

AN ORDINANCE 2009-11-19-0908

AUTHORIZING THE EXECUTION OF FOUR PROFESSIONAL SERVICES AGREEMENTS EACH IN AN AMOUNT UP TO \$150,000.00 WITH RABA-KISTNER CONSULTANTS, INC., TERRACON CONSULTANTS, INC., FUGRO CONSULTANTS, INC., AND PROFESSIONAL SERVICES INDUSTRIES, INC. FOR CONSTRUCTION MATERIAL TESTING SERVICES FOR SAN ANTONIO INTERNATIONAL AIRPORT AND STINSON MUNICIPAL AIRPORT.

* * * * *

WHEREAS, San Antonio International Airport and Stinson Municipal Airport repeatedly require Construction Materials Testing services; and

WHEREAS, the Aviation Department determined that an on-call agreement for Construction Materials Testing services would expedite the completion of future construction projects by providing an efficient means of obtaining standard Construction Materials Testing services and released a solicitation for such services on July 31, 2009; and

WHEREAS, there were nine respondents to the solicitation and Raba-Kistner Consultants, Inc., Terracon Consultants, Inc., Fugro Consultants, Inc., and Professional Services Industries, Inc. were determined to be the most qualified respondents; and

WHEREAS, it is now necessary to authorize the execution of four separate professional services agreements with Raba-Kistner Consultants, Inc., Terracon Consultants, Inc., Fugro Consultants, Inc., and Professional Services Industries, Inc.; **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager, or her designee, is authorized to execute four Professional Services Agreements, each in an amount up to \$150,000, with Raba-Kistner Consultants, Inc., Terracon Consultants, Inc., Fugro Consultants, Inc., and Professional Services Industries, Inc., Attachments 1, 2, 3, and 4 respectively, for on-call Construction Materials Testing services for San Antonio International Airport and Stinson Municipal Airport.

SECTION 2. Funding for this Ordinance will be identified when work orders are issued from the potential funding sources. All expenditures will comply with Operating and or Capital Budgets for current and future fiscal years.

SECTION 3. Payment not to exceed the limitations of the budgeted amount is authorized and should be encumbered with a purchase order.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP

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Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance shall become effective immediately upon passage by eight (8) or more affirmative votes of the entire City Council; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

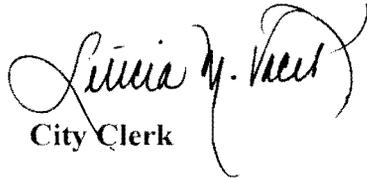
PASSED AND APPROVED this 19th day November, 2009



M A Y O R

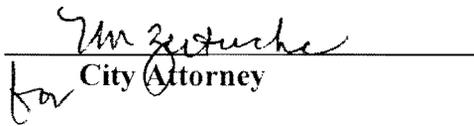
JULIÁN CASTRO

ATTEST:



City Clerk

APPROVED AS TO FORM:



for City Attorney

Agenda Item:	12 (in consent vote: 6, 7, 8, 9, 10, 12, 13, 15, 16A, 16B, 16D, 17A, 17B, 17D, 18B, 19A, 20A, 20B, 20C, 20D, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33A, 33B, 33C, 33D, 33E, 33F, 34A, 34B)						
Date:	11/19/2009						
Time:	01:19:13 PM						
Vote Type:	Motion to Approve						
Description:	An Ordinance selecting Raba-Kistner Consultants, Inc., Terracon Consultants, Inc., Fugro Consultants, Inc., and Professional Service Industries, Inc. to provide on-call, indefinite delivery construction materials-testing services to the Aviation Department for airport construction projects on an as-needed basis, and authorizing four professional service agreements each in an amount up to \$150,000.00. [Penny Post oak Ferguson, Assistant City Manager; Frank Miller, Director, Aviation]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2	x					
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8	x					
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				x

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A T T A C H M E N T I

ATTACHMENT 1

**PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL CONSTRUCTION MATERIAL TESTING**

This Professional Services Agreement (hereinafter referred to as "Agreement" or "Contract") is made and entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas municipal corporation, acting by and through its City Manager, and Raba-Kistner Consultants, Inc. acting by and through its designated officer(s), (hereinafter referred to as "Consultant"), both of which may be referred to herein collectively as the "Parties".

IN CONSIDERATION of the mutual covenants, terms, conditions, privileges and obligations herein contained, City and Consultant do hereby agree as follows:

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

- 1.1 "Airport" means the San Antonio International Airport.
- 1.2 "Stinson" means Stinson Municipal Airport.
- 1.2 "Director" means the director of the City's Aviation Department or his designee.
- 1.3 "Department" means the Aviation Department for the City of San Antonio.
- 1.4 "Project" means the specific Construction Material Testing ("CMT") work for which a Work Plan is negotiated and executed by both Parties.
- 1.5 "Work Order Request" ("WOR") means a request to Consultant to submit a Proposed Work Plan for a specific Project as further defined herein.
- 1.6 "Proposed Work Plan" means a proposal prepared by the Consultant in response to a WOR as further defined herein.
- 1.7 "Finalized Work Plan" a written agreement signed by both and made a part of this Agreement setting forth the agreed to scope and associated terms for an individual Project as further defined herein.

II. PERIOD OF SERVICE

2.1 This Agreement shall take effect on the eleventh (11th) calendar day after it is approved by the San Antonio City Council or upon execution by both parties, whichever date is later, and continue in full force and effect for 24 months from effective date unless extension or earlier termination shall occur pursuant to any of the provisions hereof.

2.2 The Aviation Director, as the City's representative, is authorized to administratively extend the term of the Agreement for one additional one (1) year term. No later than ninety (90) days prior to the completion of the initial 24 month term, the City will issue Consultant a written Notice of Intent that will inform Consultant of the City's decision with regard to exercising its option for an extension to the Agreement for one (1) additional year.

2.3 If funding for the entire Project is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

3.1 This Agreement is an on-call or indefinite delivery agreement for Construction Materials Testing ("CMT") services and such other services that are required for Consultant to provide or are associated with CMT. CMT services shall include, but are not limited to, the tests set out in Exhibit A, Compensation Sheet. Specific requirements as to types, number, and location of testing, conditions, procedures, and associated services pertaining to a Project shall be negotiated and set out in individual Finalized Work Plans for each request, which Finalized Work Plans are incorporated into and shall become a part of this Agreement. The City does not guarantee a particular volume of work or a minimum number of units of work.

3.2 Consultant shall provide all labor, equipment and transportation necessary to complete all services agreed to hereunder in a timely manner throughout the term of the Contract. Additionally, Consultant shall provide staff for regular, overtime, night, weekend, and holiday work, as requested by Department. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or subcontractors of Consultant.

3.3 All services and work performed under this Agreement must be conducted in full conformance with the provisions of this Agreement and be in compliance with all Federal Aviation Administration ("FAA") requirements and the American Society for Testing and Material ("ASTM") standards. Additionally, Consultant shall only use testing laboratory(ies) which comply with all applicable FAA requirements and ASTM standards.

3.4 Immediately upon City Council approval of this Agreement, Consultant shall, at Consultant's expense, obtain 1) Airport Personnel Identification Badges for each employee who may perform work hereunder, and 2) Airfield Driver's Licenses, as needed, for employees that may have a need to operate a vehicle within the Airport Operations Area. The procedures for procuring these badges and licenses are outlined in the Procedures for Obtaining Airport Personnel Identification Badge and Airfield Driver's License in Exhibit B. Consultant, at its own expense, shall maintain sufficient staff security clearances, badges and driving operator licenses to be able to initiate CMT Services in a timely manner upon issuance of a Notice to Proceed.

3.5 For all tests performed pursuant to this Agreement, Consultant shall promptly deliver to Department, within such timeframe required to avoid any delay in construction progress, two (2) paper copies and one (1) electronic copy in Adobe PDF format on a compact disc of all reports, on the testing laboratory's letterhead and signed by a

Professional Engineer or appropriate licensed Professional, of the test results which include:

- a. The Project name,
- b. Date(s)/time(s)/location(s) of service,
- c. Report Identification Number,
- d. Type and quantity of tests performed
- e. Test Results
- f. Standards Controlling the Test(s)
- g. Compliance or noncompliance with the specifications
- h. Any extenuating circumstances affecting the test(s) or result(s)
- i. Observations to include service time chargeable to delays and rescheduling.
- j. If manpower is involved, provide names, job classification and hours.
- k. Number of trips with work performed on the Project.
- l. Name of person who ordered the test(s).
- m. Identify any and all re-test services.

3.6 Consultant is responsible for ensuring that at the end of each Project, the construction materials testing lab uses test results to follow FAA Section 110, Method of Estimating Percentage of Material within Specification Limits (PWL) to provide a table on concrete and asphalt, if applicable.

IV. PROJECT WORK REQUEST PROCESS

4.1 When Director has a Project for which he desires to procure CMT Services, Director shall notify Consultant by issuing a WOR. Each WOR will include, at a minimum: name of Project, location of Project, copies of or access to Project documentation (such as specifications, environmental reports, or drawings) needed by Consultant to prepare a Proposed Work Plan, Project schedule and any specific deadlines for performance of CMT Services, any Project specific insurance requirements necessitated by the work which may require additional types of coverages or higher levels of coverage than required by the Agreement, and a deadline for providing Director with a Proposed Work Plan based on the above.

4.2 Consultant shall prepare and submit to Director, within the timeline stated in a WOR, a Proposed Work Plan for the desired services which will include at a minimum: Scope of Services, specific staffing, an estimate of Project cost based on the hourly rates and test fees agreed upon in Exhibit A, Compensation Sheet, and Project specific expenses for the services requested in the WOR. The Consultant shall submit the Proposed Work Plan in editable electronic format to the City. By submitting a Proposed Work Plan, Consultant agrees to perform the requested service within the time stated in the WOR.

4.3 Consultant and Director shall negotiate the Proposed Work Plan. Once Consultant and Director reach mutual agreement as to scope, staffing, scheduling and

cost, the City shall issue a Finalized Work Plan to be executed by both parties evidencing the agreed to scope and costs.

4.4 The Director has the authority to execute Finalized Work Plans on behalf of the City so long as such Finalized Work Plan does not exceed the total contract value and funds are provided for in the Project budget as allocated by City Council.

4.5 Consultant shall not proceed with services until after a Finalized Work Plan has been executed, Consultant receives a Notice to Proceed, and all documents required by Director in advance of commencement of work, to include proof of insurance, have been provided. Any services provided or expenses incurred prior to receiving a Notice to Proceed or after the expiration of this Agreement or a particular Final Work Plan will be at Consultant's sole risk and expense and may not be reimbursable by City.

4.6 Actual amounts billed shall not exceed the total amount as set out in the Final Work Plan.

4.7 Each Finalized Work Plan and Notices to Proceed shall be attached hereto and incorporated herein for all purposes. Each grouping of Final Work Plans and Notices to Proceed shall be labeled and identified in numerical order. For example, the first group shall be labeled as:

Attachment 1(a) – Finalized Work Plan
Attachment 1(b) – Notice to Proceed

4.8 Consultant shall not invoice for any work associated with the Project Work Request Process, including development of Proposed Work Plan and its negotiation.

V. COORDINATION WITH THE CITY

5.1 The Director or his designee shall act on behalf of City with respect to the work performed under this Agreement, and shall have complete authority to transmit instructions, receive information, and interpret and define City's policies and decisions with respect to materials, equipment elements and systems pertinent to Consultant's services.

5.2 City shall provide written notice to the Consultant of any errors or omissions discovered in the Consultant's services, or performance, or of any development that affects the scope or timing of Consultant's services.

5.3 City shall strive to provide a minimum of 24 hours advance notice for scheduling or canceling field inspection and testing services. Work scheduled with less than 24 hours notice will be serviced subject to available personnel. Consultant shall not invoice any type of cancellation fee.

VI. COMPENSATION

6.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant for at the rates set out in Exhibit A, Compensation Sheet, within 30 calendar days' receipt of an approved itemized invoice.

However, in no event shall the total compensation to be paid to Consultant under this Agreement exceed \$150,000.00.

6.2 Only amounts specifically set forth in Exhibit A, Compensation Sheet, or within a particular Finalized Work Plan may be invoiced hereunder.

6.3 Nothing contained in this Agreement shall require City to pay for any unsatisfactory work, as determined by Director, or for work that is not in compliance with the terms of this Agreement. City shall not be required to make any payments to Consultant at any time Consultant is in default under this Agreement.

6.4 Despite the City's approval of an assignee or subcontractor, the City shall, in no event, be obligated to any third party, including any assignee or subcontractor of the Consultant, for performance of work or services, nor shall City funds be used for payment of work or services performed prior to the date of Agreement execution, prior to the Notice to Proceed for a Project, after the completion date contained in a Finalized Work Plan, or after the expiration date of this Agreement.

6.5 Invoicing. Consultant shall submit an invoice to the City for CMT Services provided, and actual work performed in the format to be prescribed by the City. Consultant may submit invoices no more than once monthly for tests completed with reported results and work performed which have not been included on previous invoices. Such invoices must show: a) a detailed summary of the tests completed, b) services rendered itemized by task performed, the employee category and the number of hours worked during the period covered by the invoice, c) any allowable expenses incurred, itemized and with sufficient documentation to allow verification, d) the amount due for the services and expenses, and e) any other evidence required by the Director or his designated representative. Consultant must invoice separately for each open Project. Blended invoices for multiple open Projects will not be acceptable.

6.6 Records. All time keeping records must be accurate and complete. Invoices for services shall indicate the name and job classification of each employee performing the work, the associated billing rate (in accordance with the rate set forth in Exhibit A) and must be recorded in quarter hour increments.

6.7 Right to Audit. The Consultant will provide supporting evidence necessary to substantiate charges related to the contract and allow the City to access Consultant's "records" associated with this Agreement. Consultant's "records" shall be made available within two weeks of the written request for open inspection, audit, and/or reproduction during normal business working hours. Such audits may be performed by a City's representative or an outside representative engaged by City. The City or its designee may conduct such audits or inspections throughout the term of this Agreement and for a period of three years after final payment or longer if required by law. The City's representatives may (without limitation) conduct verifications such as counting employees at the Project site, verifying information and amounts through interviews and written confirmations with Consultant's employees, field and agency labor, subcontractors, and vendors.

6.7.1 Consultant's "records" as referred to in this contract shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions,

recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in the City's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by this Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; invoices and related payment documentation; general ledger, and any other Consultant records which may have a bearing on matters of interest to the City in connection with the Consultant's dealings with the City to the extent necessary to adequately permit evaluation and verification of any or all of the following:

- (a) Compliance with contract requirements for deliverables
 - (b) Compliance with contract provisions regarding the pricing of change orders
 - (c) Accuracy of Consultant representations regarding the pricing of invoices
 - (d) Accuracy of Consultant representations related to claims submitted by the Consultant or any payees.
- 6.7.2 Consultant shall require all payees (examples of payees include subcontractors, material suppliers, insurance carriers, etc.) to comply with the provisions of this article by ensuring that the City's right to audit requirements set forth herein are contained in a written contract between Consultant and payee. Consultant will ensure that the City has the same right to audit all payees that it has to audit Consultant under the terms of this Agreement.
- 6.7.3 City's authorized representative or designee shall have reasonable access to the Consultant's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, in order to conduct audits in compliance with this article.
- 6.7.4 If an audit inspection or examination in accordance with this article discloses overpricing or overcharges (of any nature) by the Consultant to the City in excess of three percent (3%) of the total contract billings, in addition to making adjustments for the overcharges, the reasonable actual cost of the City's audit shall be reimbursed to the City by the Consultant. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Consultant's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Consultant.

VII. OWNERSHIP AND RETENTION OF DOCUMENTS AND ACCESS TO LAB RESULTS

7.1 Upon completion or termination of the Project, or upon request by the City, all documents and information, in whatever form, given to, prepared or assembled by the Consultant in connection with its performance of its duties under this Agreement shall become the sole property of the City and shall be delivered at no cost to the City without restriction on future use. Documents and information covered by this paragraph shall include, but not be limited to, reports, test results, field notes and other data. The City shall have free and immediate access to all such information at all times during the term of this Agreement with the right to make and retain copies documents, notes and data, whether or not the Project has been completed. Prior to surrender of the documents and information, Consultant may make copies of any and all documents for its files, at its sole cost and expense. Consultant will not be responsible for the unauthorized reuse or modification of reports or work product resulting from City's use, distribution of, or failure to maintain control over the reports or work product once delivered to the City.

7.2 At any time during the Project, the City shall have the right to unrestrained direct access and contact with laboratories and testing facilities used by Consultant for work performed by Consultant under this Agreement; and the City shall have the unrestricted right to obtain original or duplicate copies of reports and testing results directly from the lab or testing facility used by Consultant.

7.3 The Consultant agrees to maintain all books, records and reports required under this contract for a period of not less than three (3) years after final payment is made and all pending matters are closed. In addition, the Consultant shall maintain an acceptable cost accounting system during the term of this Agreement. The Consultant agrees to provide the City, the Federal Aviation Administration ("FAA") and the Comptroller General of the United States, or any of their duly authorized representatives, access to any books, documents, papers and records of the Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions.

VIII. TERMINATION OF AGREEMENT

8.1 Termination Without Cause.

8.1.1 This Agreement may be terminated by City without cause, prior to Director giving Consultant written Notice to Proceed, should Director, in his sole discretion, determine that it is not in City's best interest to proceed with this Agreement. Such notice shall be provided in accordance with the notice provisions contained in this Agreement, and shall be effective immediately upon delivery to the Consultant.

8.1.2 This Agreement may be terminated by the City at any time after issuance of the Director's Notice to Proceed, either for the City's convenience or because of

Consultant's failure to fulfill the contract obligations. Upon receipt of such notice, services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Agreement, whether completed or in progress, delivered to the City.

8.1.3 If the termination is for the convenience of the City, and following inspection and acceptance of Consultant's services properly performed prior to the effective date of termination, an equitable adjustment in the contract price shall be made. Consultant shall not, however, be entitled to lost or anticipated profit on unperformed services, should City choose to exercise its option to terminate, nor shall Consultant be entitled to compensation for any unnecessary or unapproved work, performed during time between the issuance of the City's notice of termination and the actual termination date.

8.1.4 If the termination is due to Consultant's failure to fulfill its obligations, the City may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Consultant shall be liable to the City for any additional cost occasioned to the City thereby.

8.1.5 If, after notice of termination for failure to fulfill contract obligations, it is determined that the Consultant had not so failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, an equitable adjustment in the contract price shall be made as provided in paragraph 7.1.3 of this clause.

8.1.6 The rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

8.1.7 This Agreement may be terminated by the Consultant, at any time after issuance of the Director's Notice to Proceed, upon ninety (90) calendar days written notice provided in accordance with the Notice provisions contained in this Agreement.

8.2 Defaults With Opportunity for Cure. Should Consultant fail, as determined by the Director, to satisfactorily perform the duties set out in Article III. SCOPE OF SERVICES; or comply with any covenant herein required, such failure shall be considered an Event of Default. In such event, the City shall deliver written notice of said default, in accordance with the notice provisions contained in this Agreement, specifying the specific Events of Default and the action necessary to cure such defaults. Consultant shall have ten (10) calendar days after receipt of the written notice to cure such default. If Consultant fails to cure the default within such cure period, or take steps reasonably calculated to cure such default, City shall have the right, without further notice, to terminate this Contract in whole or in part as City deems appropriate, and to contract with another Consultant to complete the work required by this Agreement. City shall also have the right to offset the cost of said new agreement with a new Consultant against Consultant's future or unpaid invoice(s), subject to any statutory or legal duty, if any, on the part of City to mitigate its losses.

8.3 Termination For Cause. Upon the occurrence of one (1) or more of the following events, and following written notice to Consultant given in accordance with the notice provisions contained in this Agreement, City may immediately terminate this Contract, in whole or in part, "for cause":

8.3.1 Consultant makes, directly or indirectly through its employees or representatives, any material misrepresentation or provides any materially misleading information to City in connection with this Agreement or its performance hereunder; or

8.3.2 Consultant violates or materially fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this Agreement, except those events of default for which an opportunity to cure is provided herein; or

8.3.3 Consultant fails to cure, or initiate steps reasonably calculated to cure, a default listed in Section 9.3 below, within the time period required for cure; or

8.3.4 Consultant violates any rule, regulation or law to which Consultant is bound or shall be bound under the terms of this Agreement; or

8.3.5 Consultant attempts the sale, transfer, pledge, conveyance or assignment of this Agreement contrary to the terms of the Agreement; or

8.3.6 Consultant ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Contract shall continue) and such petition is not dismissed within forty-five (45) days of filing; or if a receiver, trustee or liquidator is appointed for it, or its joint venture entity, or any substantial part of Manager's assets or properties.

8.4 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

8.5 Orderly Transfer Following Termination. Regardless of how this Agreement is terminated, Consultant shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City. Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant, or any of its subcontractors, pursuant to this Agreement. All completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced, or provided to Consultant, in connection with the services rendered by Consultant under this Agreement, regardless of storage medium, shall be transferred to City. Such record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents.

8.6 Claims for Outstanding Fees. Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. **Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a Waiver by Consultant of any and all**

right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

8.7 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

8.8 Upon termination or cancellation of this Agreement, the City may immediately commence an audit of the Consultant's books, accounts, and records. Within thirty (30) calendar days after being notified by the City of the results of said audit, the Consultant shall pay the City any amount shown by said audit to be owed the City or its employees. No waiver of existing default shall be deemed to waive any subsequent default.

IX. SUSPENSION OF WORK UNDER AGREEMENT

9.1 Right of City to Suspend. City may suspend this Agreement for any reason, with or without cause upon the issuance of written Notice of Suspension in accordance with the Notice provisions contained in this Agreement. Such suspension shall take effect upon the date specified in such notice; provided, however, such date shall not be earlier than the tenth (10th) day following receipt by Consultant of said notice. The Notice of Suspension will set out the reason(s) for the suspension and the anticipated duration of the suspension, but will in no way guarantee the total number of days of suspension.

9.2 Consultant's Right to Terminate In Event of Suspension of Agreement. In the event such suspension exceeds one hundred and twenty (120) calendar days, Consultant shall have the right to terminate this Agreement. Consultant may exercise this right to terminate by issuing a written Notice of Termination to the City, delivered in accordance with the Notice provisions contained in this Agreement after the expiration of one hundred and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by City and such termination shall be subject to all the requirements set out in Paragraphs 7.5 and 7.6 above, related to the Orderly Transfer and Fee Payment.

9.3 Procedures Upon Receipt of Notice of Suspension.

9.3.1 Upon receipt of a notice of suspension and prior to the effective date of the suspension, Consultant shall, unless otherwise directed, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement.

9.3.2 Consultant shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

9.3.3 Copies of all completed or partially completed studies, plans and other documents prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to the City but shall be retained by Consultant until such time as Consultant may exercise the right to terminate.

9.3.4 During the period of Suspension, Consultant shall have the option to at any time submit the above referenced statement to the City for payment of any unpaid portion of the prescribed fee for services which have actually been performed to the benefit of the City under this Agreement, adjusted for any previous payments of the fee in question.

9.3.5 In the event Consultant exercises its right to terminate this Agreement at any time after the effective Suspension date, Consultant shall submit, within forty-five (45) calendar days after receipt by City of Consultant's notice of termination (if he has not previously done so) the above referenced statement showing in detail the services performed under this Agreement prior to the effective date of suspension. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a Waiver by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

9.3.6 Upon the above conditions being met, the City's review of the submissions and finding the claimed compensation to be appropriate to the terms of this agreement, the City shall pay Consultant that portion of the agreed prescribed fee for those as yet uncompensated services actually performed under this Agreement to the benefit of the City, adjusted for any previous payments of the fee in question.

X. INSURANCE REQUIREMENTS

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Aviation Department, which shall be clearly labeled "**On-Call Construction Materials Testing Services**" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Aviation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article for each WOR issued during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, circumstances surrounding this Agreement, or risks associated with the specific WOR to be issued under the Agreement(s). In no instance will City allow modification whereupon City may incur increased risk.

10.3 A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance

coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any negligent act, malpractice, error or omission in professional services.

10.4 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation, employer's liability and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

10.5 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

10.6 In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

10.7 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

10.8 It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

10.9 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

10.10 Consultant and any Subcontractors are responsible for all damage to their own equipment and/or property.

10.11 Consultant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Consultant herein, and provide a certificate of insurance and endorsement that names the Consultant and the CITY as additional insureds. Consultant shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

XI. INDEMNIFICATION

11.1 Consultant whose work product is the subject of this contract agrees to INDEMNIFY AND HOLD CITY, ITS OFFICERS AND EMPLOYEES, HARMLESS against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, intellectual property infringement, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may **ARISE OUT OF OR BE OCCASIONED OR CAUSED BY CONSULTANT'S NEGLIGENT ACT,**

ERROR, OR OMISSION OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF CONSULTANT AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the rights or duties under this Agreement.

11.2 The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

11.3 Consultant shall promptly advise the City, in writing, of any claim or demand against the City or Consultant known to Consultant related to or arising out of Consultant activities under this contract.

11.4 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or other wise, to any other person or entity.

XII. CONSULTANT'S LIABILITY AND STANDARD OF CARE

12.1 Services provided by Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Acceptance of the services performed and/or results and reports submitted by Consultant hereunder shall not constitute nor be deemed a release of the responsibility and liability of Consultant, its employees, associates, agents or subcontractors for the accuracy and competency of their testing, reports, assessments or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by City for any defect or error in testing, reports, or assessments and work performed by Consultant, its employees, subcontractors, and agents.

XIII. CONSULTANT'S WARRANTY UNDER THE PROFESSIONAL SERVICES PROCUREMENT ACT

13.1 Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for Consultant to solicit or secure this Agreement, and that it has not, for the purpose of soliciting or securing this Agreement, paid, compensated, or agreed to pay or compensate, any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift, for any other consideration contingent upon or resulting from the award or making of this Agreement. For breach of the foregoing warranty, the City shall have the right to terminate the Agreement under the provisions of this Agreement. However, breach of the warranty required in this provision constitutes fraud by operation of law; therefore, any Consultant found in breach of such warranty, by a final judgment of

a Court of Competent Jurisdiction, shall take no compensation under this Agreement for any services rendered and such forfeiture shall not bar the City from pursuit and collection of any and all other damages, at law and in equity, to which it may be justly entitled. Accordingly, Consultant further pledges and warrants its best and most competent professional efforts to secure to the City the benefits of the Agreement.

XIV. ASSIGNMENT OF RIGHTS OR DUTIES

14.1 By entering into this Agreement, City has approved the use of any subcontractors identified in Consultant's Response to City's solicitation for services. No further approval shall be needed for Consultant to use such subcontractors as are identified in Consultant's Response to City's Request for Qualifications.

14.2 Except as otherwise required herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the prior written consent of City. Engineering services required by law to be performed by a licensed engineer, or services which, by law, require the supervision and approval of a licensed engineer, may only be subcontracted upon the prior written approval of the San Antonio City Council, by approval and passage of an ordinance therefore. Any other services to be performed under this Agreement may be subcontracted upon the written approval of Director. As a condition of consent, if same is given, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor consultant, assignee, transferee or subcontractor. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by City in accordance with this Article.

14.3 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this Agreement, without said written approval, shall be void, and shall confer no rights upon any third person. Should Consultant assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this Agreement, City may, at its option, terminate this Agreement as provided herein, and all rights, titles and interest of Consultant shall thereupon cease and terminate, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

14.4 Consultant agrees to notify Director of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to City under this Agreement, any such change of ownership interest or control of its business entity may be grounds for termination of this Agreement in accordance with Article VIII, Termination.

XV. INDEPENDENT CONTRACTOR

15.1 Consultant covenants and agrees that (s)he is an independent contractor and not an officer, agent, servant, or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of *respondeat superior* shall not apply as between City and Consultant, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Consultant.

15.2 No Third Party Beneficiaries - For purposes of this Agreement, including its intended operation and effect, the Parties specifically agree and contract that: (1) this Agreement only affects matters/disputes between the Parties to this Agreement, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with City or Consultant or both, or that such third parties may benefit incidentally by this Agreement; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either City or Consultant.

XVI. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

16.1 It is the policy of the City of San Antonio that disadvantaged business enterprises (DBEs) as defined under 49 CFR Part 26, shall have "equality of opportunity" to participate in the awarding of federally-assisted Aviation Department contracts and related subcontracts, to include sub-tier subcontracts. This policy supports the position of the U.S. Department of Transportation (DOT) and the FAA in creating a level playing field and removing barriers by ensuring nondiscrimination in the award and administration of contracts financed in whole or in part with federal funds under this contract. Therefore, on all DOT or FAA-assisted projects the DBE program requirements of 49 CFR Part 26 apply to the contract.

16.2 The Consultant agrees to employ good-faith efforts (as defined in the Aviation Department's DBE Program) to carry out this policy through award of sub-consultant contracts to disadvantaged business enterprises to the fullest extent participation is consistent with the performance of the Aviation Department Contract, and/or the utilization of DBE suppliers where feasible. Consultants are expected to solicit bids from available DBE's on contracts which offer subcontracting opportunities.

16.3 Consultant specifically agrees to comply with all applicable provisions of the Aviation Department's DBE Program. The DBE Program may be obtained through the airport's DBE Liaison Officer at (210) 207-3505 or by contacting the City's Aviation Department.

16.4 The Consultant shall not discriminate on the basis of race, color, national origin,

or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate. Consultant agrees to include this clause in each sub-consultant contract the prime consultant signs with a sub-consultant.

16.5 The Consultant agrees to pay each sub-consultant under this Contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment the prime contract receives from the City of San Antonio. The Consultant further agrees to return retainage payments to each sub-consultant within fifteen (15) days after the sub-consultant's work is satisfactorily completed. The Consultant shall provide the City with a report, in a format prescribed by the City, detailing all amounts, if any, paid to DBE subconsultants or suppliers with each invoice that Consultant submits hereunder. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval from the City of San Antonio. This Clause applies to both DBE and non-DBE sub-consultants.

16.6 All changes to the list of sub-consultants submitted with the proposal and approved by the City or Aviation Department, excluding vendors shall be submitted for review and approval by Aviation Department's DBE Liaison Office for approval when adding, changing, or deleting sub-consultants on airport projects. Consultants shall make a good-faith effort to replace DBE sub-consultants unable to perform on the contract with another DBE.

16.7 During the term of this Agreement, the Consultant must report the actual payments made to all subcontractors to the City in a time interval and a format determined by the City. The City reserves the right, at any time during the term of this Agreement, to request additional information, documentation or verification of payments made to subcontractors in connection with this Agreement. Verification of amounts being reported may take the form of requesting copies of cancelled checks paid to participating DBEs and/or confirmation inquiries directly with participating DBEs. Proof of payment such as copies of check must properly identify the project name or project number to substantiate payment.

16.8 The Consultant shall comply with the DBE Compliance and Enforcement Policy attached hereto as Exhibit C. Failure or refusal by a Proposer or Consultant to comply with the DBE provisions herein or any applicable provisions of the DBE Program, either during the proposal process or at any time during the term of the Contract, may constitute a material breach of Contract, whereupon the Contract, at the option of the Aviation Department, may be cancelled, terminated, or suspended in whole or in part.

XVII. NOTICES

17.1 Unless otherwise expressly provided elsewhere in this Agreement, any election, notice or communication required or permitted to be given under this Agreement shall be

in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier.

If intended for CITY, to:

City of San Antonio
Attn: Mr. Dan Gallagher
Aviation Department/Planning & Development
9700 Airport Blvd.
San Antonio, Texas 78216

If intended for Consultant, to:

Raba-Kistner Consultants, Inc.
Attn: Mr. Preston Parker
12821 West. Golden Lane
San Antonio, TX 78249

XVIII. CONFLICTS OF INTEREST

18.1 Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

18.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of City. Consultant further warrants and certifies that it has tendered to City's a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

XIX. SOLICITATION

19.1 Consultant warrants and represents that he has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. This representation constitutes a substantial part of the consideration for the making of this Agreement.

XX. AIRPORT SECURITY

20.1 To the extent Consultant will be responsible for work which necessitates entrance to the Air Operations Area or other secure area of the Airport, this Agreement is expressly subject to the airport security requirements of Title 49 of the United States Code, Chapter 449, as amended ("Airport Security Act"), the provisions of which govern airport security and are incorporated by reference, including without limitation the rules and regulations promulgated under it. Consultant is subject to, and further must conduct with respect to its Subcontractors and the respective employees of each, such employment investigations, including criminal history record checks, as the Aviation Director, the TSA or the FAA may deem necessary. Further, in the event of any threat to civil aviation, Consultant must promptly report any information in accordance with those regulations promulgated by the FAA, the TSA and the City. Consultant must, notwithstanding anything contained in this Agreement to the contrary, at no additional cost to the City, perform under this Agreement in compliance with those guidelines developed by the City, the TSA and the FAA with the objective of maximum security enhancement.

20.2 Consultant must comply with, and require compliance by its Subcontractors, with all present and future laws, rules, regulations, or ordinances promulgated by the City, the TSA or the FAA, or other governmental agencies to protect the security and integrity of the Airport, and to protect against access by unauthorized persons. Subject to the approval of the TSA, the FAA and the Aviation Director, Consultant must adopt procedures to control and limit access to the Airport Premises utilized by Consultant and its Subcontractors in accordance with all present and future City, TSA and FAA laws, rules, regulations, and ordinances. At all times during the Term, Consultant must have in place and in operation a security program for the Airport Premises utilized by Consultant that complies with all applicable laws and regulations. All employees of Consultant that require regular access to sterile or secure areas of the Airports must be badged in accordance with City and TSA rules and regulations.

20.3 Gates and doors located in and around the Airport Premises utilized by Consultant that permit entry into sterile or secured areas at the Airports, if any, must be kept locked by Consultant at all times when not in use, or under Consultant's constant security surveillance. Gate or door malfunctions must be reported to the Aviation Director or the Aviation Director's designee without delay and must be kept under constant surveillance by Consultant until the malfunction is remedied.

20.4 In connection with the implementation of its security program, Consultant may receive, gain access to or otherwise obtain certain knowledge and information related to the City's overall Airport security program. Consultant acknowledges that all such knowledge and information is of a highly confidential nature. Consultant covenants that no person will be permitted to gain access to such knowledge and information, unless the person has been approved by the City or the Aviation Director in advance in writing. Consultant further must indemnify, hold harmless and defend the City and other users of the Airport from and against any and all claims, reasonable costs, reasonable expenses, damages and liabilities, including all reasonable attorney's fees and costs, resulting directly or indirectly from the breach of Licensee's covenants and agreements as set forth in this section.

XXI. CONTRACT CONSTRUCTION

21.1 All parties have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

XXII. FAMILIARITY WITH LAW AND CONTRACT TERMS

22.1 Consultant represents that, prior to signing this Agreement; Consultant has become thoroughly acquainted with all matters relating to the performance of this Agreement, all applicable laws, and all of the terms and conditions of this Agreement.

XXIII. APPLICABLE LAW

23.1 This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

XXIV. VENUE

24.1 The obligations of the parties to this Agreement shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

XXV. SEVERABILITY

25.1 In the event any one or more paragraphs or portions of this Agreement are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of this Agreement, but such shall be confined to the specific section, sentences, clauses or portions of this Agreement held invalid or unenforceable.

XXVI. FORCE MAJEURE

26.1 In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

XXVII. SUCCESSORS

27.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as

otherwise provided in this Agreement, their assigns.

XXVIII. NON-WAIVER OF PERFORMANCE

28.1 A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City , such changes must be approved by the San Antonio City Council.

28.2 No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXIX. PARAGRAPH HEADINGS

29.1 The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXX. LEGAL AUTHORITY

30.1 The signer of this Agreement for CITY and Consultant each represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of City and Consultant respectively, and to bind City and Consultant to all of the terms, conditions, provisions and obligations herein contained.

XXXI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

31.1 By execution of this Agreement, the undersigned authorized representative of Consultant certifies, and the City relies thereon, that neither Consultant., nor its Principals are presently debarred, suspended, proposed for debarment, or declared ineligible, or voluntarily excluded for the award of contracts by any Federal governmental agency or department;

31.2 "Principals", for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

31.3 Consultant shall provide immediate written notice to City, in accordance the notice provisions of this Agreement, if, at any time during the term of this contract, including any renewals hereof, Consultant learns that this certification was erroneous when made or has become erroneous by reason of changed circumstances.

31.4 Consultant's certification is a material representation of fact upon which the City has relied in entering into this Agreement. Should City determine, at any time during this Agreement, including any renewals hereof, that this certification is false, or should it become false due to changed circumstances, the City may terminate this Agreement in accordance the terms of this Agreement.

XXXII. ENTIRE AGREEMENT & AMENDMENTS

32.1 This Agreement, together with its Exhibits and Attachments, embodies the complete Agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein. No other agreements, verbal or otherwise, regarding the matters of this Agreement shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and executed by the parties hereto.

32.2 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant, and subject to approval by the City Council, as evidenced by passage of an ordinance.

32.3 It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

EXECUTED ON this the ____ day of _____, 2009.

CITY OF SAN ANTONIO, TEXAS

RABA-KISTNER CONSULTANTS, INC.

By: _____
Sheryl Sculley
City Manager

By: Paul R. Lampe
Paul R. Lampe
Senior Vice President

Federal Tax ID # 74-1611534

APPROVED AS TO FORM:

By: _____
City Attorney

ATTACHMENT 2

**PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL CONSTRUCTION MATERIAL TESTING**

This Professional Services Agreement (hereinafter referred to as "Agreement" or "Contract") is made and entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas municipal corporation, acting by and through its City Manager, and Terracon Consultants, Inc., acting by and through its designated officer(s), (hereinafter referred to as "Consultant"), both of which may be referred to herein collectively as the "Parties".

IN CONSIDERATION of the mutual covenants, terms, conditions, privileges and obligations herein contained, City and Consultant do hereby agree as follows:

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

- 1.1 "Airport" means the San Antonio International Airport.
- 1.2 "Stinson" means Stinson Municipal Airport.
- 1.2 "Director" means the director of the City's Aviation Department or his designee.
- 1.3 "Department" means the Aviation Department for the City of San Antonio.
- 1.4 "Project" means the specific Construction Material Testing ("CMT") work for which a Work Plan is negotiated and executed by both Parties.
- 1.5 "Work Order Request" ("WOR") means a request to Consultant to submit a Proposed Work Plan for a specific Project as further defined herein.
- 1.6 "Proposed Work Plan" means a proposal prepared by the Consultant in response to a WOR as further defined herein.
- 1.7 "Finalized Work Plan" a written agreement signed by both and made a part of this Agreement setting forth the agreed to scope and associated terms for an individual Project as further defined herein.

II. PERIOD OF SERVICE

2.1 This Agreement shall take effect on the eleventh (11th) calendar day after it is approved by the San Antonio City Council or upon execution by both parties, whichever date is later, and continue in full force and effect for 24 months from effective date unless extension or earlier termination shall occur pursuant to any of the provisions hereof.

2.2 The Aviation Director, as the City's representative, is authorized to administratively extend the term of the Agreement for one additional one (1) year term. No later than ninety (90) days prior to the completion of the initial 24 month term, the City will issue Consultant a written Notice of Intent that will inform Consultant of the City's decision with regard to exercising its option for an extension to the Agreement for one (1) additional year.

2.3 If funding for the entire Project is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

3.1 This Agreement is an on-call or indefinite delivery agreement for Construction Materials Testing ("CMT") services and such other services that are required for Consultant to provide or are associated with CMT. CMT services shall include, but are not limited to, the tests set out in Exhibit A, Compensation Sheet. Specific requirements as to types, number, and location of testing, conditions, procedures, and associated services pertaining to a Project shall be negotiated and set out in individual Finalized Work Plans for each request, which Finalized Work Plans are incorporated into and shall become a part of this Agreement. The City does not guarantee a particular volume of work or a minimum number of units of work.

3.2 Consultant shall provide all labor, equipment and transportation necessary to complete all services agreed to hereunder in a timely manner throughout the term of the Contract. Additionally, Consultant shall provide staff for regular, overtime, night, weekend, and holiday work, as requested by Department. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or subcontractors of Consultant.

3.3 All services and work performed under this Agreement must be conducted in full conformance with the provisions of this Agreement and be in compliance with all Federal Aviation Administration ("FAA") requirements and the American Society for Testing and Material ("ASTM") standards. Additionally, Consultant shall only use testing laboratory(ies) which comply with all applicable FAA requirements and ASTM standards.

3.4 Immediately upon City Council approval of this Agreement, Consultant shall, at Consultant's expense, obtain 1) Airport Personnel Identification Badges for each employee who may perform work hereunder, and 2) Airfield Driver's Licenses, as needed, for employees that may have a need to operate a vehicle within the Airport Operations Area. The procedures for procuring these badges and licenses are outlined in the Procedures for Obtaining Airport Personnel Identification Badge and Airfield Driver's License in Exhibit B. Consultant, at its own expense, shall maintain sufficient staff security clearances, badges and driving operator licenses to be able to initiate CMT Services in a timely manner upon issuance of a Notice to Proceed.

3.5 For all tests performed pursuant to this Agreement, Consultant shall promptly deliver to Department, within such timeframe required to avoid any delay in construction progress, two (2) paper copies and one (1) electronic copy in Adobe PDF format on a compact disc of all reports, on the testing laboratory's letterhead and signed by a

Professional Engineer or appropriate licensed Professional, of the test results which include:

- a. The Project name,
- b. Date(s)/time(s)/location(s) of service,
- c. Report Identification Number,
- d. Type and quantity of tests performed
- e. Test Results
- f. Standards Controlling the Test(s)
- g. Compliance or noncompliance with the specifications
- h. Any extenuating circumstances affecting the test(s) or result(s)
- i. Observations to include service time chargeable to delays and rescheduling.
- j. If manpower is involved, provide names, job classification and hours.
- k. Number of trips with work performed on the Project.
- l. Name of person who ordered the test(s).
- m. Identify any and all re-test services.

3.6 Consultant is responsible for ensuring that at the end of each Project, the construction materials testing lab uses test results to follow FAA Section 110, Method of Estimating Percentage of Material within Specification Limits (PWL) to provide a table on concrete and asphalt, if applicable.

IV. PROJECT WORK REQUEST PROCESS

4.1 When Director has a Project for which he desires to procure CMT Services, Director shall notify Consultant by issuing a WOR. Each WOR will include, at a minimum: name of Project, location of Project, copies of or access to Project documentation (such as specifications, environmental reports, or drawings) needed by Consultant to prepare a Proposed Work Plan, Project schedule and any specific deadlines for performance of CMT Services, any Project specific insurance requirements necessitated by the work which may require additional types of coverages or higher levels of coverage than required by the Agreement, and a deadline for providing Director with a Proposed Work Plan based on the above.

4.2 Consultant shall prepare and submit to Director, within the timeline stated in a WOR, a Proposed Work Plan for the desired services which will include at a minimum: Scope of Services, specific staffing, an estimate of Project cost based on the hourly rates and test fees agreed upon in Exhibit A, Compensation Sheet, and Project specific expenses for the services requested in the WOR. The Consultant shall submit the Proposed Work Plan in editable electronic format to the City. By submitting a Proposed Work Plan, Consultant agrees to perform the requested service within the time stated in the WOR.

4.3 Consultant and Director shall negotiate the Proposed Work Plan. Once Consultant and Director reach mutual agreement as to scope, staffing, scheduling and

cost, the City shall issue a Finalized Work Plan to be executed by both parties evidencing the agreed to scope and costs.

4.4 The Director has the authority to execute Finalized Work Plans on behalf of the City so long as such Finalized Work Plan does not exceed the total contract value and funds are provided for in the Project budget as allocated by City Council.

4.5 Consultant shall not proceed with services until after a Finalized Work Plan has been executed, Consultant receives a Notice to Proceed, and all documents required by Director in advance of commencement of work, to include proof of insurance, have been provided. Any services provided or expenses incurred prior to receiving a Notice to Proceed or after the expiration of this Agreement or a particular Final Work Plan will be at Consultant's sole risk and expense and may not be reimbursable by City.

4.6 Actual amounts billed shall not exceed the total amount as set out in the Final Work Plan.

4.7 Each Finalized Work Plan and Notices to Proceed shall be attached hereto and incorporated herein for all purposes. Each grouping of Final Work Plans and Notices to Proceed shall be labeled and identified in numerical order. For example, the first group shall be labeled as:

Attachment 1(a) – Finalized Work Plan
Attachment 1(b) – Notice to Proceed

4.8 Consultant shall not invoice for any work associated with the Project Work Request Process, including development of Proposed Work Plan and its negotiation.

V. COORDINATION WITH THE CITY

5.1 The Director or his designee shall act on behalf of City with respect to the work performed under this Agreement, and shall have complete authority to transmit instructions, receive information, and interpret and define City's policies and decisions with respect to materials, equipment elements and systems pertinent to Consultant's services.

5.2 City shall provide written notice to the Consultant of any errors or omissions discovered in the Consultant's services, or performance, or of any development that affects the scope or timing of Consultant's services.

5.3 City shall strive to provide a minimum of 24 hours advance notice for scheduling or canceling field inspection and testing services. Work scheduled with less than 24 hours notice will be serviced subject to available personnel. Consultant shall not invoice any type of cancellation fee.

VI. COMPENSATION

6.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant for at the rates set out in Exhibit A, Compensation Sheet, within 30 calendar days' receipt of an approved itemized invoice.

However, in no event shall the total compensation to be paid to Consultant under this Agreement exceed \$150,000.00.

6.2 Only amounts specifically set forth in Exhibit A, Compensation Sheet, or within a particular Finalized Work Plan may be invoiced hereunder.

6.3 Nothing contained in this Agreement shall require City to pay for any unsatisfactory work, as determined by Director, or for work that is not in compliance with the terms of this Agreement. City shall not be required to make any payments to Consultant at any time Consultant is in default under this Agreement.

6.4 Despite the City's approval of an assignee or subcontractor, the City shall, in no event, be obligated to any third party, including any assignee or subcontractor of the Consultant, for performance of work or services, nor shall City funds be used for payment of work or services performed prior to the date of Agreement execution, prior to the Notice to Proceed for a Project, after the completion date contained in a Finalized Work Plan, or after the expiration date of this Agreement.

6.5 Invoicing. Consultant shall submit an invoice to the City for CMT Services provided, and actual work performed in the format to be prescribed by the City. Consultant may submit invoices no more than once monthly for tests completed with reported results and work performed which have not been included on previous invoices. Such invoices must show: a) a detailed summary of the tests completed, b) services rendered itemized by task performed, the employee category and the number of hours worked during the period covered by the invoice, c) any allowable expenses incurred, itemized and with sufficient documentation to allow verification, d) the amount due for the services and expenses, and e) any other evidence required by the Director or his designated representative. Consultant must invoice separately for each open Project. Blended invoices for multiple open Projects will not be acceptable.

6.6 Records. All time keeping records must be accurate and complete. Invoices for services shall indicate the name and job classification of each employee performing the work, the associated billing rate (in accordance with the rate set forth in Exhibit A) and must be recorded in quarter hour increments.

6.7 Right to Audit. The Consultant will provide supporting evidence necessary to substantiate charges related to the contract and allow the City to access Consultant's "records" associated with this Agreement. Consultant's "records" shall be made available within two weeks of the written request for open inspection, audit, and/or reproduction during normal business working hours. Such audits may be performed by a City's representative or an outside representative engaged by City. The City or its designee may conduct such audits or inspections throughout the term of this Agreement and for a period of three years after final payment or longer if required by law. The City's representatives may (without limitation) conduct verifications such as counting employees at the Project site, verifying information and amounts through interviews and written confirmations with Consultant's employees, field and agency labor, subcontractors, and vendors.

6.7.1 Consultant's "records" as referred to in this contract shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions,

recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in the City's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by this Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; invoices and related payment documentation; general ledger, and any other Consultant records which may have a bearing on matters of interest to the City in connection with the Consultant's dealings with the City to the extent necessary to adequately permit evaluation and verification of any or all of the following:

- (a) Compliance with contract requirements for deliverables
- (b) Compliance with contract provisions regarding the pricing of change orders
- (c) Accuracy of Consultant representations regarding the pricing of invoices
- (d) Accuracy of Consultant representations related to claims submitted by the Consultant or any payees.

6.7.2 Consultant shall require all payees (examples of payees include subcontractors, material suppliers, insurance carriers, etc.) to comply with the provisions of this article by ensuring that the City's right to audit requirements set forth herein are contained in a written contract between Consultant and payee. Consultant will ensure that the City has the same right to audit all payees that it has to audit Consultant under the terms of this Agreement.

6.7.3 City's authorized representative or designee shall have reasonable access to the Consultant's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, in order to conduct audits in compliance with this article.

6.7.4 If an audit inspection or examination in accordance with this article discloses overpricing or overcharges (of any nature) by the Consultant to the City in excess of three percent (3%) of the total contract billings, in addition to making adjustments for the overcharges, the reasonable actual cost of the City's audit shall be reimbursed to the City by the Consultant. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Consultant's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Consultant.

VII. OWNERSHIP AND RETENTION OF DOCUMENTS AND ACCESS TO LAB RESULTS

7.1 Upon completion or termination of the Project, or upon request by the City, all documents and information, in whatever form, given to, prepared or assembled by the Consultant in connection with its performance of its duties under this Agreement shall become the sole property of the City and shall be delivered at no cost to the City without restriction on future use. Documents and information covered by this paragraph shall include, but not be limited to, reports, test results, field notes and other data. The City shall have free and immediate access to all such information at all times during the term of this Agreement with the right to make and retain copies documents, notes and data, whether or not the Project has been completed. Prior to surrender of the documents and information, Consultant may make copies of any and all documents for its files, at its sole cost and expense. Consultant will not be responsible for the unauthorized reuse or modification of reports or work product resulting from City's use, distribution of, or failure to maintain control over the reports or work product once delivered to the City.

7.2 At any time during the Project, the City shall have the right to unrestrained direct access and contact with laboratories and testing facilities used by Consultant for work performed by Consultant under this Agreement; and the City shall have the unrestricted right to obtain original or duplicate copies of reports and testing results directly from the lab or testing facility used by Consultant.

7.3 The Consultant agrees to maintain all books, records and reports required under this contract for a period of not less than three (3) years after final payment is made and all pending matters are closed. In addition, the Consultant shall maintain an acceptable cost accounting system during the term of this Agreement. The Consultant agrees to provide the City, the Federal Aviation Administration ("FAA") and the Comptroller General of the United States, or any of their duly authorized representatives, access to any books, documents, papers and records of the Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions.

VIII. TERMINATION OF AGREEMENT

8.1 Termination Without Cause.

8.1.1 This Agreement may be terminated by City without cause, prior to Director giving Consultant written Notice to Proceed, should Director, in his sole discretion, determine that it is not in City's best interest to proceed with this Agreement. Such notice shall be provided in accordance with the notice provisions contained in this Agreement, and shall be effective immediately upon delivery to the Consultant.

8.1.2 This Agreement may be terminated by the City at any time after issuance of the Director's Notice to Proceed, either for the City's convenience or because of Consultant's failure to fulfill the contract obligations. Upon receipt of such notice, services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Agreement, whether completed or in progress, delivered to the City.

8.1.3 If the termination is for the convenience of the City, and following inspection and acceptance of Consultant's services properly performed prior to the effective date of termination, an equitable adjustment in the contract price shall be made. Consultant shall not, however, be entitled to lost or anticipated profit on unperformed services, should City choose to exercise its option to terminate, nor shall Consultant be entitled to compensation for any unnecessary or unapproved work, performed during time between the issuance of the City's notice of termination and the actual termination date.

8.1.4 If the termination is due to Consultant's failure to fulfill its obligations, the City may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Consultant shall be liable to the City for any additional cost occasioned to the City thereby.

8.1.5 If, after notice of termination for failure to fulfill contract obligations, it is determined that the Consultant had not so failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, an equitable adjustment in the contract price shall be made as provided in paragraph 7.1.3 of this clause.

8.1.6 The rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

8.1.7 This Agreement may be terminated by the Consultant, at any time after issuance of the Director's Notice to Proceed, upon ninety (90) calendar days written notice provided in accordance with the Notice provisions contained in this Agreement.

8.2 Defaults With Opportunity for Cure. Should Consultant fail, as determined by the Director, to satisfactorily perform the duties set out in Article III. SCOPE OF SERVICES; or comply with any covenant herein required, such failure shall be considered an Event of Default. In such event, the City shall deliver written notice of said default, in accordance with the notice provisions contained in this Agreement, specifying the specific Events of Default and the action necessary to cure such defaults. Consultant shall have ten (10) calendar days after receipt of the written notice to cure such default. If Consultant fails to cure the default within such cure period, or take steps reasonably calculated to cure such default, City shall have the right, without further notice, to terminate this Contract in whole or in part as City deems appropriate, and to contract with another Consultant to complete the work required by this Agreement. City shall also have the right to offset the cost of said new agreement with a new Consultant against Consultant's future or unpaid invoice(s), subject to any statutory or legal duty, if any, on the part of City to mitigate its losses.

8.3 Termination For Cause. Upon the occurrence of one (1) or more of the following events, and following written notice to Consultant given in accordance with the notice provisions contained in this Agreement, City may immediately terminate this Contract, in whole or in part, "for cause":

8.3.1 Consultant makes, directly or indirectly through its employees or representatives, any material misrepresentation or provides any materially misleading information to City in connection with this Agreement or its performance hereunder; or

8.3.2 Consultant violates or materially fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this Agreement, except those events of default for which an opportunity to cure is provided herein; or

8.3.3 Consultant fails to cure, or initiate steps reasonably calculated to cure, a default listed in Section 9.3 below, within the time period required for cure; or

8.3.4 Consultant violates any rule, regulation or law to which Consultant is bound or shall be bound under the terms of this Agreement; or

8.3.5 Consultant attempts the sale, transfer, pledge, conveyance or assignment of this Agreement contrary to the terms of the Agreement; or

8.3.6 Consultant ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Contract shall continue) and such petition is not dismissed within forty-five (45) days of filing; or if a receiver, trustee or liquidator is appointed for it, or its joint venture entity, or any substantial part of Manager's assets or properties.

8.4 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

8.5 Orderly Transfer Following Termination. Regardless of how this Agreement is terminated, Consultant shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City. Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant, or any of its subcontractors, pursuant to this Agreement. All completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced, or provided to Consultant, in connection with the services rendered by Consultant under this Agreement, regardless of storage medium, shall be transferred to City. Such record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents.

8.6 Claims for Outstanding Fees. Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. **Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a Waiver by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.**

8.7 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies,

nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

8.8 Upon termination or cancellation of this Agreement, the City may immediately commence an audit of the Consultant's books, accounts, and records. Within thirty (30) calendar days after being notified by the City of the results of said audit, the Consultant shall pay the City any amount shown by said audit to be owed the City or its employees. No waiver of existing default shall be deemed to waive any subsequent default.

IX. SUSPENSION OF WORK UNDER AGREEMENT

9.1 Right of City to Suspend. City may suspend this Agreement for any reason, with or without cause upon the issuance of written Notice of Suspension in accordance with the Notice provisions contained in this Agreement. Such suspension shall take effect upon the date specified in such notice; provided, however, such date shall not be earlier than the tenth (10th) day following receipt by Consultant of said notice. The Notice of Suspension will set out the reason(s) for the suspension and the anticipated duration of the suspension, but will in no way guarantee the total number of days of suspension.

9.2 Consultant's Right to Terminate In Event of Suspension of Agreement. In the event such suspension exceeds one hundred and twenty (120) calendar days, Consultant shall have the right to terminate this Agreement. Consultant may exercise this right to terminate by issuing a written Notice of Termination to the City, delivered in accordance with the Notice provisions contained in this Agreement after the expiration of one hundred and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by City and such termination shall be subject to all the requirements set out in Paragraphs 7.5 and 7.6 above, related to the Orderly Transfer and Fee Payment.

9.3 Procedures Upon Receipt of Notice of Suspension.

9.3.1 Upon receipt of a notice of suspension and prior to the effective date of the suspension, Consultant shall, unless otherwise directed, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement.

9.3.2 Consultant shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

9.3.3 Copies of all completed or partially completed studies, plans and other documents prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to the City but shall be retained by Consultant until such time as Consultant may exercise the right to terminate.

9.3.4 During the period of Suspension, Consultant shall have the option to at any time submit the above referenced statement to the City for payment of any unpaid portion of the prescribed fee for services which have actually been performed to the benefit of the City under this Agreement, adjusted for any previous payments of the fee in question.

9.3.5 In the event Consultant exercises its right to terminate this Agreement at any time after the effective Suspension date, Consultant shall submit, within forty-five (45) calendar days after receipt by City of Consultant's notice of termination (if he has not previously done so) the above referenced statement showing in detail the services performed under this Agreement prior to the effective date of suspension. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a Waiver by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

9.3.6 Upon the above conditions being met, the City's review of the submissions and finding the claimed compensation to be appropriate to the terms of this agreement, the City shall pay Consultant that portion of the agreed prescribed fee for those as yet uncompensated services actually performed under this Agreement to the benefit of the City, adjusted for any previous payments of the fee in question.

X. INSURANCE REQUIREMENTS

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Aviation Department, which shall be clearly labeled "**On-Call Construction Materials Testing Services**" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Aviation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article for each WOR issued during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, circumstances surrounding this Agreement, or risks associated with the specific WOR to be issued under the Agreement(s). In no instance will City allow modification whereupon City may incur increased risk.

10.3 A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined <u>Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any negligent act, malpractice, error or omission in professional services.

10.4 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation, employer's liability and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

10.5 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this contract. Failure to provide

and to maintain the required insurance shall constitute a material breach of this Agreement.

10.6 In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

10.7 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

10.8 It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

10.9 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

10.10 Consultant and any Subcontractors are responsible for all damage to their own equipment and/or property.

10.11 Consultant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Consultant herein, and provide a certificate of insurance and endorsement that names the Consultant and the CITY as additional insureds. Consultant shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

XI. INDEMNIFICATION

11.1 Consultant whose work product is the subject of this contract agrees to INDEMNIFY AND HOLD CITY, ITS OFFICERS AND EMPLOYEES, HARMLESS against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, intellectual property infringement, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may **ARISE OUT OF OR BE OCCASIONED OR CAUSED BY CONSULTANT'S NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF CONSULTANT AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES,**

DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the rights or duties under this Agreement.

11.2 The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

11.3 Consultant shall promptly advise the City, in writing, of any claim or demand against the City or Consultant known to Consultant related to or arising out of Consultant activities under this contract.

11.4 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or other wise, to any other person or entity.

XII. CONSULTANT'S LIABILITY AND STANDARD OF CARE

12.1 Services provided by Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Acceptance of the services performed and/or results and reports submitted by Consultant hereunder shall not constitute nor be deemed a release of the responsibility and liability of Consultant, its employees, associates, agents or subcontractors for the accuracy and competency of their testing, reports, assessments or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by City for any defect or error in testing, reports, or assessments and work performed by Consultant, its employees, subcontractors, and agents.

XIII. CONSULTANT'S WARRANTY UNDER THE PROFESSIONAL SERVICES PROCUREMENT ACT

13.1 Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for Consultant to solicit or secure this Agreement, and that it has not, for the purpose of soliciting or securing this Agreement, paid, compensated, or agreed to pay or compensate, any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift, for any other consideration contingent upon or resulting from the award or making of this Agreement. For breach of the foregoing warranty, the City shall have the right to terminate the Agreement under the provisions of this Agreement. However, breach of the warranty required in this provision constitutes fraud by operation of law; therefore, any Consultant found in breach of such warranty, by a final judgment of a Court of Competent Jurisdiction, shall take no compensation under this Agreement for any services rendered and such forfeiture shall not bar the City from pursuit and collection of any and all other damages, at law and in equity, to which it may be justly

entitled. Accordingly, Consultant further pledges and warrants its best and most competent professional efforts to secure to the City the benefits of the Agreement.

XIV. ASSIGNMENT OF RIGHTS OR DUTIES

14.1 By entering into this Agreement, City has approved the use of any subcontractors identified in Consultant's Response to City's solicitation for services. No further approval shall be needed for Consultant to use such subcontractors as are identified in Consultant's Response to City's Request for Qualifications.

14.2 Except as otherwise required herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the prior written consent of City. Engineering services required by law to be performed by a licensed engineer, or services which, by law, require the supervision and approval of a licensed engineer, may only be subcontracted upon the prior written approval of the San Antonio City Council, by approval and passage of an ordinance therefore. Any other services to be performed under this Agreement may be subcontracted upon the written approval of Director. As a condition of consent, if same is given, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor consultant, assignee, transferee or subcontractor. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by City in accordance with this Article.

14.3 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this Agreement, without said written approval, shall be void, and shall confer no rights upon any third person. Should Consultant assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this Agreement, City may, at its option, terminate this Agreement as provided herein, and all rights, titles and interest of Consultant shall thereupon cease and terminate, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

14.4 Consultant agrees to notify Director of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to City under this Agreement, any such change of ownership interest or control of its business entity may be grounds for termination of this Agreement in accordance with Article VIII, Termination.

XV. INDEPENDENT CONTRACTOR

15.1 Consultant covenants and agrees that (s)he is an independent contractor and not an officer, agent, servant, or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and

all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of *respondeat superior* shall not apply as between City and Consultant, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Consultant.

15.2 No Third Party Beneficiaries - For purposes of this Agreement, including its intended operation and effect, the Parties specifically agree and contract that: (1) this Agreement only affects matters/disputes between the Parties to this Agreement, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with City or Consultant or both, or that such third parties may benefit incidentally by this Agreement; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either City or Consultant.

XVI. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

16.1 It is the policy of the City of San Antonio that disadvantaged business enterprises (DBEs) as defined under 49 CFR Part 26, shall have "equality of opportunity" to participate in the awarding of federally-assisted Aviation Department contracts and related subcontracts, to include sub-tier subcontracts. This policy supports the position of the U.S. Department of Transportation (DOT) and the FAA in creating a level playing field and removing barriers by ensuring nondiscrimination in the award and administration of contracts financed in whole or in part with federal funds under this contract. Therefore, on all DOT or FAA-assisted projects the DBE program requirements of 49 CFR Part 26 apply to the contract.

16.2 The Consultant agrees to employ good-faith efforts (as defined in the Aviation Department's DBE Program) to carry out this policy through award of sub-consultant contracts to disadvantaged business enterprises to the fullest extent participation is consistent with the performance of the Aviation Department Contract, and/or the utilization of DBE suppliers where feasible. Consultants are expected to solicit bids from available DBE's on contracts which offer subcontracting opportunities.

16.3 Consultant specifically agrees to comply with all applicable provisions of the Aviation Department's DBE Program. The DBE Program may be obtained through the airport's DBE Liaison Officer at (210) 207-3505 or by contacting the City's Aviation Department.

16.4 The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate. Consultant agrees to include this clause in

each sub-consultant contract the prime consultant signs with a sub-consultant.

16.5 The Consultant agrees to pay each sub-consultant under this Contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment the prime contract receives from the City of San Antonio. The Consultant further agrees to return retainage payments to each sub-consultant within fifteen (15) days after the sub-consultant's work is satisfactorily completed. The Consultant shall provide the City with a report, in a format prescribed by the City, detailing all amounts, if any, paid to DBE subconsultants or suppliers with each invoice that Consultant submits hereunder. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval from the City of San Antonio. This Clause applies to both DBE and non-DBE sub-consultants.

16.6 All changes to the list of sub-consultants submitted with the proposal and approved by the City or Aviation Department, excluding vendors shall be submitted for review and approval by Aviation Department's DBE Liaison Office for approval when adding, changing, or deleting sub-consultants on airport projects. Consultants shall make a good-faith effort to replace DBE sub-consultants unable to perform on the contract with another DBE.

16.7 During the term of this Agreement, the Consultant must report the actual payments made to all subcontractors to the City in a time interval and a format determined by the City. The City reserves the right, at any time during the term of this Agreement, to request additional information, documentation or verification of payments made to subcontractors in connection with this Agreement. Verification of amounts being reported may take the form of requesting copies of cancelled checks paid to participating DBEs and/or confirmation inquiries directly with participating DBEs. Proof of payment such as copies of check must properly identify the project name or project number to substantiate payment.

16.8 The Consultant shall comply with the DBE Compliance and Enforcement Policy attached hereto as Exhibit C. Failure or refusal by a Proposer or Consultant to comply with the DBE provisions herein or any applicable provisions of the DBE Program, either during the proposal process or at any time during the term of the Contract, may constitute a material breach of Contract, whereupon the Contract, at the option of the Aviation Department, may be cancelled, terminated, or suspended in whole or in part.

XVII. NOTICES

17.1 Unless otherwise expressly provided elsewhere in this Agreement, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier.

If intended for CITY, to:

City of San Antonio
Attn: Mr. Dan Gallagher
Aviation Department – Planning & Development
9700 Airport Blvd
San Antonio, Texas 78216

If intended for Consultant, to:

Terracon Consultants, Inc.
Attn: Mr. Chuck Gregory
6911 Blanco Road
San Antonio, TX 78216

XVIII. CONFLICTS OF INTEREST

18.1 Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

18.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of City. Consultant further warrants and certifies that it has tendered to City's a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

XIX. SOLICITATION

19.1 Consultant warrants and represents that he has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. This representation constitutes a substantial part of the consideration for the making of this Agreement.

XX. AIRPORT SECURITY

20.1 To the extent Consultant will be responsible for work which necessitates entrance to the Air Operations Area or other secure area of the Airport, this Agreement is expressly subject to the airport security requirements of Title 49 of the United States Code, Chapter 449, as amended ("Airport Security Act"), the provisions of which govern airport security and are incorporated by reference, including without limitation the rules and regulations promulgated under it. Consultant is subject to, and further must conduct

with respect to its Subcontractors and the respective employees of each, such employment investigations, including criminal history record checks, as the Aviation Director, the TSA or the FAA may deem necessary. Further, in the event of any threat to civil aviation, Consultant must promptly report any information in accordance with those regulations promulgated by the FAA, the TSA and the City. Consultant must, notwithstanding anything contained in this Agreement to the contrary, at no additional cost to the City, perform under this Agreement in compliance with those guidelines developed by the City, the TSA and the FAA with the objective of maximum security enhancement.

20.2 Consultant must comply with, and require compliance by its Subcontractors, with all present and future laws, rules, regulations, or ordinances promulgated by the City, the TSA or the FAA, or other governmental agencies to protect the security and integrity of the Airport, and to protect against access by unauthorized persons. Subject to the approval of the TSA, the FAA and the Aviation Director, Consultant must adopt procedures to control and limit access to the Airport Premises utilized by Consultant and its Subcontractors in accordance with all present and future City, TSA and FAA laws, rules, regulations, and ordinances. At all times during the Term, Consultant must have in place and in operation a security program for the Airport Premises utilized by Consultant that complies with all applicable laws and regulations. All employees of Consultant that require regular access to sterile or secure areas of the Airports must be badged in accordance with City and TSA rules and regulations.

20.3 Gates and doors located in and around the Airport Premises utilized by Consultant that permit entry into sterile or secured areas at the Airports, if any, must be kept locked by Consultant at all times when not in use, or under Consultant's constant security surveillance. Gate or door malfunctions must be reported to the Aviation Director or the Aviation Director's designee without delay and must be kept under constant surveillance by Consultant until the malfunction is remedied.

20.4 In connection with the implementation of its security program, Consultant may receive, gain access to or otherwise obtain certain knowledge and information related to the City's overall Airport security program. Consultant acknowledges that all such knowledge and information is of a highly confidential nature. Consultant covenants that no person will be permitted to gain access to such knowledge and information, unless the person has been approved by the City or the Aviation Director in advance in writing. Consultant further must indemnify, hold harmless and defend the City and other users of the Airport from and against any and all claims, reasonable costs, reasonable expenses, damages and liabilities, including all reasonable attorney's fees and costs, resulting directly or indirectly from the breach of Licensee's covenants and agreements as set forth in this section.

XXI. CONTRACT CONSTRUCTION

21.1 All parties have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

XXII. FAMILIARITY WITH LAW AND CONTRACT TERMS

22.1 Consultant represents that, prior to signing this Agreement; Consultant has become thoroughly acquainted with all matters relating to the performance of this Agreement, all applicable laws, and all of the terms and conditions of this Agreement.

XXIII. APPLICABLE LAW

23.1 This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

XXIV. VENUE

24.1 The obligations of the parties to this Agreement shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

XXV. SEVERABILITY

25.1 In the event any one or more paragraphs or portions of this Agreement are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of this Agreement, but such shall be confined to the specific section, sentences, clauses or portions of this Agreement held invalid or unenforceable.

XXVI. FORCE MAJEURE

26.1 In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

XXVII. SUCCESSORS

27.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this Agreement, their assigns.

XXVIII. NON-WAIVER OF PERFORMANCE

28.1 A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any

succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City , such changes must be approved by the San Antonio City Council.

28.2 No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXIX. PARAGRAPH HEADINGS

29.1 The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXX. LEGAL AUTHORITY

30.1 The signer of this Agreement for CITY and Consultant each represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of City and Consultant respectively, and to bind City and Consultant to all of the terms, conditions, provisions and obligations herein contained.

XXXI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

31.1 By execution of this Agreement, the undersigned authorized representative of Consultant certifies, and the City relies thereon, that neither Consultant., nor its Principals are presently debarred, suspended, proposed for debarment, or declared ineligible, or voluntarily excluded for the award of contracts by any Federal governmental agency or department;

31.2 "Principals", for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

31.3 Consultant shall provide immediate written notice to City, in accordance the notice provisions of this Agreement, if, at any time during the term of this contract, including any renewals hereof, Consultant learns that this certification was erroneous when made or has become erroneous by reason of changed circumstances.

31.4 Consultant's certification is a material representation of fact upon which the City has relied in entering into this Agreement. Should City determine, at any time during this

Agreement, including any renewals hereof, that this certification is false, or should it become false due to changed circumstances, the City may terminate this Agreement in accordance the terms of this Agreement.

XXXII. ENTIRE AGREEMENT & AMENDMENTS

32.1 This Agreement, together with its Exhibits and Attachments, embodies the complete Agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein. No other agreements, verbal or otherwise, regarding the matters of this Agreement shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and executed by the parties hereto.

32.2 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant, and subject to approval by the City Council, as evidenced by passage of an ordinance.

32.3 It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

EXECUTED ON this the ____ day of _____, 2009.

CITY OF SAN ANTONIO, TEXAS

TERRACON CONSULTANTS, INC.

By: _____
Sheryl Sculley
City Manager

By: _____

Federal Tax ID # _____

APPROVED AS TO FORM:

By: _____
City Attorney

ATTACHMENT 3

**PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL CONSTRUCTION MATERIAL TESTING**

This Professional Services Agreement (hereinafter referred to as "Agreement" or "Contract") is made and entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas municipal corporation, acting by and through its City Manager, and Fugro Consultants, Inc. acting by and through its designated officer(s), (hereinafter referred to as "Consultant"), both of which may be referred to herein collectively as the "Parties".

IN CONSIDERATION of the mutual covenants, terms, conditions, privileges and obligations herein contained, City and Consultant do hereby agree as follows:

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

- 1.1 "Airport" means the San Antonio International Airport.
- 1.2 "Stinson" means Stinson Municipal Airport.
- 1.2 "Director" means the director of the City's Aviation Department or his designee.
- 1.3 "Department" means the Aviation Department for the City of San Antonio.
- 1.4 "Project" means the specific Construction Material Testing ("CMT") work for which a Work Plan is negotiated and executed by both Parties.
- 1.5 "Work Order Request" ("WOR") means a request to Consultant to submit a Proposed Work Plan for a specific Project as further defined herein.
- 1.6 "Proposed Work Plan" means a proposal prepared by the Consultant in response to a WOR as further defined herein.
- 1.7 "Finalized Work Plan" a written agreement signed by both and made a part of this Agreement setting forth the agreed to scope and associated terms for an individual Project as further defined herein.

II. PERIOD OF SERVICE

2.1 This Agreement shall take effect on the eleventh (11th) calendar day after it is approved by the San Antonio City Council or upon execution by both parties, whichever date is later, and continue in full force and effect for 24 months from effective date unless extension or earlier termination shall occur pursuant to any of the provisions hereof.

2.2 The Aviation Director, as the City's representative, is authorized to administratively extend the term of the Agreement for one additional one (1) year term. No later than ninety (90) days prior to the completion of the initial 24 month term, the City will issue Consultant a written Notice of Intent that will inform Consultant of the City's decision with regard to exercising its option for an extension to the Agreement for one (1) additional year.

2.3 If funding for the entire Project is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

3.1 This Agreement is an on-call or indefinite delivery agreement for Construction Materials Testing ("CMT") services and such other services that are required for Consultant to provide or are associated with CMT. CMT services shall include, but are not limited to, the tests set out in Exhibit A, Compensation Sheet. Specific requirements as to types, number, and location of testing, conditions, procedures, and associated services pertaining to a Project shall be negotiated and set out in individual Finalized Work Plans for each request, which Finalized Work Plans are incorporated into and shall become a part of this Agreement. The City does not guarantee a particular volume of work or a minimum number of units of work.

3.2 Consultant shall provide all labor, equipment and transportation necessary to complete all services agreed to hereunder in a timely manner throughout the term of the Contract. Additionally, Consultant shall provide staff for regular, overtime, night, weekend, and holiday work, as requested by Department. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or subcontractors of Consultant.

3.3 All services and work performed under this Agreement must be conducted in full conformance with the provisions of this Agreement and be in compliance with all Federal Aviation Administration ("FAA") requirements and the American Society for Testing and Material ("ASTM") standards. Additionally, Consultant shall only use testing laboratory(ies) which comply with all applicable FAA requirements and ASTM standards.

3.4 Immediately upon City Council approval of this Agreement, Consultant shall, at Consultant's expense, obtain 1) Airport Personnel Identification Badges for each employee who may perform work hereunder, and 2) Airfield Driver's Licenses, as needed, for employees that may have a need to operate a vehicle within the Airport Operations Area. The procedures for procuring these badges and licenses are outlined in the Procedures for Obtaining Airport Personnel Identification Badge and Airfield Driver's License in Exhibit B. Consultant, at its own expense, shall maintain sufficient staff security clearances, badges and driving operator licenses to be able to initiate CMT Services in a timely manner upon issuance of a Notice to Proceed.

3.5 For all tests performed pursuant to this Agreement, Consultant shall promptly deliver to Department, within such timeframe required to avoid any delay in construction progress, two (2) paper copies and one (1) electronic copy in Adobe PDF format on a compact disc of all reports, on the testing laboratory's letterhead and signed by a

Professional Engineer or appropriate licensed Professional, of the test results which include:

- a. The Project name,
- b. Date(s)/time(s)/location(s) of service,
- c. Report Identification Number,
- d. Type and quantity of tests performed
- e. Test Results
- f. Standards Controlling the Test(s)
- g. Compliance or noncompliance with the specifications
- h. Any extenuating circumstances affecting the test(s) or result(s)
- i. Observations to include service time chargeable to delays and rescheduling.
- j. If manpower is involved, provide names, job classification and hours.
- k. Number of trips with work performed on the Project.
- l. Name of person who ordered the test(s).
- m. Identify any and all re-test services.

3.6 Consultant is responsible for ensuring that at the end of each Project, the construction materials testing lab uses test results to follow FAA Section 110, Method of Estimating Percentage of Material within Specification Limits (PWL) to provide a table on concrete and asphalt, if applicable.

IV. PROJECT WORK REQUEST PROCESS

4.1 When Director has a Project for which he desires to procure CMT Services, Director shall notify Consultant by issuing a WOR. Each WOR will include, at a minimum: name of Project, location of Project, copies of or access to Project documentation (such as specifications, environmental reports, or drawings) needed by Consultant to prepare a Proposed Work Plan, Project schedule and any specific deadlines for performance of CMT Services, any Project specific insurance requirements necessitated by the work which may require additional types of coverages or higher levels of coverage than required by the Agreement, and a deadline for providing Director with a Proposed Work Plan based on the above.

4.2 Consultant shall prepare and submit to Director, within the timeline stated in a WOR, a Proposed Work Plan for the desired services which will include at a minimum: Scope of Services, specific staffing, an estimate of Project cost based on the hourly rates and test fees agreed upon in Exhibit A, Compensation Sheet, and Project specific expenses for the services requested in the WOR. The Consultant shall submit the Proposed Work Plan in editable electronic format to the City. By submitting a Proposed Work Plan, Consultant agrees to perform the requested service within the time stated in the WOR.

4.3 Consultant and Director shall negotiate the Proposed Work Plan. Once Consultant and Director reach mutual agreement as to scope, staffing, scheduling and

cost, the City shall issue a Finalized Work Plan to be executed by both parties evidencing the agreed to scope and costs.

4.4 The Director has the authority to execute Finalized Work Plans on behalf of the City so long as such Finalized Work Plan does not exceed the total contract value and funds are provided for in the Project budget as allocated by City Council.

4.5 Consultant shall not proceed with services until after a Finalized Work Plan has been executed, Consultant receives a Notice to Proceed, and all documents required by Director in advance of commencement of work, to include proof of insurance, have been provided. Any services provided or expenses incurred prior to receiving a Notice to Proceed or after the expiration of this Agreement or a particular Final Work Plan will be at Consultant's sole risk and expense and may not be reimbursable by City.

4.6 Actual amounts billed shall not exceed the total amount as set out in the Final Work Plan.

4.7 Each Finalized Work Plan and Notices to Proceed shall be attached hereto and incorporated herein for all purposes. Each grouping of Final Work Plans and Notices to Proceed shall be labeled and identified in numerical order. For example, the first group shall be labeled as:

Attachment 1(a) – Finalized Work Plan
Attachment 1(b) – Notice to Proceed

4.8 Consultant shall not invoice for any work associated with the Project Work Request Process, including development of Proposed Work Plan and its negotiation.

V. COORDINATION WITH THE CITY

5.1 The Director or his designee shall act on behalf of City with respect to the work performed under this Agreement, and shall have complete authority to transmit instructions, receive information, and interpret and define City's policies and decisions with respect to materials, equipment elements and systems pertinent to Consultant's services.

5.2 City shall provide written notice to the Consultant of any errors or omissions discovered in the Consultant's services, or performance, or of any development that affects the scope or timing of Consultant's services.

5.3 City shall strive to provide a minimum of 24 hours advance notice for scheduling or canceling field inspection and testing services. Work scheduled with less than 24 hours notice will be serviced subject to available personnel. Consultant shall not invoice any type of cancellation fee.

VI. COMPENSATION

6.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant for at the rates set out in Exhibit A, Compensation Sheet, within 30 calendar days' receipt of an approved itemized invoice.

However, in no event shall the total compensation to be paid to Consultant under this Agreement exceed \$150,000.00.

6.2 Only amounts specifically set forth in Exhibit A, Compensation Sheet, or within a particular Finalized Work Plan may be invoiced hereunder.

6.3 Nothing contained in this Agreement shall require City to pay for any unsatisfactory work, as determined by Director, or for work that is not in compliance with the terms of this Agreement. City shall not be required to make any payments to Consultant at any time Consultant is in default under this Agreement.

6.4 Despite the City's approval of an assignee or subcontractor, the City shall, in no event, be obligated to any third party, including any assignee or subcontractor of the Consultant, for performance of work or services, nor shall City funds be used for payment of work or services performed prior to the date of Agreement execution, prior to the Notice to Proceed for a Project, after the completion date contained in a Finalized Work Plan, or after the expiration date of this Agreement.

6.5 Invoicing. Consultant shall submit an invoice to the City for CMT Services provided, and actual work performed in the format to be prescribed by the City. Consultant may submit invoices no more than once monthly for tests completed with reported results and work performed which have not been included on previous invoices. Such invoices must show: a) a detailed summary of the tests completed, b) services rendered itemized by task performed, the employee category and the number of hours worked during the period covered by the invoice, c) any allowable expenses incurred, itemized and with sufficient documentation to allow verification, d) the amount due for the services and expenses, and e) any other evidence required by the Director or his designated representative. Consultant must invoice separately for each open Project. Blended invoices for multiple open Projects will not be acceptable.

6.6 Records. All time keeping records must be accurate and complete. Invoices for services shall indicate the name and job classification of each employee performing the work, the associated billing rate (in accordance with the rate set forth in Exhibit A) and must be recorded in quarter hour increments.

6.7 Right to Audit. The Consultant will provide supporting evidence necessary to substantiate charges related to the contract and allow the City to access Consultant's "records" associated with this Agreement. Consultant's "records" shall be made available within two weeks of the written request for open inspection, audit, and/or reproduction during normal business working hours. Such audits may be performed by a City's representative or an outside representative engaged by City. The City or its designee may conduct such audits or inspections throughout the term of this Agreement and for a period of three years after final payment or longer if required by law. The City's representatives may (without limitation) conduct verifications such as counting employees at the Project site, verifying information and amounts through interviews and written confirmations with Consultant's employees, field and agency labor, subcontractors, and vendors.

6.7.1 Consultant's "records" as referred to in this contract shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions,

recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in the City's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by this Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; invoices and related payment documentation; general ledger, and any other Consultant records which may have a bearing on matters of interest to the City in connection with the Consultant's dealings with the City to the extent necessary to adequately permit evaluation and verification of any or all of the following:

- (a) Compliance with contract requirements for deliverables
- (b) Compliance with contract provisions regarding the pricing of change orders
- (c) Accuracy of Consultant representations regarding the pricing of invoices
- (d) Accuracy of Consultant representations related to claims submitted by the Consultant or any payees.

6.7.2 Consultant shall require all payees (examples of payees include subcontractors, material suppliers, insurance carriers, etc.) to comply with the provisions of this article by ensuring that the City's right to audit requirements set forth herein are contained in a written contract between Consultant and payee. Consultant will ensure that the City has the same right to audit all payees that it has to audit Consultant under the terms of this Agreement.

6.7.3 City's authorized representative or designee shall have reasonable access to the Consultant's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, in order to conduct audits in compliance with this article.

6.7.4 If an audit inspection or examination in accordance with this article discloses overpricing or overcharges (of any nature) by the Consultant to the City in excess of three percent (3%) of the total contract billings, in addition to making adjustments for the overcharges, the reasonable actual cost of the City's audit shall be reimbursed to the City by the Consultant. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Consultant's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Consultant.

VII. OWNERSHIP AND RETENTION OF DOCUMENTS AND ACCESS TO LAB RESULTS

7.1 Upon completion or termination of the Project, or upon request by the City, all documents and information, in whatever form, given to, prepared or assembled by the Consultant in connection with its performance of its duties under this Agreement shall become the sole property of the City and shall be delivered at no cost to the City without restriction on future use. Documents and information covered by this paragraph shall include, but not be limited to, reports, test results, field notes and other data. The City shall have free and immediate access to all such information at all times during the term of this Agreement with the right to make and retain copies documents, notes and data, whether or not the Project has been completed. Prior to surrender of the documents and information, Consultant may make copies of any and all documents for its files, at its sole cost and expense. Consultant will not be responsible for the unauthorized reuse or modification of reports or work product resulting from City's use, distribution of, or failure to maintain control over the reports or work product once delivered to the City.

7.2 At any time during the Project, the City shall have the right to unrestrained direct access and contact with laboratories and testing facilities used by Consultant for work performed by Consultant under this Agreement; and the City shall have the unrestricted right to obtain original or duplicate copies of reports and testing results directly from the lab or testing facility used by Consultant.

7.3 The Consultant agrees to maintain all books, records and reports required under this contract for a period of not less than three (3) years after final payment is made and all pending matters are closed. In addition, the Consultant shall maintain an acceptable cost accounting system during the term of this Agreement. The Consultant agrees to provide the City, the Federal Aviation Administration ("FAA") and the Comptroller General of the United States, or any of their duly authorized representatives, access to any books, documents, papers and records of the Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions.

VIII. TERMINATION OF AGREEMENT

8.1 Termination Without Cause.

8.1.1 This Agreement may be terminated by City without cause, prior to Director giving Consultant written Notice to Proceed, should Director, in his sole discretion, determine that it is not in City's best interest to proceed with this Agreement. Such notice shall be provided in accordance with the notice provisions contained in this Agreement, and shall be effective immediately upon delivery to the Consultant.

8.1.2 This Agreement may be terminated by the City at any time after issuance of the Director's Notice to Proceed, either for the City's convenience or because of Consultant's failure to fulfill the contract obligations. Upon receipt of such notice, services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Agreement, whether completed or in progress, delivered to the City.

8.1.3 If the termination is for the convenience of the City, and following inspection and acceptance of Consultant's services properly performed prior to the effective date of termination, an equitable adjustment in the contract price shall be made. Consultant shall not, however, be entitled to lost or anticipated profit on unperformed services, should City choose to exercise its option to terminate, nor shall Consultant be entitled to compensation for any unnecessary or unapproved work, performed during time between the issuance of the City's notice of termination and the actual termination date.

8.1.4 If the termination is due to Consultant's failure to fulfill its obligations, the City may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Consultant shall be liable to the City for any additional cost occasioned to the City thereby.

8.1.5 If, after notice of termination for failure to fulfill contract obligations, it is determined that the Consultant had not so failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, an equitable adjustment in the contract price shall be made as provided in paragraph 7.1.3 of this clause.

8.1.6 The rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

8.1.7 This Agreement may be terminated by the Consultant, at any time after issuance of the Director's Notice to Proceed, upon ninety (90) calendar days written notice provided in accordance with the Notice provisions contained in this Agreement.

8.2 Defaults With Opportunity for Cure. Should Consultant fail, as determined by the Director, to satisfactorily perform the duties set out in Article III. SCOPE OF SERVICES; or comply with any covenant herein required, such failure shall be considered an Event of Default. In such event, the City shall deliver written notice of said default, in accordance with the notice provisions contained in this Agreement, specifying the specific Events of Default and the action necessary to cure such defaults. Consultant shall have ten (10) calendar days after receipt of the written notice to cure such default. If Consultant fails to cure the default within such cure period, or take steps reasonably calculated to cure such default, City shall have the right, without further notice, to terminate this Contract in whole or in part as City deems appropriate, and to contract with another Consultant to complete the work required by this Agreement. City shall also have the right to offset the cost of said new agreement with a new Consultant against Consultant's future or unpaid invoice(s), subject to any statutory or legal duty, if any, on the part of City to mitigate its losses.

8.3 Termination For Cause. Upon the occurrence of one (1) or more of the following events, and following written notice to Consultant given in accordance with the notice provisions contained in this Agreement, City may immediately terminate this Contract, in whole or in part, "for cause":

8.3.1 Consultant makes, directly or indirectly through its employees or representatives, any material misrepresentation or provides any materially misleading information to City in connection with this Agreement or its performance hereunder; or

8.3.2 Consultant violates or materially fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this Agreement, except those events of default for which an opportunity to cure is provided herein; or

8.3.3 Consultant fails to cure, or initiate steps reasonably calculated to cure, a default listed in Section 9.3 below, within the time period required for cure; or

8.3.4 Consultant violates any rule, regulation or law to which Consultant is bound or shall be bound under the terms of this Agreement; or

8.3.5 Consultant attempts the sale, transfer, pledge, conveyance or assignment of this Agreement contrary to the terms of the Agreement; or

8.3.6 Consultant ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Contract shall continue) and such petition is not dismissed within forty-five (45) days of filing; or if a receiver, trustee or liquidator is appointed for it, or its joint venture entity, or any substantial part of Manager's assets or properties.

8.4 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

8.5 Orderly Transfer Following Termination. Regardless of how this Agreement is terminated, Consultant shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City. Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant, or any of its subcontractors, pursuant to this Agreement. All completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced, or provided to Consultant, in connection with the services rendered by Consultant under this Agreement, regardless of storage medium, shall be transferred to City. Such record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents.

8.6 Claims for Outstanding Fees. Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. **Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a Waiver by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.**

8.7 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

8.8 Upon termination or cancellation of this Agreement, the City may immediately commence an audit of the Consultant's books, accounts, and records. Within thirty (30) calendar days after being notified by the City of the results of said audit, the Consultant shall pay the City any amount shown by said audit to be owed the City or its employees. No waiver of existing default shall be deemed to waive any subsequent default.

IX. SUSPENSION OF WORK UNDER AGREEMENT

9.1 Right of City to Suspend. City may suspend this Agreement for any reason, with or without cause upon the issuance of written Notice of Suspension in accordance with the Notice provisions contained in this Agreement. Such suspension shall take effect upon the date specified in such notice; provided, however, such date shall not be earlier than the tenth (10th) day following receipt by Consultant of said notice. The Notice of Suspension will set out the reason(s) for the suspension and the anticipated duration of the suspension, but will in no way guarantee the total number of days of suspension.

9.2 Consultant's Right to Terminate In Event of Suspension of Agreement. In the event such suspension exceeds one hundred and twenty (120) calendar days, Consultant shall have the right to terminate this Agreement. Consultant may exercise this right to terminate by issuing a written Notice of Termination to the City, delivered in accordance with the Notice provisions contained in this Agreement after the expiration of one hundred and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by City and such termination shall be subject to all the requirements set out in Paragraphs 7.5 and 7.6 above, related to the Orderly Transfer and Fee Payment.

9.3 Procedures Upon Receipt of Notice of Suspension.

9.3.1 Upon receipt of a notice of suspension and prior to the effective date of the suspension, Consultant shall, unless otherwise directed, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement.

9.3.2 Consultant shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

9.3.3 Copies of all completed or partially completed studies, plans and other documents prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to the City but shall be retained by Consultant until such time as Consultant may exercise the right to terminate.

9.3.4 During the period of Suspension, Consultant shall have the option to at any time submit the above referenced statement to the City for payment of any unpaid portion of the prescribed fee for services which have actually been performed to the

benefit of the City under this Agreement, adjusted for any previous payments of the fee in question.

9.3.5 In the event Consultant exercises its right to terminate this Agreement at any time after the effective Suspension date, Consultant shall submit, within forty-five (45) calendar days after receipt by City of Consultant's notice of termination (if he has not previously done so) the above referenced statement showing in detail the services performed under this Agreement prior to the effective date of suspension. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a Waiver by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

9.3.6 Upon the above conditions being met, the City's review of the submissions and finding the claimed compensation to be appropriate to the terms of this agreement, the City shall pay Consultant that portion of the agreed prescribed fee for those as yet uncompensated services actually performed under this Agreement to the benefit of the City, adjusted for any previous payments of the fee in question.

X. INSURANCE REQUIREMENTS

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Aviation Department, which shall be clearly labeled "**On-Call Construction Materials Testing Services**" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Aviation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article for each WOR issued during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, circumstances surrounding this Agreement, or risks associated with the specific WOR to be issued under the Agreement(s). In no instance will City allow modification whereupon City may incur increased risk.

10.3 A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any negligent act, malpractice, error or omission in professional services.

10.4 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation, employer's liability and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

10.5 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance

should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

10.6 In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

10.7 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

10.8 It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

10.9 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

10.10 Consultant and any Subcontractors are responsible for all damage to their own equipment and/or property.

10.11 Consultant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Consultant herein, and provide a certificate of insurance and endorsement that names the Consultant and the CITY as additional insureds. Consultant shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

XI. INDEMNIFICATION

11.1 Consultant whose work product is the subject of this contract agrees to **INDEMNIFY AND HOLD CITY, ITS OFFICERS AND EMPLOYEES, HARMLESS** against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, intellectual property infringement, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may **ARISE OUT OF OR BE OCCASIONED OR CAUSED BY CONSULTANT'S NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF CONSULTANT AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES,**

DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the rights or duties under this Agreement.

11.2 The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

11.3 Consultant shall promptly advise the City, in writing, of any claim or demand against the City or Consultant known to Consultant related to or arising out of Consultant activities under this contract.

11.4 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or other wise, to any other person or entity.

XII. CONSULTANT'S LIABILITY AND STANDARD OF CARE

12.1 Services provided by Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Acceptance of the services performed and/or results and reports submitted by Consultant hereunder shall not constitute nor be deemed a release of the responsibility and liability of Consultant, its employees, associates, agents or subcontractors for the accuracy and competency of their testing, reports, assessments or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by City for any defect or error in testing, reports, or assessments and work performed by Consultant, its employees, subcontractors, and agents.

XIII. CONSULTANT'S WARRANTY UNDER THE PROFESSIONAL SERVICES PROCUREMENT ACT

13.1 Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for Consultant to solicit or secure this Agreement, and that it has not, for the purpose of soliciting or securing this Agreement, paid, compensated, or agreed to pay or compensate, any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift, for any other consideration contingent upon or resulting from the award or making of this Agreement. For breach of the foregoing warranty, the City shall have the right to terminate the Agreement under the provisions of this Agreement. However, breach of the warranty required in this provision constitutes fraud by operation of law; therefore, any Consultant found in breach of such warranty, by a final judgment of a Court of Competent Jurisdiction, shall take no compensation under this Agreement for any services rendered and such forfeiture shall not bar the City from pursuit and collection of any and all other damages, at law and in equity, to which it may be justly

entitled. Accordingly, Consultant further pledges and warrants its best and most competent professional efforts to secure to the City the benefits of the Agreement.

XIV. ASSIGNMENT OF RIGHTS OR DUTIES

14.1 By entering into this Agreement, City has approved the use of any subcontractors identified in Consultant's Response to City's solicitation for services. No further approval shall be needed for Consultant to use such subcontractors as are identified in Consultant's Response to City's Request for Qualifications.

14.2 Except as otherwise required herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the prior written consent of City. Engineering services required by law to be performed by a licensed engineer, or services which, by law, require the supervision and approval of a licensed engineer, may only be subcontracted upon the prior written approval of the San Antonio City Council, by approval and passage of an ordinance therefore. Any other services to be performed under this Agreement may be subcontracted upon the written approval of Director. As a condition of consent, if same is given, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor consultant, assignee, transferee or subcontractor. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by City in accordance with this Article.

14.3 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this Agreement, without said written approval, shall be void, and shall confer no rights upon any third person. Should Consultant assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this Agreement, City may, at its option, terminate this Agreement as provided herein, and all rights, titles and interest of Consultant shall thereupon cease and terminate, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

14.4 Consultant agrees to notify Director of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to City under this Agreement, any such change of ownership interest or control of its business entity may be grounds for termination of this Agreement in accordance with Article VIII, Termination.

XV. INDEPENDENT CONTRACTOR

15.1 Consultant covenants and agrees that (s)he is an independent contractor and not an officer, agent, servant, or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and

all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of *respondeat superior* shall not apply as between City and Consultant, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Consultant.

15.2 No Third Party Beneficiaries - For purposes of this Agreement, including its intended operation and effect, the Parties specifically agree and contract that: (1) this Agreement only affects matters/disputes between the Parties to this Agreement, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with City or Consultant or both, or that such third parties may benefit incidentally by this Agreement; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either City or Consultant.

XVI. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

16.1 It is the policy of the City of San Antonio that disadvantaged business enterprises (DBEs) as defined under 49 CFR Part 26, shall have "equality of opportunity" to participate in the awarding of federally-assisted Aviation Department contracts and related subcontracts, to include sub-tier subcontracts. This policy supports the position of the U.S. Department of Transportation (DOT) and the FAA in creating a level playing field and removing barriers by ensuring nondiscrimination in the award and administration of contracts financed in whole or in part with federal funds under this contract. Therefore, on all DOT or FAA-assisted projects the DBE program requirements of 49 CFR Part 26 apply to the contract.

16.2 The Consultant agrees to employ good-faith efforts (as defined in the Aviation Department's DBE Program) to carry out this policy through award of sub-consultant contracts to disadvantaged business enterprises to the fullest extent participation is consistent with the performance of the Aviation Department Contract, and/or the utilization of DBE suppliers where feasible. Consultants are expected to solicit bids from available DBE's on contracts which offer subcontracting opportunities.

16.3 Consultant specifically agrees to comply with all applicable provisions of the Aviation Department's DBE Program. The DBE Program may be obtained through the airport's DBE Liaison Officer at (210) 207-3505 or by contacting the City's Aviation Department.

16.4 The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate. Consultant agrees to include this clause in

each sub-consultant contract the prime consultant signs with a sub-consultant.

16.5 The Consultant agrees to pay each sub-consultant under this Contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment the prime contract receives from the City of San Antonio. The Consultant further agrees to return retainage payments to each sub-consultant within fifteen (15) days after the sub-consultant's work is satisfactorily completed. The Consultant shall provide the City with a report, in a format prescribed by the City, detailing all amounts, if any, paid to DBE subconsultants or suppliers with each invoice that Consultant submits hereunder. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval from the City of San Antonio. This Clause applies to both DBE and non-DBE sub-consultants.

16.6 All changes to the list of sub-consultants submitted with the proposal and approved by the City or Aviation Department, excluding vendors shall be submitted for review and approval by Aviation Department's DBE Liaison Office for approval when adding, changing, or deleting sub-consultants on airport projects. Consultants shall make a good-faith effort to replace DBE sub-consultants unable to perform on the contract with another DBE.

16.7 During the term of this Agreement, the Consultant must report the actual payments made to all subcontractors to the City in a time interval and a format determined by the City. The City reserves the right, at any time during the term of this Agreement, to request additional information, documentation or verification of payments made to subcontractors in connection with this Agreement. Verification of amounts being reported may take the form of requesting copies of cancelled checks paid to participating DBEs and/or confirmation inquiries directly with participating DBEs. Proof of payment such as copies of check must properly identify the project name or project number to substantiate payment.

16.8 The Consultant shall comply with the DBE Compliance and Enforcement Policy attached hereto as Exhibit C. Failure or refusal by a Proposer or Consultant to comply with the DBE provisions herein or any applicable provisions of the DBE Program, either during the proposal process or at any time during the term of the Contract, may constitute a material breach of Contract, whereupon the Contract, at the option of the Aviation Department, may be cancelled, terminated, or suspended in whole or in part.

XVII. NOTICES

17.1 Unless otherwise expressly provided elsewhere in this Agreement, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier.

If intended for CITY, to:

City of San Antonio
Attn: Mr. Dan Gallagher
Aviation Department/Planning & Development
9700 Airport Blvd.
San Antonio, Texas 78216

If intended for Consultant, to:

Fugro Consultants, Inc.
Attn: Mr. Thomas C. Wesling
11009 Osgood
San Antonio, TX 78233

XVIII. CONFLICTS OF INTEREST

18.1 Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

18.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of City. Consultant further warrants and certifies that it has tendered to City's a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

XIX. SOLICITATION

19.1 Consultant warrants and represents that he has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. This representation constitutes a substantial part of the consideration for the making of this Agreement.

XX. AIRPORT SECURITY

20.1 To the extent Consultant will be responsible for work which necessitates entrance to the Air Operations Area or other secure area of the Airport, this Agreement is expressly subject to the airport security requirements of Title 49 of the United States Code, Chapter 449, as amended ("Airport Security Act"), the provisions of which govern airport security and are incorporated by reference, including without limitation the rules and regulations promulgated under it. Consultant is subject to, and further must conduct

with respect to its Subcontractors and the respective employees of each, such employment investigations, including criminal history record checks, as the Aviation Director, the TSA or the FAA may deem necessary. Further, in the event of any threat to civil aviation, Consultant must promptly report any information in accordance with those regulations promulgated by the FAA, the TSA and the City. Consultant must, notwithstanding anything contained in this Agreement to the contrary, at no additional cost to the City, perform under this Agreement in compliance with those guidelines developed by the City, the TSA and the FAA with the objective of maximum security enhancement.

20.2 Consultant must comply with, and require compliance by its Subcontractors, with all present and future laws, rules, regulations, or ordinances promulgated by the City, the TSA or the FAA, or other governmental agencies to protect the security and integrity of the Airport, and to protect against access by unauthorized persons. Subject to the approval of the TSA, the FAA and the Aviation Director, Consultant must adopt procedures to control and limit access to the Airport Premises utilized by Consultant and its Subcontractors in accordance with all present and future City, TSA and FAA laws, rules, regulations, and ordinances. At all times during the Term, Consultant must have in place and in operation a security program for the Airport Premises utilized by Consultant that complies with all applicable laws and regulations. All employees of Consultant that require regular access to sterile or secure areas of the Airports must be badged in accordance with City and TSA rules and regulations.

20.3 Gates and doors located in and around the Airport Premises utilized by Consultant that permit entry into sterile or secured areas at the Airports, if any, must be kept locked by Consultant at all times when not in use, or under Consultant 's constant security surveillance. Gate or door malfunctions must be reported to the Aviation Director or the Aviation Director's designee without delay and must be kept under constant surveillance by Consultant until the malfunction is remedied.

20.4 In connection with the implementation of its security program, Consultant may receive, gain access to or otherwise obtain certain knowledge and information related to the City's overall Airport security program. Consultant acknowledges that all such knowledge and information is of a highly confidential nature. Consultant covenants that no person will be permitted to gain access to such knowledge and information, unless the person has been approved by the City or the Aviation Director in advance in writing. Consultant further must indemnify, hold harmless and defend the City and other users of the Airport from and against any and all claims, reasonable costs, reasonable expenses, damages and liabilities, including all reasonable attorney's fees and costs, resulting directly or indirectly from the breach of Licensee's covenants and agreements as set forth in this section.

XXI. CONTRACT CONSTRUCTION

21.1 All parties have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

XXII. FAMILIARITY WITH LAW AND CONTRACT TERMS

22.1 Consultant represents that, prior to signing this Agreement; Consultant has become thoroughly acquainted with all matters relating to the performance of this Agreement, all applicable laws, and all of the terms and conditions of this Agreement.

XXIII. APPLICABLE LAW

23.1 This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

XXIV. VENUE

24.1 The obligations of the parties to this Agreement shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

XXV. SEVERABILITY

25.1 In the event any one or more paragraphs or portions of this Agreement are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of this Agreement, but such shall be confined to the specific section, sentences, clauses or portions of this Agreement held invalid or unenforceable.

XXVI. FORCE MAJEURE

26.1 In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

XXVII. SUCCESSORS

27.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this Agreement, their assigns.

XXVIII. NON-WAIVER OF PERFORMANCE

28.1 A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any

succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the San Antonio City Council.

28.2 No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXIX. PARAGRAPH HEADINGS

29.1 The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXX. LEGAL AUTHORITY

30.1 The signer of this Agreement for CITY and Consultant each represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of City and Consultant respectively, and to bind City and Consultant to all of the terms, conditions, provisions and obligations herein contained.

XXXI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

31.1 By execution of this Agreement, the undersigned authorized representative of Consultant certifies, and the City relies thereon, that neither Consultant, nor its Principals are presently debarred, suspended, proposed for debarment, or declared ineligible, or voluntarily excluded for the award of contracts by any Federal governmental agency or department;

31.2 "Principals", for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

31.3 Consultant shall provide immediate written notice to City, in accordance the notice provisions of this Agreement, if, at any time during the term of this contract, including any renewals hereof, Consultant learns that this certification was erroneous when made or has become erroneous by reason of changed circumstances.

31.4 Consultant's certification is a material representation of fact upon which the City has relied in entering into this Agreement. Should City determine, at any time during this

Agreement, including any renewals hereof, that this certification is false, or should it become false due to changed circumstances, the City may terminate this Agreement in accordance the terms of this Agreement.

XXXII. ENTIRE AGREEMENT & AMENDMENTS

32.1 This Agreement, together with its Exhibits and Attachments, embodies the complete Agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein. No other agreements, verbal or otherwise, regarding the matters of this Agreement shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and executed by the parties hereto.

32.2 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant, and subject to approval by the City Council, as evidenced by passage of an ordinance.

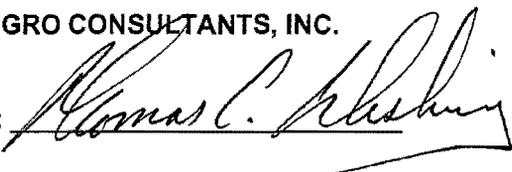
32.3 It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

EXECUTED ON this the ____ day of _____, 2009.

CITY OF SAN ANTONIO, TEXAS

FUGRO CONSULTANTS, INC.

By: _____
Sheryl Sculley
City Manager

By: 

Federal Tax ID # 74-2426512

APPROVED AS TO FORM:

By: _____
City Attorney

ATTACHMENT 4

**PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL CONSTRUCTION MATERIAL TESTING**

This Professional Services Agreement (hereinafter referred to as "Agreement" or "Contract") is made and entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas municipal corporation, acting by and through its City Manager, and Professional Service Industries, Inc. acting by and through its designated officer(s), (hereinafter referred to as "Consultant"), both of which may be referred to herein collectively as the "Parties".

IN CONSIDERATION of the mutual covenants, terms, conditions, privileges and obligations herein contained, City and Consultant do hereby agree as follows:

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

- 1.1 "Airport" means the San Antonio International Airport.
- 1.2 "Stinson" means Stinson Municipal Airport.
- 1.2 "Director" means the director of the City's Aviation Department or his designee.
- 1.3 "Department" means the Aviation Department for the City of San Antonio.
- 1.4 "Project" means the specific Construction Material Testing ("CMT") work for which a Work Plan is negotiated and executed by both Parties.
- 1.5 "Work Order Request" ("WOR") means a request to Consultant to submit a Proposed Work Plan for a specific Project as further defined herein.
- 1.6 "Proposed Work Plan" means a proposal prepared by the Consultant in response to a WOR as further defined herein.
- 1.7 "Finalized Work Plan" a written agreement signed by both and made a part of this Agreement setting forth the agreed to scope and associated terms for an individual Project as further defined herein.

II. PERIOD OF SERVICE

2.1 This Agreement shall take effect on the eleventh (11th) calendar day after it is approved by the San Antonio City Council or upon execution by both parties, whichever date is later, and continue in full force and effect for 24 months from effective date unless extension or earlier termination shall occur pursuant to any of the provisions hereof.

2.2 The Aviation Director, as the City's representative, is authorized to administratively extend the term of the Agreement for one additional one (1) year term. No later than ninety (90) days prior to the completion of the initial 24 month term, the City will issue Consultant a written Notice of Intent that will inform Consultant of the City's decision with regard to exercising its option for an extension to the Agreement for one (1) additional year.

2.3 If funding for the entire Project is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

3.1 This Agreement is an on-call or indefinite delivery agreement for Construction Materials Testing ("CMT") services and such other services that are required for Consultant to provide or are associated with CMT. CMT services shall include, but are not limited to, the tests set out in Exhibit A, Compensation Sheet. Specific requirements as to types, number, and location of testing, conditions, procedures, and associated services pertaining to a Project shall be negotiated and set out in individual Finalized Work Plans for each request, which Finalized Work Plans are incorporated into and shall become a part of this Agreement. The City does not guarantee a particular volume of work or a minimum number of units of work.

3.2 Consultant shall provide all labor, equipment and transportation necessary to complete all services agreed to hereunder in a timely manner throughout the term of the Contract. Additionally, Consultant shall provide staff for regular, overtime, night, weekend, and holiday work, as requested by Department. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or subcontractors of Consultant.

3.3 All services and work performed under this Agreement must be conducted in full conformance with the provisions of this Agreement and be in compliance with all Federal Aviation Administration ("FAA") requirements and the American Society for Testing and Material ("ASTM") standards. Additionally, Consultant shall only use testing laboratory(ies) which comply with all applicable FAA requirements and ASTM standards.

3.4 Immediately upon City Council approval of this Agreement, Consultant shall, at Consultant's expense, obtain 1) Airport Personnel Identification Badges for each employee who may perform work hereunder, and 2) Airfield Driver's Licenses, as needed, for employees that may have a need to operate a vehicle within the Airport Operations Area. The procedures for procuring these badges and licenses are outlined in the Procedures for Obtaining Airport Personnel Identification Badge and Airfield Driver's License in Exhibit B. Consultant, at its own expense, shall maintain sufficient staff security clearances, badges and driving operator licenses to be able to initiate CMT Services in a timely manner upon issuance of a Notice to Proceed.

3.5 For all tests performed pursuant to this Agreement, Consultant shall promptly deliver to Department, within such timeframe required to avoid any delay in construction progress, two (2) paper copies and one (1) electronic copy in Adobe PDF format on a compact disc of all reports, on the testing laboratory's letterhead and signed by a

Professional Engineer or appropriate licensed Professional, of the test results which include:

- a. The Project name,
- b. Date(s)/time(s)/location(s) of service,
- c. Report Identification Number,
- d. Type and quantity of tests performed
- e. Test Results
- f. Standards Controlling the Test(s)
- g. Compliance or noncompliance with the specifications
- h. Any extenuating circumstances affecting the test(s) or result(s)
- i. Observations to include service time chargeable to delays and rescheduling.
- j. If manpower is involved, provide names, job classification and hours.
- k. Number of trips with work performed on the Project.
- l. Name of person who ordered the test(s).
- m. Identify any and all re-test services.

3.6 Consultant is responsible for ensuring that at the end of each Project, the construction materials testing lab uses test results to follow FAA Section 110, Method of Estimating Percentage of Material within Specification Limits (PWL) to provide a table on concrete and asphalt, if applicable.

IV. PROJECT WORK REQUEST PROCESS

4.1 When Director has a Project for which he desires to procure CMT Services, Director shall notify Consultant by issuing a WOR. Each WOR will include, at a minimum: name of Project, location of Project, copies of or access to Project documentation (such as specifications, environmental reports, or drawings) needed by Consultant to prepare a Proposed Work Plan, Project schedule and any specific deadlines for performance of CMT Services, any Project specific insurance requirements necessitated by the work which may require additional types of coverages or higher levels of coverage than required by the Agreement, and a deadline for providing Director with a Proposed Work Plan based on the above.

4.2 Consultant shall prepare and submit to Director, within the timeline stated in a WOR, a Proposed Work Plan for the desired services which will include at a minimum: Scope of Services, specific staffing, an estimate of Project cost based on the hourly rates and test fees agreed upon in Exhibit A, Compensation Sheet, and Project specific expenses for the services requested in the WOR. The Consultant shall submit the Proposed Work Plan in editable electronic format to the City. By submitting a Proposed Work Plan, Consultant agrees to perform the requested service within the time stated in the WOR.

4.3 Consultant and Director shall negotiate the Proposed Work Plan. Once Consultant and Director reach mutual agreement as to scope, staffing, scheduling and

cost, the City shall issue a Finalized Work Plan to be executed by both parties evidencing the agreed to scope and costs.

4.4 The Director has the authority to execute Finalized Work Plans on behalf of the City so long as such Finalized Work Plan does not exceed the total contract value and funds are provided for in the Project budget as allocated by City Council.

4.5 Consultant shall not proceed with services until after a Finalized Work Plan has been executed, Consultant receives a Notice to Proceed, and all documents required by Director in advance of commencement of work, to include proof of insurance, have been provided. Any services provided or expenses incurred prior to receiving a Notice to Proceed or after the expiration of this Agreement or a particular Final Work Plan will be at Consultant's sole risk and expense and may not be reimbursable by City.

4.6 Actual amounts billed shall not exceed the total amount as set out in the Final Work Plan.

4.7 Each Finalized Work Plan and Notices to Proceed shall be attached hereto and incorporated herein for all purposes. Each grouping of Final Work Plans and Notices to Proceed shall be labeled and identified in numerical order. For example, the first group shall be labeled as:

Attachment 1(a) – Finalized Work Plan

Attachment 1(b) – Notice to Proceed

4.8 Consultant shall not invoice for any work associated with the Project Work Request Process, including development of Proposed Work Plan and its negotiation.

V. COORDINATION WITH THE CITY

5.1 The Director or his designee shall act on behalf of City with respect to the work performed under this Agreement, and shall have complete authority to transmit instructions, receive information, and interpret and define City's policies and decisions with respect to materials, equipment elements and systems pertinent to Consultant's services.

5.2 City shall provide written notice to the Consultant of any errors or omissions discovered in the Consultant's services, or performance, or of any development that affects the scope or timing of Consultant's services.

5.3 City shall strive to provide a minimum of 24 hours advance notice for scheduling or canceling field inspection and testing services. Work scheduled with less than 24 hours notice will be serviced subject to available personnel. Consultant shall not invoice any type of cancellation fee.

VI. COMPENSATION

6.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant for at the rates set out in Exhibit A, Compensation Sheet, within 30 calendar days' receipt of an approved itemized invoice.

However, in no event shall the total compensation to be paid to Consultant under this Agreement exceed \$150,000.00.

6.2 Only amounts specifically set forth in Exhibit A, Compensation Sheet, or within a particular Finalized Work Plan may be invoiced hereunder.

6.3 Nothing contained in this Agreement shall require City to pay for any unsatisfactory work, as determined by Director, or for work that is not in compliance with the terms of this Agreement. City shall not be required to make any payments to Consultant at any time Consultant is in default under this Agreement.

6.4 Despite the City's approval of an assignee or subcontractor, the City shall, in no event, be obligated to any third party, including any assignee or subcontractor of the Consultant, for performance of work or services, nor shall City funds be used for payment of work or services performed prior to the date of Agreement execution, prior to the Notice to Proceed for a Project, after the completion date contained in a Finalized Work Plan, or after the expiration date of this Agreement.

6.5 Invoicing. Consultant shall submit an invoice to the City for CMT Services provided, and actual work performed in the format to be prescribed by the City. Consultant may submit invoices no more than once monthly for tests completed with reported results and work performed which have not been included on previous invoices. Such invoices must show: a) a detailed summary of the tests completed, b) services rendered itemized by task performed, the employee category and the number of hours worked during the period covered by the invoice, c) any allowable expenses incurred, itemized and with sufficient documentation to allow verification, d) the amount due for the services and expenses, and e) any other evidence required by the Director or his designated representative. Consultant must invoice separately for each open Project. Blended invoices for multiple open Projects will not be acceptable.

6.6 Records. All time keeping records must be accurate and complete. Invoices for services shall indicate the name and job classification of each employee performing the work, the associated billing rate (in accordance with the rate set forth in Exhibit A) and must be recorded in quarter hour increments.

6.7 Right to Audit. The Consultant will provide supporting evidence necessary to substantiate charges related to the contract and allow the City to access Consultant's "records" associated with this Agreement. Consultant's "records" shall be made available within two weeks of the written request for open inspection, audit, and/or reproduction during normal business working hours. Such audits may be performed by a City's representative or an outside representative engaged by City. The City or its designee may conduct such audits or inspections throughout the term of this Agreement and for a period of three years after final payment or longer if required by law. The City's representatives may (without limitation) conduct verifications such as counting employees at the Project site, verifying information and amounts through interviews and written confirmations with Consultant's employees, field and agency labor, subcontractors, and vendors.

6.7.1 Consultant's "records" as referred to in this contract shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions,

recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in the City's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by this Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; invoices and related payment documentation; general ledger, and any other Consultant records which may have a bearing on matters of interest to the City in connection with the Consultant's dealings with the City to the extent necessary to adequately permit evaluation and verification of any or all of the following:

- (a) Compliance with contract requirements for deliverables
- (b) Compliance with contract provisions regarding the pricing of change orders
- (c) Accuracy of Consultant representations regarding the pricing of invoices
- (d) Accuracy of Consultant representations related to claims submitted by the Consultant or any payees.

6.7.2 Consultant shall require all payees (examples of payees include subcontractors, material suppliers, insurance carriers, etc.) to comply with the provisions of this article by ensuring that the City's right to audit requirements set forth herein are contained in a written contract between Consultant and payee. Consultant will ensure that the City has the same right to audit all payees that it has to audit Consultant under the terms of this Agreement.

6.7.3 City's authorized representative or designee shall have reasonable access to the Consultant's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, in order to conduct audits in compliance with this article.

6.7.4 If an audit inspection or examination in accordance with this article discloses overpricing or overcharges (of any nature) by the Consultant to the City in excess of three percent (3%) of the total contract billings, in addition to making adjustments for the overcharges, the reasonable actual cost of the City's audit shall be reimbursed to the City by the Consultant. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Consultant's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Consultant.

VII. OWNERSHIP AND RETENTION OF DOCUMENTS AND ACCESS TO LAB RESULTS

7.1 Upon completion or termination of the Project, or upon request by the City, all documents and information, in whatever form, given to, prepared or assembled by the Consultant in connection with its performance of its duties under this Agreement shall become the sole property of the City and shall be delivered at no cost to the City without restriction on future use. Documents and information covered by this paragraph shall include, but not be limited to, reports, test results, field notes and other data. The City shall have free and immediate access to all such information at all times during the term of this Agreement with the right to make and retain copies documents, notes and data, whether or not the Project has been completed. Prior to surrender of the documents and information, Consultant may make copies of any and all documents for its files, at its sole cost and expense. Consultant will not be responsible for the unauthorized reuse or modification of reports or work product resulting from City's use, distribution of, or failure to maintain control over the reports or work product once delivered to the City.

7.2 At any time during the Project, the City shall have the right to unrestrained direct access and contact with laboratories and testing facilities used by Consultant for work performed by Consultant under this Agreement; and the City shall have the unrestricted right to obtain original or duplicate copies of reports and testing results directly from the lab or testing facility used by Consultant.

7.3 The Consultant agrees to maintain all books, records and reports required under this contract for a period of not less than three (3) years after final payment is made and all pending matters are closed. In addition, the Consultant shall maintain an acceptable cost accounting system during the term of this Agreement. The Consultant agrees to provide the City, the Federal Aviation Administration ("FAA") and the Comptroller General of the United States, or any of their duly authorized representatives, access to any books, documents, papers and records of the Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions.

VIII. TERMINATION OF AGREEMENT

8.1 Termination Without Cause.

8.1.1 This Agreement may be terminated by City without cause, prior to Director giving Consultant written Notice to Proceed, should Director, in his sole discretion, determine that it is not in City's best interest to proceed with this Agreement. Such notice shall be provided in accordance with the notice provisions contained in this Agreement, and shall be effective immediately upon delivery to the Consultant.

8.1.2 This Agreement may be terminated by the City at any time after issuance of the Director's Notice to Proceed, either for the City's convenience or because of

Consultant's failure to fulfill the contract obligations. Upon receipt of such notice, services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Agreement, whether completed or in progress, delivered to the City.

8.1.3 If the termination is for the convenience of the City, and following inspection and acceptance of Consultant's services properly performed prior to the effective date of termination, an equitable adjustment in the contract price shall be made. Consultant shall not, however, be entitled to lost or anticipated profit on unperformed services, should City choose to exercise its option to terminate, nor shall Consultant be entitled to compensation for any unnecessary or unapproved work, performed during time between the issuance of the City's notice of termination and the actual termination date.

8.1.4 If the termination is due to Consultant's failure to fulfill its obligations, the City may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Consultant shall be liable to the City for any additional cost occasioned to the City thereby.

8.1.5 If, after notice of termination for failure to fulfill contract obligations, it is determined that the Consultant had not so failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, an equitable adjustment in the contract price shall be made as provided in paragraph 7.1.3 of this clause.

8.1.6 The rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

8.1.7 This Agreement may be terminated by the Consultant, at any time after issuance of the Director's Notice to Proceed, upon ninety (90) calendar days written notice provided in accordance with the Notice provisions contained in this Agreement.

8.2 Defaults With Opportunity for Cure. Should Consultant fail, as determined by the Director, to satisfactorily perform the duties set out in Article III. SCOPE OF SERVICES; or comply with any covenant herein required, such failure shall be considered an Event of Default. In such event, the City shall deliver written notice of said default, in accordance with the notice provisions contained in this Agreement, specifying the specific Events of Default and the action necessary to cure such defaults. Consultant shall have ten (10) calendar days after receipt of the written notice to cure such default. If Consultant fails to cure the default within such cure period, or take steps reasonably calculated to cure such default, City shall have the right, without further notice, to terminate this Contract in whole or in part as City deems appropriate, and to contract with another Consultant to complete the work required by this Agreement. City shall also have the right to offset the cost of said new agreement with a new Consultant against Consultant's future or unpaid invoice(s), subject to any statutory or legal duty, if any, on the part of City to mitigate its losses.

8.3 Termination For Cause. Upon the occurrence of one (1) or more of the following events, and following written notice to Consultant given in accordance with the notice provisions contained in this Agreement, City may immediately terminate this Contract, in whole or in part, "for cause":

8.3.1 Consultant makes, directly or indirectly through its employees or representatives, any material misrepresentation or provides any materially misleading information to City in connection with this Agreement or its performance hereunder; or

8.3.2 Consultant violates or materially fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this Agreement, except those events of default for which an opportunity to cure is provided herein; or

8.3.3 Consultant fails to cure, or initiate steps reasonably calculated to cure, a default listed in Section 9.3 below, within the time period required for cure; or

8.3.4 Consultant violates any rule, regulation or law to which Consultant is bound or shall be bound under the terms of this Agreement; or

8.3.5 Consultant attempts the sale, transfer, pledge, conveyance or assignment of this Agreement contrary to the terms of the Agreement; or

8.3.6 Consultant ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Contract shall continue) and such petition is not dismissed within forty-five (45) days of filing; or if a receiver, trustee or liquidator is appointed for it, or its joint venture entity, or any substantial part of Manager's assets or properties.

8.4 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

8.5 Orderly Transfer Following Termination. Regardless of how this Agreement is terminated, Consultant shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City. Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant, or any of its subcontractors, pursuant to this Agreement. All completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced, or provided to Consultant, in connection with the services rendered by Consultant under this Agreement, regardless of storage medium, shall be transferred to City. Such record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents.

8.6 Claims for Outstanding Fees. Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. **Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a Waiver by Consultant of any and all**

right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

8.7 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

8.8 Upon termination or cancellation of this Agreement, the City may immediately commence an audit of the Consultant's books, accounts, and records. Within thirty (30) calendar days after being notified by the City of the results of said audit, the Consultant shall pay the City any amount shown by said audit to be owed the City or its employees. No waiver of existing default shall be deemed to waive any subsequent default.

IX. SUSPENSION OF WORK UNDER AGREEMENT

9.1 Right of City to Suspend. City may suspend this Agreement for any reason, with or without cause upon the issuance of written Notice of Suspension in accordance with the Notice provisions contained in this Agreement. Such suspension shall take effect upon the date specified in such notice; provided, however, such date shall not be earlier than the tenth (10th) day following receipt by Consultant of said notice. The Notice of Suspension will set out the reason(s) for the suspension and the anticipated duration of the suspension, but will in no way guarantee the total number of days of suspension.

9.2 Consultant's Right to Terminate In Event of Suspension of Agreement. In the event such suspension exceeds one hundred and twenty (120) calendar days, Consultant shall have the right to terminate this Agreement. Consultant may exercise this right to terminate by issuing a written Notice of Termination to the City, delivered in accordance with the Notice provisions contained in this Agreement after the expiration of one hundred and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by City and such termination shall be subject to all the requirements set out in Paragraphs 7.5 and 7.6 above, related to the Orderly Transfer and Fee Payment.

9.3 Procedures Upon Receipt of Notice of Suspension.

9.3.1 Upon receipt of a notice of suspension and prior to the effective date of the suspension, Consultant shall, unless otherwise directed, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement.

9.3.2 Consultant shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

9.3.3 Copies of all completed or partially completed studies, plans and other documents prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to the City but shall be retained by Consultant until such time as Consultant may exercise the right to terminate.

9.3.4 During the period of Suspension, Consultant shall have the option to at any time submit the above referenced statement to the City for payment of any unpaid portion of the prescribed fee for services which have actually been performed to the benefit of the City under this Agreement, adjusted for any previous payments of the fee in question.

9.3.5 In the event Consultant exercises its right to terminate this Agreement at any time after the effective Suspension date, Consultant shall submit, within forty-five (45) calendar days after receipt by City of Consultant's notice of termination (if he has not previously done so) the above referenced statement showing in detail the services performed under this Agreement prior to the effective date of suspension. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a Waiver by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

9.3.6 Upon the above conditions being met, the City's review of the submissions and finding the claimed compensation to be appropriate to the terms of this agreement, the City shall pay Consultant that portion of the agreed prescribed fee for those as yet uncompensated services actually performed under this Agreement to the benefit of the City, adjusted for any previous payments of the fee in question.

X. INSURANCE REQUIREMENTS

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Aviation Department, which shall be clearly labeled "**On-Call Construction Materials Testing Services**" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Aviation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article for each WOR issued during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, circumstances surrounding this Agreement, or risks associated with the specific WOR to be issued under the Agreement(s). In no instance will City allow modification whereupon City may incur increased risk.

10.3 A Consultant's financial integrity is of interest to the City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance

coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any negligent act, malpractice, error or omission in professional services.

10.4 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation, employer's liability and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

10.5 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

10.6 In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

10.7 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.

10.8 It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

10.9 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

10.10 Consultant and any Subcontractors are responsible for all damage to their own equipment and/or property.

10.11 Consultant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Consultant herein, and provide a certificate of insurance and endorsement that names the Consultant and the CITY as additional insureds. Consultant shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

XI. INDEMNIFICATION

11.1 Consultant whose work product is the subject of this contract agrees to INDEMNIFY AND HOLD CITY, ITS OFFICERS AND EMPLOYEES, HARMLESS against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, intellectual property infringement, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may **ARISE OUT OF OR BE OCCASIONED OR CAUSED BY CONSULTANT'S NEGLIGENT ACT,**

ERROR, OR OMISSION OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF CONSULTANT AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the rights or duties under this Agreement.

11.2 The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

11.3 Consultant shall promptly advise the City, in writing, of any claim or demand against the City or Consultant known to Consultant related to or arising out of Consultant activities under this contract.

11.4 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or other wise, to any other person or entity.

XII. CONSULTANT'S LIABILITY AND STANDARD OF CARE

12.1 Services provided by Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Acceptance of the services performed and/or results and reports submitted by Consultant hereunder shall not constitute nor be deemed a release of the responsibility and liability of Consultant, its employees, associates, agents or subcontractors for the accuracy and competency of their testing, reports, assessments or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by City for any defect or error in testing, reports, or assessments and work performed by Consultant, its employees, subcontractors, and agents.

XIII. CONSULTANT'S WARRANTY UNDER THE PROFESSIONAL SERVICES PROCUREMENT ACT

13.1 Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for Consultant to solicit or secure this Agreement, and that it has not, for the purpose of soliciting or securing this Agreement, paid, compensated, or agreed to pay or compensate, any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift, for any other consideration contingent upon or resulting from the award or making of this Agreement. For breach of the foregoing warranty, the City shall have the right to terminate the Agreement under the provisions of this Agreement. However, breach of the warranty required in this provision constitutes fraud by operation of law; therefore, any Consultant found in breach of such warranty, by a final judgment of

a Court of Competent Jurisdiction, shall take no compensation under this Agreement for any services rendered and such forfeiture shall not bar the City from pursuit and collection of any and all other damages, at law and in equity, to which it may be justly entitled. Accordingly, Consultant further pledges and warrants its best and most competent professional efforts to secure to the City the benefits of the Agreement.

XIV. ASSIGNMENT OF RIGHTS OR DUTIES

14.1 By entering into this Agreement, City has approved the use of any subcontractors identified in Consultant's Response to City's solicitation for services. No further approval shall be needed for Consultant to use such subcontractors as are identified in Consultant's Response to City's Request for Qualifications.

14.2 Except as otherwise required herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the prior written consent of City. Engineering services required by law to be performed by a licensed engineer, or services which, by law, require the supervision and approval of a licensed engineer, may only be subcontracted upon the prior written approval of the San Antonio City Council, by approval and passage of an ordinance therefore. Any other services to be performed under this Agreement may be subcontracted upon the written approval of Director. As a condition of consent, if same is given, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor consultant, assignee, transferee or subcontractor. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by City in accordance with this Article.

14.3 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this Agreement, without said written approval, shall be void, and shall confer no rights upon any third person. Should Consultant assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this Agreement, City may, at its option, terminate this Agreement as provided herein, and all rights, titles and interest of Consultant shall thereupon cease and terminate, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

14.4 Consultant agrees to notify Director of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to City under this Agreement, any such change of ownership interest or control of its business entity may be grounds for termination of this Agreement in accordance with Article VIII, Termination.

XV. INDEPENDENT CONTRACTOR

15.1 Consultant covenants and agrees that (s)he is an independent contractor and not an officer, agent, servant, or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of *respondeat superior* shall not apply as between City and Consultant, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Consultant.

15.2 No Third Party Beneficiaries - For purposes of this Agreement, including its intended operation and effect, the Parties specifically agree and contract that: (1) this Agreement only affects matters/disputes between the Parties to this Agreement, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with City or Consultant or both, or that such third parties may benefit incidentally by this Agreement; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either City or Consultant.

XVI. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

16.1 It is the policy of the City of San Antonio that disadvantaged business enterprises (DBEs) as defined under 49 CFR Part 26, shall have "equality of opportunity" to participate in the awarding of federally-assisted Aviation Department contracts and related subcontracts, to include sub-tier subcontracts. This policy supports the position of the U.S. Department of Transportation (DOT) and the FAA in creating a level playing field and removing barriers by ensuring nondiscrimination in the award and administration of contracts financed in whole or in part with federal funds under this contract. Therefore, on all DOT or FAA-assisted projects the DBE program requirements of 49 CFR Part 26 apply to the contract.

16.2 The Consultant agrees to employ good-faith efforts (as defined in the Aviation Department's DBE Program) to carry out this policy through award of sub-consultant contracts to disadvantaged business enterprises to the fullest extent participation is consistent with the performance of the Aviation Department Contract, and/or the utilization of DBE suppliers where feasible. Consultants are expected to solicit bids from available DBE's on contracts which offer subcontracting opportunities.

16.3 Consultant specifically agrees to comply with all applicable provisions of the Aviation Department's DBE Program. The DBE Program may be obtained through the airport's DBE Liaison Officer at (210) 207-3505 or by contacting the City's Aviation Department.

16.4 The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted

contracts. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate. Consultant agrees to include this clause in each sub-consultant contract the prime consultant signs with a sub-consultant.

16.5 The Consultant agrees to pay each sub-consultant under this Contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment the prime contract receives from the City of San Antonio. The Consultant further agrees to return retainage payments to each sub-consultant within fifteen (15) days after the sub-consultant's work is satisfactorily completed. The Consultant shall provide the City with a report, in a format prescribed by the City, detailing all amounts, if any, paid to DBE subconsultants or suppliers with each invoice that Consultant submits hereunder. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval from the City of San Antonio. This Clause applies to both DBE and non-DBE sub-consultants.

16.6 All changes to the list of sub-consultants submitted with the proposal and approved by the City or Aviation Department, excluding vendors shall be submitted for review and approval by Aviation Department's DBE Liaison Office for approval when adding, changing, or deleting sub-consultants on airport projects. Consultants shall make a good-faith effort to replace DBE sub-consultants unable to perform on the contract with another DBE.

16.7 During the term of this Agreement, the Consultant must report the actual payments made to all subcontractors to the City in a time interval and a format determined by the City. The City reserves the right, at any time during the term of this Agreement, to request additional information, documentation or verification of payments made to subcontractors in connection with this Agreement. Verification of amounts being reported may take the form of requesting copies of cancelled checks paid to participating DBEs and/or confirmation inquiries directly with participating DBEs. Proof of payment such as copies of check must properly identify the project name or project number to substantiate payment.

16.8 The Consultant shall comply with the DBE Compliance and Enforcement Policy attached hereto as Exhibit C. Failure or refusal by a Proposer or Consultant to comply with the DBE provisions herein or any applicable provisions of the DBE Program, either during the proposal process or at any time during the term of the Contract, may constitute a material breach of Contract, whereupon the Contract, at the option of the Aviation Department, may be cancelled, terminated, or suspended in whole or in part.

XVII. NOTICES

17.1 Unless otherwise expressly provided elsewhere in this Agreement, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or on receipt after mailing the same by certified mail, return

receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier.

If intended for CITY, to:

City of San Antonio
Attn: Mr. Dan Gallagher
Aviation Department/Planning & Development
9700 Airport Blvd.
San Antonio, Texas 78216

If intended for Consultant, to:

Professional Service Industries, Inc.
Attn: Mr. Edward E. Pruske
3 Burwood Lane
San Antonio, TX 78216

XVIII. CONFLICTS OF INTEREST

18.1 Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

18.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of City. Consultant further warrants and certifies that it has tendered to City's a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

XIX. SOLICITATION

19.1 Consultant warrants and represents that he has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. This representation constitutes a substantial part of the consideration for the making of this Agreement.

XX. AIRPORT SECURITY

20.1 To the extent Consultant will be responsible for work which necessitates entrance to the Air Operations Area or other secure area of the Airport, this Agreement

is expressly subject to the airport security requirements of Title 49 of the United States Code, Chapter 449, as amended ("Airport Security Act"), the provisions of which govern airport security and are incorporated by reference, including without limitation the rules and regulations promulgated under it. Consultant is subject to, and further must conduct with respect to its Subcontractors and the respective employees of each, such employment investigations, including criminal history record checks, as the Aviation Director, the TSA or the FAA may deem necessary. Further, in the event of any threat to civil aviation, Consultant must promptly report any information in accordance with those regulations promulgated by the FAA, the TSA and the City. Consultant must, notwithstanding anything contained in this Agreement to the contrary, at no additional cost to the City, perform under this Agreement in compliance with those guidelines developed by the City, the TSA and the FAA with the objective of maximum security enhancement.

20.2 Consultant must comply with, and require compliance by its Subcontractors, with all present and future laws, rules, regulations, or ordinances promulgated by the City, the TSA or the FAA, or other governmental agencies to protect the security and integrity of the Airport, and to protect against access by unauthorized persons. Subject to the approval of the TSA, the FAA and the Aviation Director, Consultant must adopt procedures to control and limit access to the Airport Premises utilized by Consultant and its Subcontractors in accordance with all present and future City, TSA and FAA laws, rules, regulations, and ordinances. At all times during the Term, Consultant must have in place and in operation a security program for the Airport Premises utilized by Consultant that complies with all applicable laws and regulations. All employees of Consultant that require regular access to sterile or secure areas of the Airports must be badged in accordance with City and TSA rules and regulations.

20.3 Gates and doors located in and around the Airport Premises utilized by Consultant that permit entry into sterile or secured areas at the Airports, if any, must be kept locked by Consultant at all times when not in use, or under Consultant's constant security surveillance. Gate or door malfunctions must be reported to the Aviation Director or the Aviation Director's designee without delay and must be kept under constant surveillance by Consultant until the malfunction is remedied.

20.4 In connection with the implementation of its security program, Consultant may receive, gain access to or otherwise obtain certain knowledge and information related to the City's overall Airport security program. Consultant acknowledges that all such knowledge and information is of a highly confidential nature. Consultant covenants that no person will be permitted to gain access to such knowledge and information, unless the person has been approved by the City or the Aviation Director in advance in writing. Consultant further must indemnify, hold harmless and defend the City and other users of the Airport from and against any and all claims, reasonable costs, reasonable expenses, damages and liabilities, including all reasonable attorney's fees and costs, resulting directly or indirectly from the breach of Licensee's covenants and agreements as set forth in this section.

XXI. CONTRACT CONSTRUCTION

21.1 All parties have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

XXII. FAMILIARITY WITH LAW AND CONTRACT TERMS

22.1 Consultant represents that, prior to signing this Agreement; Consultant has become thoroughly acquainted with all matters relating to the performance of this Agreement, all applicable laws, and all of the terms and conditions of this Agreement.

XXIII. APPLICABLE LAW

23.1 This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

XXIV. VENUE

24.1 The obligations of the parties to this Agreement shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

XXV. SEVERABILITY

25.1 In the event any one or more paragraphs or portions of this Agreement are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of this Agreement, but such shall be confined to the specific section, sentences, clauses or portions of this Agreement held invalid or unenforceable.

XXVI. FORCE MAJEURE

26.1 In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

XXVII. SUCCESSORS

27.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this Agreement, their assigns.

XXVIII. NON-WAIVER OF PERFORMANCE

28.1 A waiver by either Party of a breach of any of the terms, conditions, covenants or

guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the San Antonio City Council.

28.2 No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXIX. PARAGRAPH HEADINGS

29.1 The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXX. LEGAL AUTHORITY

30.1 The signer of this Agreement for CITY and Consultant each represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of City and Consultant respectively, and to bind City and Consultant to all of the terms, conditions, provisions and obligations herein contained.

XXXI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

31.1 By execution of this Agreement, the undersigned authorized representative of Consultant certifies, and the City relies thereon, that neither Consultant, nor its Principals are presently debarred, suspended, proposed for debarment, or declared ineligible, or voluntarily excluded for the award of contracts by any Federal governmental agency or department;

31.2 "Principals", for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

31.3 Consultant shall provide immediate written notice to City, in accordance the notice provisions of this Agreement, if, at any time during the term of this contract, including any renewals hereof, Consultant learns that this certification was erroneous when made or has become erroneous by reason of changed circumstances.

31.4 Consultant's certification is a material representation of fact upon which the City has relied in entering into this Agreement. Should City determine, at any time during this Agreement, including any renewals hereof, that this certification is false, or should it become false due to changed circumstances, the City may terminate this Agreement in accordance the terms of this Agreement.

XXXII. ENTIRE AGREEMENT & AMENDMENTS

32.1 This Agreement, together with its Exhibits and Attachments, embodies the complete Agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein. No other agreements, verbal or otherwise, regarding the matters of this Agreement shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and executed by the parties hereto.

32.2 Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant, and subject to approval by the City Council, as evidenced by passage of an ordinance.

32.3 It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

EXECUTED ON this the ____ day of _____, 2009.

CITY OF SAN ANTONIO, TEXAS

PROFESSIONAL SERVICE INDUSTRIES, INC.

By: _____
Sheryl Sculley
City Manager

By:  _____

Federal Tax ID # 37-0962090

APPROVED AS TO FORM:

By: _____
City Attorney