

AN ORDINANCE      **2011-03-03-0175**

**AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. IN THE AMOUNT OF \$349,250.00 TO DEVELOP AN AIRPORT MASTER PLAN FOR STINSON MUNICIPAL AIRPORT.**

\* \* \* \* \*

**WHEREAS**, an Airport Master Plan (the “Plan”) is a comprehensive study of an airport providing short, medium, and long-term development plans to include future capital projects; and

**WHEREAS**, the last Plan for Stinson Municipal Airport (“Stinson”) was developed in 2002 and most of the capital projects identified in that study have been completed; and

**WHEREAS**, the Aviation Department has determined that a new Plan is necessary for Stinson; and

**WHEREAS**, the City issued a Request for Qualifications to develop the Stinson Airport Master Plan in November 2010 and received four responses; and

**WHEREAS**, an evaluation committee selected Kimley-Horn and Associates, Inc. as the most qualified to develop the Plan; and

**WHEREAS**, it is now necessary to authorize the execution of a Professional Services Agreement with Kimley-Horn and Associates, 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 the Professional Services Agreement attached hereto as “Attachment 1” with Kimley-Horn and Associates, Inc. in the not to exceed amount of \$349,250.00 for development of an Airport Master Plan for Stinson Municipal Airport.

**SECTION 2.** The amount of \$349,250.00 is appropriated in SAP Fund 51016000, Stinson Airport Improvement & Contingency, SAP WBS AV-00008-01-01-26, SAP GL account 6102100 – Interfund Transfer out entitled Transfer to 33-00034-90-01. The amount of \$349,250.00 is authorized to be transferred to SAP Fund 51099000.

**SECTION 3.** The budget in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00034, Stinson Master Plan Update, shall be revised by increasing SAP WBS Element 33-00034-90-01 entitled Transfer from AV-00008-01-01-26, SAP GL Account 6101100 – Interfund Transfer In, by the amount \$349,250.00.

**SECTION 4.** The amount of \$349,250.00 is appropriated in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00034, Stinson Master Plan Update, SAP WBS Element 33-00034-01-02 entitled Stinson Master Plan, SAP GL Account 5201040.

**SECTION 5.** Payment in the amount not to exceed \$349,250.00 in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00034, Stinson Master Plan Update, is authorized to be encumbered and made payable to Kimley-Horn and Associates, Inc. for the development of a Master Plan for Stinson Municipal Airport.

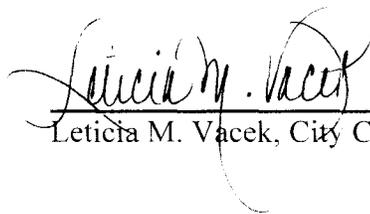
**SECTION 6.** The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer, City of San Antonio. The Chief Financial Officer may, subject to concurrence by the City Manager, or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP 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 7.** This Ordinance shall become effective immediately after passage upon the receipt of eight affirmative votes, or, in the absence of eight affirmative votes, ten days after passage.

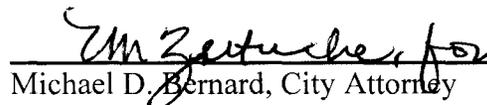
**PASSED and APPROVED** this 3rd day of March, 2011.

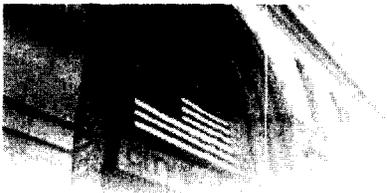
  
M A Y O R  
Julián Castro

**ATTEST:**

  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk

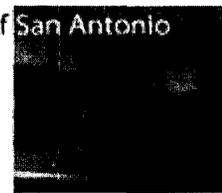
**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Michael D. Bernard, City Attorney



Request for  
**COUNCIL**  
**ACTION**

City of San Antonio



## Agenda Voting Results - 28

<b>Name:</b>	6, 7, 8, 10, 11, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25A, 25B, 25C, 25D, 25E, 25F, 25G, 25H, 26, 27, 28, 29, 30, 31						
<b>Date:</b>	03/03/2011						
<b>Time:</b>	03:14:19 PM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing a professional services agreement with Kimley-Horn and Associates, Inc. in the amount of \$349,250.00, funded from the Stinson Revolving Fund, for the development of a Master Plan Update for Stinson Municipal Airport. [Pat DiGiovanni, Deputy City Manager; Frank Miller, Director, Aviation]						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x			x	
David Medina Jr.	District 5		x				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				

# **ATTACHMENT 1**

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
THE DEVELOPMENT OF AN  
AIRPORT MASTER PLAN  
AT  
STINSON MUNICIPAL AIRPORT**

This Agreement 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 Kimley-Horn and Associates, Inc. (hereinafter referred to as "Consultant") by and through its designated officer(s) pursuant to its by-laws or a resolution of its Board of Directors, 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 Stinson Municipal Airport
- 1.2 "Director" means the director of the City's Aviation Department
- 1.3 "Project" means the development of an Airport Master Plan for Stinson Municipal Airport as more fully set out in Article III, Scope of Services.

**II. PERIOD OF SERVICE**

2.1 This Agreement shall take effect upon execution by both parties and continue in full force and effect for the period required for completion of the duties as set forth in the Scope of Services. Performance shall commence upon execution of this contract by the Director or his designee, and shall terminate upon substantial completion of Consultant's duties as set forth in the Scope of Services and upon written acceptance by City of Consultant's work product or services rendered, unless extension or earlier termination shall occur pursuant to any of the provisions hereof.

**III. SCOPE OF SERVICES**

- 3.1 Consultant, in consideration for the compensation herein provided, as outlined in Article V. Compensation, shall render the required professional services in connection with the Project, as more specifically outlined in Exhibit 1, Scope of Services.
- 3.2 Consultant shall complete all Project work within the Scope of Services in compliance with this Agreement, and agrees to staff the Project with sufficient necessary, qualified personnel to the Project, in order not to delay or disrupt the progress of the Project. Time is of the essence.
- 3.3 All work performed and reports and deliverables required pursuant to this Agreement shall be in compliance with all laws, rules, and applicable regulations.

3.4 All services and work performed under this Agreement must be conducted in full conformance with the Texas Occupations Code. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or subcontractors of Consultant.

#### IV. COORDINATION WITH THE CITY

4.1 Consultant shall hold periodic conferences with Director or his designee, so that the Project, as developed, shall have the full benefit of City's experience, and knowledge of existing needs and facilities, and be consistent with the City's current policies and standards.

4.2 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.

4.3 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.

#### V. COMPENSATION

5.1 For and in consideration of the services to be rendered by Consultant, City shall pay Consultant the not to exceed fee set forth in this Article V, COMPENSATION. Nothing contained in this Agreement shall require City to pay for any unsatisfactory work, as determined solely 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.

5.2 The total compensation for all work to be performed by Consultant as fully defined in the Scope of Services, to include all travel and other expenses, shall not exceed **THREE HUNDRED FORTY-NINE THOUSAND, TWO HUNDRED FIFTY AND 00/100 DOLLARS (\$349, 250.00)**. Consultant acknowledges that such not to exceed fee shall be sufficient compensation for all services, travel and other expense to be performed pursuant to or associated with the Scope of Services.

5.3 Consultant shall bill all services in accordance with the hourly rates set out in Exhibit 2, Fee Schedule. Consultant may submit invoices no more than once monthly. Such invoices must be for work actually performed and actual travel and other expenses incurred and not previously invoiced and must show: a) the hours being billed delineated by the tasks set out in the Scope of Services, employee name and position, b) a summary of the services performed during the period covered by the invoice, c) travel and other expenses with supporting documentation attached; and d) the total amount due for services, travel and expenses. Allowable travel and other expenses shall be invoiced at the actual cost incurred without markup and must be in compliance with the Aviation Department Consultant and Contractor Reimbursable Expense Policy to be eligible for reimbursement. City reserves the right to request such additional information as the City deems necessary to support the invoiced charges. City shall pay all undisputed amounts due under this Agreement within 30 days of receipt of a properly addressed invoice. Payment is deemed to be made on the date of mailing of the check or electronic fund transfer.

5.4 Consultant shall adhere to the Aviation Department Consultant and Contractor Reimbursable Expense Policy, attached hereto as Exhibit 3, governing expenditures.

5.5 Right to Audit. The Consultant will provide supporting evidence necessary to substantiate charges related to the Agreement 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 verifying information and amounts through interviews and written confirmations with Consultant's employees, field and agency labor, subcontractors, and vendors.

5.5.1 Consultant's "records" as referred to in this Agreement 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 Agreement. 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.

5.5.2 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.

5.5.3 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 Agreement, in order to conduct audits in compliance with this article.

## **VI. OWNERSHIP AND RETENTION OF DOCUMENTS**

6.1 Any and all documents, papers, records, writings, media or information in whatever form and character created by Consultant pursuant to the provisions of this Agreement and pertinent to the services rendered hereunder, (hereinafter "Documents") shall be the exclusive property of City; and such Documents shall not be the subject of any copyright or proprietary claim by Consultant. Consultant understands and acknowledges that as the exclusive owner of any and all Documents, City has the right to use all Documents as City desires, without restriction and that City will be providing reports developed pursuant to this Agreement to the FAA.

6.2 All of the Consultant's documentary work product reports and correspondence to City under this Agreement shall be the property of the City and, upon completion of this Agreement; such documentary work product shall be promptly delivered to City in a reasonably organized form, without restriction on its future use by City. The above notwithstanding, the Consultant shall retain all rights in any standard drawing details, designs, specifications, databases, computer software and any other proprietary information it may provide pursuant to this Agreement, whether or not such proprietary information was modified during the course of providing the services hereunder. The Consultant may retain for its files

any copies of documents it chooses to retain and may use Consultant's work product as it deems fit. Any materially significant work product lost or destroyed by the Consultant shall be replaced or reproduced at the Consultant's non-reimbursable, sole cost.

6.3 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. 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.

6.4 The Consultant agrees to maintain all books, records and reports required under this Agreement for a period of not less than four (4) 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 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.

6.5 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

## VII. TERMINATION OF AGREEMENT

### 7.1 Termination Without Cause.

7.1.1 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.

7.1.2 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.

7.1.3 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.

7.1.4 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.

7.1.5 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.

7.1.6 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 Agreement.

7.1.7 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.

7.2 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 Agreement 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.

7.3 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 Agreement, in whole or in part, "for cause":

7.3.1 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

7.3.2 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

7.3.3 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

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

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

7.3.6 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 Agreement 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 Consultant's assets or properties.

7.4 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.

7.5 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.

7.6 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.**

7.7 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.

## VIII. SUSPENSION OF WORK UNDER AGREEMENT

8.1 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.

8.2 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.

### 8.3 Procedures Upon Receipt of Notice of Suspension.

8.3.1 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.

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

8.3.3 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.

8.3.4 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.

8.3.5 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.

8.3.6 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.

## **IX. INSURANCE REQUIREMENTS**

9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Aviation Department, which shall be clearly labeled "**Stinson Municipal Airport Master Plan**" in the Description of Operations block of the Certificate. The 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 a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature 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.

9.2 The City reserves the right to review the insurance requirements of this Article 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, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

9.3 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, unless otherwise indicated, by companies authorized 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 \$500,000/\$500,000/\$500,000
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 f.. Damage to property rented by you	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage  f. \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability (Claims-made basis)  To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$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 act, malpractice, error, or omission in professional services.

9.4 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.

9.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

Attn: Stinson Airport Manager  
8535 Mission Road  
San Antonio, Texas 78214

9.6 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 insureds 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 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, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide 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.

9.7 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.

9.8 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.

9.9 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.

9.10 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.

9.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided..

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

## X. INDEMNIFICATION

10.1 Consultant covenants and agrees to **FULLY INDEMNIFY, DEFEND and HOLD HARMLESS**, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages (to include exemplary, consequential and punitive damages), losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to Consultant's activities under this Agreement, including any acts or omissions 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 the rights or performance of the duties under this Agreement. 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 FOR 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.**

10.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Consultant shall advise the City in writing within 24 hours of any claim or demand against the City or Consultant known to Consultant related to or arising out of Consultant's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at Consultant's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Consultant of any of its obligations under this paragraph.

10.3 Defense Counsel - City shall have the right to approve defense counsel to be retained by Consultant in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Consultant shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If Consultant fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Consultant shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

10.4 Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of Consultant, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or any subcontractor under worker's compensation or other employee benefit acts.

10.5 Acceptance of the final report by the City shall not constitute nor be deemed a release of the responsibility and liability of the Consultant, its employees, associates, agents or subcontractors for the accuracy and competency of their reports or other documents and Work; nor shall such acceptance be deemed an assumption of responsibility or liability by the City for any defect in the report or other documents and Work prepared by said Consultant.

## **XI. CONSULTANT'S LIABILITY AND STANDARD OF CARE**

11.1 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.

## **XII. CONSULTANT'S WARRANTY UNDER THE PROFESSIONAL SERVICES PROCUREMENT ACT**

12.1 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. This Agreement is entered into under competency requirements of the Texas Professional Services Procurement Act governing municipal employment of professional and other professionals. Accordingly, Consultant further pledges and warrants its best and most competent professional efforts to secure to the City the benefits of the agreement.

## **XIII. ASSIGNMENT OF RIGHTS OR DUTIES**

13.1 By entering into this Agreement, City has approved the use of any subcontractors identified in Consultant's Proposal. No further approval shall be needed for Consultant to use such subcontractors as are identified in Consultant's Proposal.

13.2 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. Professional 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.

13.3 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.

13.4 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.

#### **XIV. INDEPENDENT CONTRACTOR**

14.1 Consultant covenants and agrees that it 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.

14.2 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.

#### **XV. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)**

**SBEDA Program.** The City has adopted a Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to the City. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Agreement:

SBEDA Enterprise ("SE") - A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.

Commercially Useful Function - A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.

Conduit - An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the

SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE's participation does not count toward the SE utilization goal.

SBEDA Plan – The Good Faith Effort Plan (“GFEP”), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with Consultant's bid for this project Agreement, attached hereto and incorporated herein as Exhibit 4.

**For this Agreement, the Parties agree that:**

- (a) The terms of the City's SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the “SBEDA Program”) are incorporated into this Agreement by reference; and
- (b) The failure of Consultant or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Agreement.
- (c) Failure of Consultant or any applicable SE to provide any documentation or written submissions required by the City Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Agreement.
- (d) During the Term of this Agreement, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in Consultant's SBEDA Plan (Exhibit 4) shall constitute a material breach of the SBEDA Program and this Agreement.
- (e) Consultant shall pay all suppliers and subcontractors identified in its SBEDA Plan (Exhibit 4) in a timely manner for satisfactory work, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be submitted by Consultant to the City Managing Department. Failure to pay SEs in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this Agreement.

**The Parties also agree that the following shall constitute a material breach of the SBEDA Program and this Agreement:**

- (a) Failure of Consultant to utilize an SE that was originally listed at bid opening or proposal submission to satisfy SBEDA Program goals in order to be awarded this Agreement, or failing to allow such SE to perform a Commercially Useful Function; or
- (b) Modification or elimination by Consultant of all or a portion of the scope of work attributable to an SE upon which the Agreement was awarded; or
- (c) Termination by Consultant of an SE originally utilized as a Subcontractor, Joint Venturer, Supplier, Manufacturer or Broker in order to be awarded the Agreement without replacing such SE with another SE performing the same Commercially Useful Function and dollar amount, or without demonstrating each element of Modified Good Faith Efforts to do so; or
- (d) Participation by Consultant in a Conduit relationship with an SE scheduled to perform work that is the subject of this Agreement.

**Remedies for Violation of SBEDA Program.** The Parties further agree that in addition to any other remedies the City may have at law or in equity, or under this Agreement for material breach, including the specified remedies available under the SBEDA Program for Alternative Construction Delivery Method, the City shall be entitled, at its election, to exercise any one or more of the following remedies if the Consultant materially breaches the requirements of the SBEDA Program:

- (a) Terminate this Agreement for default;
- (b) Suspend this Agreement for default;
- (c) Withhold all payments due to the Consultant under this Agreement until such violation has been fully cured or the Parties have reached a mutually agreeable resolution; and/or
- (d) Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the City pursuant to the Agreement, or from any other amounts due to the Consultant under the Agreement.
- (e) Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.

The Parties agree that nothing in the SBEDA Program or that any action or inaction by the SBEDA Program Office or the SBEDA Program Manager shall be deemed a representation or certification that an SE is qualified to perform work in a particular area for the purposes of this Agreement.

*The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.*

**City Process For Exercising SBEDA Program Remedies.** The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the Managing Department Director regarding appropriate remedies for the City to exercise in the event a Contractor violates the SBEDA Program. The Managing Department Director shall make a recommendation regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the Agreement. If the recommended remedy is to terminate the Agreement, then the Managing Department Director or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.

**Special Provisions for Extension of Agreements.** In the event the City extends this Agreement without a competitive Bid or Proposal process, the City Managing Department responsible for monitoring the Agreement shall establish the following, subject to review and approval by the SBEDA Program Manager:

- (a) a SBEDA Utilization Goal for the extended period; and
- (b) a modified version of the Good Faith Efforts ("Modified Good Faith Efforts Plan") set forth in the SBEDA Program Ordinance, as amended, if Consultant does not meet the SBEDA Utilization Goal; and
- (c) the required minimum Good Faith Efforts outreach attempts that Consultant shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the Agreement extension document. The Consultant entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:
  - (i) subject Consultant to any of the remedies listed above; and/or
  - (ii) result in a new bid or proposal request of the Agreement that was considered for extension.

#### **XVI. EQUAL EMPLOYMENT OPPORTUNITY**

**CONSULTANT** shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, **CONSULTANT** agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's office.

#### **XVII. AMENDMENTS**

Any alterations, additions, or deletions to the terms of this Agreement shall be effected by amendment, in writing, executed by City and Consultant. The Director shall have the authority to execute amendments that require up to \$25,000.00 in increased cost on behalf of the City without further action by the San Antonio City Council, subject to appropriation of funds for the increase in cost. Any other change will require approval of the City Council by passage of an ordinance therefore.

#### **XVIII. NOTICES**

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  
Aviation Department  
Attn: Safety Manager  
10223 John Saunders Road  
San Antonio, Texas 78216

**If intended for Consultant, to:**

Kimley-Horn and Associates, Inc.  
Attn:  
Amanda O'Krongley  
Kimley - Horn and Associates, Inc  
45 NE Loop 410  
Suite 890  
San Antonio, Tx 78216

**XIX. CONFLICTS OF INTEREST**

19.1 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.

19.2 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.

**XX. RESERVED**

**XXI. AIRPORT SECURITY**

21.1 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.

21.2 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.

21.3 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.

21.4 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.

## **XXII. CONTRACT CONSTRUCTION**

22.1 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.

## **XXIII. FAMILIARITY WITH LAW AND CONTRACT TERMS**

23.1 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, regulations and FAA Advisory Circulars and guidelines, and all of the terms and conditions of this Agreement and will comply therewith.

## **XXIV. APPLICABLE LAW**

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

## **XXV. VENUE**

25.1 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.

## **XXVI. SEVERABILITY**

26.1 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.

## **XXVII. FORCE MAJEURE**

27.1 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.

## **XXVIII. SUCCESSORS**

28.1 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.

## **XXIX. NON-WAIVER OF PERFORMANCE**

29.1 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.

29.2 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.

## **XXX. PARAGRAPH HEADINGS**

30.1 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.

## **XXXI. LEGAL AUTHORITY**

31.1 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.

**XXXII. CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS**

32.1 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;

“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).

32.2 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 Agreement, including any renewals hereof, Consultant learns that this certification was erroneous when made or has become erroneous by reason of changed circumstances.

32.3 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.

**XXXIII. ENTIRE AGREEMENT**

33.1 This Agreement, together with its authorizing ordinance, 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; and except as otherwise provided herein, cannot be modified without written consent of the parties and approved by ordinance passed by the San Antonio City Council.

33.2 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 \_\_\_\_\_, 2011.

ATTEST:

CITY OF SAN ANTONIO, TEXAS

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Sheryl L. Sculley  
City Manager

APPROVED AS TO FORM:

KIMLEY-HORN AND ASSOCIATES, INC.

By: \_\_\_\_\_  
City Attorney

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

Dean Henigsmann  
Printed Name

Senior Vice President  
Title

Federal Tax ID#: 56-0885655

## EXHIBIT 1

### SCOPE OF SERVICES

The Stinson Municipal Airport (SSF or Airport) Master Plan Update for the City of San Antonio (COSA), will be completed in four phases:

- Phase I – Inventory, Aviation Demand Forecasts, and Facility Requirements
- Phase II – Development Alternatives
- Phase III – Environmental Overview and Financial Program
- Phase IV – Final Deliverables and Master Plan Documents

#### **PHASE I – Inventory, Aviation Demand Forecasts, Facility Requirements**

##### **A. ANALYSIS OF EXISTING CONDITIONS (INVENTORY)**

The Consultant shall:

1. Assist with the formation of a Planning Advisory Committee (PAC) which will serve as an advisory group. PAC will review study materials and be asked to provide feedback.
2. Plan and conduct a kickoff meeting with the City to present and discuss schedule, technical approach, and specific planning issues as it pertains to the Project.
3. Conduct interviews with Texas Department of Transportation (TXDOT), airport users and public officials responsible for policies relating to the Airport identifying issues which may influence the Master Plan's recommendations. Interview with TXDOT shall be held in Austin, Texas.
4. Conduct interview with National Park Service (NPS) and City staff to understand the issues relative to the airport, discuss the process, and set the expectations for the level of input/collaboration and participation between the City and NPS.
5. Collect and review previous reports on Stinson Airport including, but not limited to:
  - Previous planning documents,
  - State Historic Preservation Office (SHPO) Agreement,
  - Stinson Airport Vicinity Land Use Study, and
  - The City South Community Plan.
  - NPS Boundary Study
  - National Parkway Corridor

Review shall also include:

- Historical airport activity, based aircraft information
  - Description of how the airport evolved its aeronautical role regionally as well as in the Texas Airport System Plan (TASP),
  - Its place in the community's infrastructure, and
  - Its socioeconomic benefits and costs.
6. Develop an inventory of existing facilities and their current condition, including but not limited to:

- a. Runways, taxiways, aprons, and related lighting, marking, signage, and Navigational Aid System (NAVAIDS).
  - b. General aviation and other terminal buildings and areas by function.
  - c. Aviation fuel and aircraft servicing systems.
  - d. Utilities, including water, gas, electric, telephone, drainage, and sewage (based on existing and available data as task will not include new survey information).
  - e. Automobile access to the Airport, auto circulation, and parking.
7. Determine the existing and planned or proposed land uses both on and immediately adjacent to Airport property, including height hazard and compatible land use zoning.
  8. Compile information on the use of the airspace and how air traffic is managed.
  9. Determine historical meteorological data, including wind direction and velocity, annual ceiling and visibility conditions, temperature, and precipitation.
  10. Establish a SharePoint workspace with authorized access to designated stakeholders.

***Deliverables for Phase I-A:***

- a. Provide eight (8) working Project notebooks with color drafts of information generated in Phase I-A.
- b. Submit electronic draft and provide time for City review and/or comment.
- c. Create link to Stinson Municipal Airport website and post final draft document.

**B. AVIATION DEMAND FORECASTS**

The Consultant shall:

1. Delineate the service area and determine the appropriateness of the current functional role of Stinson Airport in the TASP in accordance with the TxDOT Aviation Division's "Policies and Standards" as well as examine the role of the Airport within the San Antonio Airport System
2. Document historical aviation activity and relevant economic factors influencing said activity including, but not limited to:
  - a. Economic growth and changes in industrial activity
  - b. Historical trends in number of operations, number and type of based aircraft.
3. Conduct up to two days of interviews with businesses, industrial firms, and other airport users. Also, prepare up to three survey designs for distribution to pilots, registered owners, plus business users in San Antonio and surrounding areas to determine the potential demand for improved airport facilities. An electronic distribution list will be provided to the Consultant containing names, addresses and email addresses. Hard copy surveys will be distributed as necessary, and provided for distribution within lobby areas of appropriate tenants. For hard copy distribution, if any, postage will be provided by the City. Contact and distribution information for the surveys and identification of business and entities to be interviewed by the Consultant will be provided by the City
4. Plan and conduct a Business Development Workshop with Airport tenants to obtain input on future Airport development.

5. Forecast aviation demand over a twenty (20) year planning horizon (short-term period of five years, intermediate-term period of ten years, and long-term period of twenty years), utilizing data collected in Phase I-A and above Phase I-B tasks.

Prepare a technical memorandum documenting the following forecasts of aviation demand, methodologies and assumptions:

- a. Based aircraft and fleet mix
  - b. General aviation activity including:
    - Itinerant and local activity,
    - Annual instrument approaches,
    - Transient versus based aircraft usage ratios, and
    - Runway end utilization patterns.
  - c. Military activity
  - d. Peak period activity
6. Compare the resulting forecasts to FAA Terminal Area Forecasts and previous planning forecasts and briefly analyze significant differences.

***Deliverables for Phase I-B:***

- a. Boards and presentation material for the Business Development Workshop
- b. Boards and presentation material for the Airport Advisory Commission briefing
- c. Provide eight (8) color drafts of information generated in Phase I-B to be incorporated into the working Project notebook.
- d. Submit electronic draft and provide time for City review and/or comment.
- e. Post final draft to Airport website.
- f. Prepare for and attend one briefing with the Airport Advisory Commission at the conclusion of Task I-B.

**C. FACILITY REQUIREMENTS**

The Consultant shall:

1. Identify airport improvements that will be required over the twenty (20) year planning horizon based on the determination of the functional role of the Airport and the demand forecasts developed in Phase I-B. The analyses will consider:
  - a. Airside capacity, annual service volume, and peak period characteristics
  - b. Capacity of General Aviation (GA) facilities, fuel storage, and maintenance facilities
  - c. Landside capacity of terminal area, parking, and roadways
  - d. TxDOT, Aviation Division and FAA airport standards
2. Determine the airport facilities, including property and easement acquisition, that are required at logical points over the twenty (20) year planning horizon (short-term period of five years, intermediate-term period of ten years, and long-term period of twenty years) based on thresholds of activity.

***Deliverables for Phase I-C:***

- a. Provide eight (8) color drafts of information generated in Phase I-C to be incorporated into the working Project notebook.
- b. Submit electronic draft and provide time for City review and/or comment.
- c. Post final draft to Airport website.

***Phase I Deliverable:*** At the completion of Phase I, the Consultant shall plan and conduct a PAC meeting to discuss the Inventory, Forecasts, and Facility Requirements (Phase I).

## **PHASE II – Development Alternatives**

Based on the forecast and facility requirements developed in the earlier tasks of Phase I, the Consultant shall:

1. Determine if the Airport, as it currently exists, can accommodate the proposed improvements and provide the needed aviation capacity.
2. Prepare a compatible land use evaluation, to include the National Parks Service Boundary Study, with an assessment of the potential effects on and recommendations for Airport development. A briefing with National Parks Service will be conducted to ensure the opportunity for understanding of the analysis and impact to NPS facilities.
3. Propose airfield development alternatives that can accommodate the proposed improvements based on the forecast and facility requirements developed within Phase I. This assumes that up to five alternatives will be developed for consideration and further refinement for the airfield; up to three alternatives for the terminal development, and up to 5 alternatives for general aviation area alternatives.
4. Establish a set of criteria for which the alternatives will be evaluated and assigned relative importance to each criterion. Criteria will include but not be limited to:
  - a. Safety and efficiency of aviation operations.
  - b. Ability to accommodate expected general aviation demand.
  - c. Acceptability to users, TxDOT, and the community at large.
  - d. Land availability and ownership, including potential use of existing property.
  - e. Environmental factors.
  - f. Airspace and obstruction requirements.
  - g. Consistency with area wide plans.
  - h. Political, jurisdictional, and implementation factors.
  - i. Economic feasibility.
  - j. Potential to attract new business and foster the expansion of existing businesses.
  - k. Accessibility.
5. Using the above criteria, present all feasible alternatives that meet the development goals of the Airport with realistic cost factors and minimal environmental impact.
6. Identify preferred development alternatives to be considered in Phase III-A, Environmental Overview, and included in Phase III-B, Financial Program.

### ***Deliverables for Phase II:***

- a. Provide eight (8) color drafts of information generated in Phase II-D to be incorporated into the working Project notebook.
- b. Submit electronic draft and provide time for City review and/or comment.
- c. Post final draft to Airport website.
- d. At the conclusion of Phase II, plan and conduct a Public Information Workshop (PIW) to discuss and obtain input on development alternatives. A PowerPoint presentation will be prepared and presentation boards will be prepared. The Consultant will conduct community outreach for the

- purpose of advertisement of the PIW, and will coordinate with City staff on available mechanisms and resources to enhance advertisement opportunities.
- e. At the conclusion of Phase II, prepare for and attend one Airport Advisory Commission briefing.

### **PHASE III – Environmental Overview and Financial Program**

#### **A. ENVIRONMENTAL OVERVIEW**

The Consultant shall:

1. Review current conditions and previous reports to establish a baseline for any subsequent environmental and permitting requirements. The purpose of this analysis is to identify any environmental issues which may subsequently become factors in the feasibility of proposed conceptual developments at the Airport, and evaluate them to a level of detail sufficient to establish that they will not constrain development as proposed in the plan. The Consultant will provide enough information to facilitate the identification of proposed improvement projects that may impose significant impacts thereby requiring additional environmental analyses (i.e., Environmental Assessment).
2. Conduct one interview with National Park Service and City staff to review the potential environmental impacts of the preferred development plan.
3. Identify the following potential environmental concerns when comparing the preferred development alternative:
  - a. The Consultant will review all noise and vibration studies associated with the Airport and identify any areas that may potentially cause issues or concerns based on the preferred development plan.
  - b. Sensitive biota, including wildlife and endangered species
  - c. Section 4f lands, prime farmland, and protected habitat, such as wetlands
  - d. Historical and archeological impacts
  - e. Areas susceptible to air or water pollution by airport construction activities
  - f. Potential water resources impacts, including flood hazards
  - g. Possible displacement of residences, farms, or businesses
4. Identify development recommendations that may require further environmental study along with possible mitigation strategies.

#### ***Deliverables for Phase III-A:***

- a. Provide eight (8) color drafts of information generated in Phase III-A to be incorporated into the working Project notebook.
- b. Submit electronic draft and provide time for City review and/or comment.
- c. Post final draft to Airport website.

#### **B. FINANCIAL PROGRAM (Finance, Operational, and Implementation Plans)**

The Consultant shall:

1. Discuss the factors to be monitored and evaluated in order to determine the need for and timing of recommended Airport development.
2. Rough order-of-magnitude opinions of probable cost, including construction, land acquisition, and professional fees, and schedule will be developed for the resulting recommendations from

Phase II, Development Alternatives, of the Airport Master Plan. Opinions of probable cost will be developed for the recommended projects to a level sufficient for planning purposes, recognizing that adjustments in the market and exact costs cannot be foreseen. More accuracy will be incorporated for projects targeted for the short-term (five-year) development period. These costs will be based on 2011 dollars, localized for the San Antonio market, and will be escalated to account for program phasing, as appropriate. The calculation of the rough order-of-magnitude opinions of probable cost will be provided as an appendix to the final report or otherwise at the City's direction.

Schedule will be developed according to the projected demand and the desired level of service.

3. Evaluate the economic feasibility of the proposed airport development (including industrial and commercial) and its potential costs compared to its projected revenues. Estimate the amount of annual operating expenses that will most closely match annual revenue. Evaluate the appropriateness of airport lease rates and other user charges; including comparison of rates and charges by surrounding airport facilities.
4. Prepare a realistic financial plan to recommend how capital and revenue can be made available to support airport development. Develop a preferred plan and alternative strategy, evaluating each for its requirements for investment, timing and overall costs and benefits.
5. Develop a strategy for the economic enhancement of the Airport.

***Deliverables for Phase III-B:***

- a. Provide eight (8) color drafts of information generated in Phase III-B to be incorporated into the working Project notebook.
- b. Submit electronic draft and provide time for City review and/or comment.
- c. Post final draft to Airport website.
- f. ***Phase III Deliverable:*** Upon completion of Phase III, plan and conduct a PAC meeting and a PIW with the City to discuss the Environmental Overview, Airport Plans, and Recommended Development Plan Execution. Meetings are to be held on the same evening but not concurrently. A PowerPoint presentation will be prepared and presentation boards will be prepared. The Consultant will conduct community outreach for the purpose of advertisement of the PIW, and will coordinate with City staff on available mechanisms and resources to enhance advertisement opportunities.

**PHASE IV – Final Deliverables and Master Plan Documents**

The Consultant shall:

1. Revise Airport Layout Plan (ALP), as needed. Unless amended otherwise, this revision will include changes in the form of a "traditional" ALP, and not in the form of an Electronic Airport Layout Plan (eALP). It will not include uploads to the FAA's Airport GIS (A-GIS) portal.
2. Prepare and produce three (3) copies of the draft ALP set for initial review by the City.
3. Incorporate draft ALP comments and produce four (4) copies of the draft final ALP set for review by City, and FAA staff. TxDOT will be provided one (1) copy and one electronic copy on CD.

4. Incorporate final draft ALP comments and produce ten (10) copies of the final ALP set for approval by the City. Produce one (1) compact disc (CD) containing the AutoCAD (.dwg) and Adobe Acrobat (PDF) digital files for the final ALP drawing set.
5. Produce angled aerial photographs in addition to high level photographs. Digital images will be provided for the purpose of selecting up to five images to be reproduced. A total of 20 full color photographs, approximately 36 inches by 48 inches will be produced.
6. Prepare a draft final report encompassing Phases I - III for final review by City. Submit ten (10) spiral bound copies. Fifteen (15) compact disc (CD) copies of the report will be provided to the City in an Adobe Acrobat (PDF) format.
7. Incorporate final comments and produce ten (10) spiral bound color copies of the final report. Twenty-five (25) compact disc (CD) copies of the report will be provided to the City in an Adobe Acrobat (PDF) format.
8. Create an Executive Summary documenting the purpose, process and pertinent findings of the Airport Master Plan. The Executive Summary will be up to eight full-size pages, graphically oriented, printed on glossy, thick paper or cardstock, bound with centerfold staples. Print-ready digital files and 250 paper copies will be produced. The Executive Summary will also be uploaded to the Airport website.
9. Upon completion, attend up to two (2) City Council Meetings to present the results of the Airport Master Plan for approval.

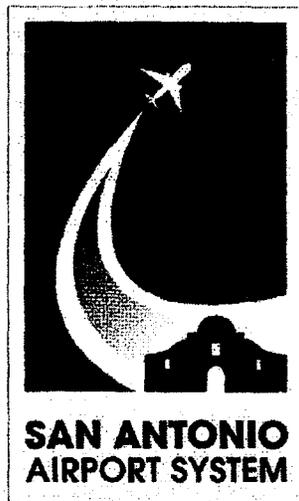
**EXHIBIT 2**

**FEE SCHEDULE**

<b>Position / Classification</b>	<b>Billing Rate / Hour</b>
<b>Kimley-Horn and Associates, Inc.</b>	
P 7/8 (Principal -in-Charge)	\$235
P 6 (Project Manager)	\$145
P5 (Senior Planner)	\$135
P3/4 (Planner)	\$120
P1/2 (Analyst)	\$90
CO 5/6 (CAD Operator)	\$77
D7 (Senior Designer)	\$95
C5 (Support Staff)	\$52
<b>Kutchins &amp; Groh</b>	
Principal	\$200
Senior Planner (Financial)	\$150
Planner	\$120
<b>Ratondo &amp; Associates, Inc.</b>	
Director	\$263
<b>Geodetix</b>	
QA/QC; Aviation Coordinator	\$125
Planner	\$125
<b>Bain Medina Bain</b>	
Principal	\$205
Project Manager	\$175
Design Engineer	\$138
Engineer-in-Training	\$108
Register Professional Surveyor	\$140
Surveyor-in-Training	\$108
CAD Technician	\$91
Survey Technician	\$88
<b>Williams CAD Consulting</b>	
Project Manager	\$125
Technician	\$90
Additional Technicians	\$75
<b>Ximmex &amp; Associates, Inc.</b>	
Principal	\$200
Public Information Manager	\$125
Public Information Coordinator	\$85
Administrative Support	\$45

**EXHIBIT 3**

**Consultant  
And  
Contractor  
Reimbursable Expense Policy**



**City of San Antonio**

*As of 6/2/08*

<p><b>Reimbursable Expense Policy</b>  <b>Table of Contents</b></p>
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# **Consultant & Contractor Reimbursable Expense Policy**

## **1. GENERAL**

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### **1.1 Introduction**

This Consultant & Contractor Reimbursable Expense Policy (the "Policy") contains the guidelines for reimbursement of reasonable expenses incurred by Contractors and contractors (both of which shall hereinafter be referred to as "Contractor") in work performed pursuant to an agreement with the City of San Antonio (hereinafter the "City").

### **1.2 Scope**

The policy and procedures contained herein apply to all Contractors in work performed in furtherance to an agreement with the City.

This policy also pertains to all reimbursable expenses by sub-consultants or subcontractors. The Contractor shall be responsible for ensuring that all subcontractor or sub-consultants adhere to this Policy.

The Contractor is responsible for becoming familiar with and adhering to the Policy as applicable for each reimbursable expense submitted.

### **1.3 Policy**

Official reimbursable expenses shall be properly authorized, processed, conducted, reported, and reimbursed in accordance with this Policy. Contractor is expected to exercise good judgment in the type and amount of expense incurred.

For travel expenses, Contractor is expected to plan in advance of the departure date to obtain lowest cost fares, rates and accommodations. In addition, Contractor is encouraged to use all practical means, including internet discounters, to obtain the lowest cost fares, rates, and accommodations.

### **1.4 Definitions**

The following definitions apply to this Policy:

**Domestic Travel** – Travel between business points within the continental United States (CONUS).

**Actual and Reasonable Expenses** – The specific, itemized expenses incurred, based on original receipts up to the amount judged by the Aviation Director as justifiable under the circumstances.

**Official Travel Time** – For the purposes of computing per diem allowances, official travel starts at the day and time the Contractor employee leaves their home, office, or other

authorized point and ends on the day and time the Contractor employee returns home, to the office, or other authorized point. This definition is for computing per diem allowances only and may not be used for billing chargeable Contractor employee hours.

Travel Expenses – Includes meals, lodging, transportation and incidental expenses incurred for assignments within 30 consecutive calendar days at the same project site. The Contractor employee's return home for the weekends does not break the continuity of the assignment.

Extended Travel Expenses - Includes meals, lodging, transportation and incidental expenses incurred for assignments 30 or more consecutive calendar days at the same project site. The Contractor employee's return home for the weekends does not break the continuity of the assignment.

Reimbursable expenses – those expenses incurred in the furtherance of a project or assignment pursuant to an executed contract or agreement with the City.

Common Carrier Terminal – a terminal facility for the general public, such as an airport, train station, subway station or bus station.

#### **1.5 Reimbursements**

Expenses incurred by the Contractor while engaged in activities outside the scope of the Contractor Agreement or in violation of this Policy will be denied. This includes, but is not limited to, expenses incurred:

- Prior to the execution of the Agreement;
- After the expiration of the Agreement;
- At a location not included authorized by the Agreement;
- At a cost in excess of those costs allowed within the Agreement and/or within this Policy.
- In connection with work performed for customers of Contractor other than the City.

Only those expenses which are ordinary and necessary, and within the contracted for budget, to accomplish the contracted work are eligible for reimbursement.

Entertainment expenses, including alcohol, are not reimbursable.

#### **1.6 Interrupted Itinerary**

If official business travel is interrupted for personal convenience, any resulting expense shall not be the responsibility of the City.

## **2. Transportation Expenses**

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### **2.1 Guideline**

Contractor must utilize the most economical mode of transportation and the most direct route consistent with the business purpose of the trip.

### **2.2 Air Travel**

#### ***Lowest Available Airfare***

Airfare reimbursement shall not exceed the lowest practical, available cost of competing airfare. Contractor shall, whenever practicable, make reservations two or more weeks in advance of travel. When all considerations are equal (e.g. travel time dates, times, destination, and work impacted by travel), Contractor must choose the lowest fare available at that time, regardless of personal preferences for air carrier.

#### ***Use of Business or First Class***

No reimbursement will be made for Business or First Class travel without advance written approval from the Aviation Director (or designee). (Note: Business or First Class accommodations obtained through use of frequent flyer programs or at Contractor's expense will not require advance approval. However, Contractor must be able to provide the lowest available price of coach fair in order to be reimbursed for that portion of the expense.)

#### ***Extended Travel to Save Costs***

The additional expenses associated with travel that includes an extended stay (e.g. Saturday night stay) may be reimbursed when the overall savings is at least \$150 compared to the cost if the Contractor had not extended the trip.

In determining if an extended stay will result in any cost savings, Contractor must consider the additional expenses associated with an extended stay. Such expenses shall include, but are not limited to, the additional cost of lodging, rental car, meals and parking.

### **2.3 Travel by Private Automobile**

#### ***Reimbursement for Travel by Private Automobile***

Travel by private automobile will only be reimbursed if such travel is for a valid business purpose. When a private automobile is used, actual mileage will be reimbursed at the most current rate allowable by the Internal Revenue Service. The number of miles driven must be documented by the Contractor. No additional reimbursement is made for expenses related to the use of the automobile. Routine repairs, cleaning, detailing, tires, gasoline, or other automobile expense items will not be reimbursed for privately owned automobiles.

When two or more persons share a privately owned automobile, only the driver may claim the reimbursement for mileage. Two or more persons traveling to the same destination, for the same purpose, and same or approximately the same time span on the

same day or days shall be expected to share a privately owned automobile whenever possible.

Charges for parking and toll roads are allowed; however receipts must be provided.

***Reimbursement for Travel by Private Automobile in Lieu of Air Travel***

When a private automobile is used instead of available air travel for the personal convenience of the Contractor, reimbursement of transportation costs by private automobile shall not exceed the documented amount of airfare Contractor would have paid had the Contractor traveled by air.

***Reimbursement for Travel To or From a Common Carrier Terminal***

When a Contractor drives a privately owned automobile to or from a common carrier terminal, the mileage and tolls for one round trip, plus parking for the duration of the trip may be claimed for reimbursement. Documented miles driven and receipts must be provided. Contractor is expected to use the lowest, reasonable cost parking option available.

**2.4 Travel by Private Aircraft**

When a private aircraft is used instead of available commercial air travel for the personal convenience of the Contractor, the reimbursement of transportation costs by private aircraft shall be reimbursed at a rate of 99.5 cents per mile up to the amount that would have been incurred by all Contractor employee travelers using common carrier transportation air fares. Documented aircraft landing and tie-down fees paid, if any, will be reimbursed separately, however, receipts must be provided.

***Example:***

Two Contractor Employee travelers in the same privately rented aircraft, traveling 500 miles to San Antonio. The common carrier transportation air fares round trip would have been \$250 per person. Total mileage of private aircraft would be 1,000 miles (500 miles each way) times 99.5 cents per mile for a total expense of \$995 for the private aircraft. The total reimbursable cost for the Contractor would be limited to \$500 (2 contractor employees times \$250 each), plus any documented aircraft landing and tie-down fees paid.

**2.5 Rental Cars**

Rental cars may be used for transportation to or from a common carrier terminal. Rental cars may also be used upon arrival at the official business destination when the use of public transportation or other transportation such as taxis is not practical when considering the cost, number of miles to be traveled and other factors. Only commercial agencies may be used. Contractors are strongly encouraged to request the lowest available rate when making rental car reservations.

**Reimbursement**

Reimbursement is limited to standard size sedan or vehicle commensurate with the requirements of the trip. The cost of the rental car and gasoline will be reimbursed. Documented miles driven and receipts must be provided. There is no reimbursement for mileage for a rental car.

The car must be turned in promptly. Daily charges, outside Official Travel Time, will not be reimbursed.

When a rental car is used on a non-exclusive basis for the City, reimbursement of the rental car and gasoline cost must be pro-rata based on mileage on City projects versus the total mileage.

**Insurance**

The Contractor assumes all risks and expenses associated with obtaining insurance deemed necessary when using a rental car. Car rental insurance, including collision damage waivers, is not reimbursable.

**2.6 Ground Transportation**

The following guidelines apply to ground transportation to or from a common carrier terminal at the business destination.

***Taxis***

The cost of the taxi ride plus a reasonable gratuity will be reimbursed. A reasonable gratuity may not exceed 10% of the total fare. Receipts must be provided.

***Airport Shuttle Service***

The cost of the airport shuttle ride plus gratuity will be reimbursed. Receipts must be provided.

***Local Buses and Subways***

Local bus and subway fares are reimbursable; however, receipts are not required.

### **3. Living Expenses**

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#### **3.1 Lodging**

Lodging expenses for travel within the Continental United States (CONUS) are reimbursed at the lesser of actual cost or the maximum rate established in the U. S. General Services Administration (GSA) Federal Travel Regulation Domestic Per Diem Rates. Lodging taxes, although not included in the GSA per diem rate for lodging, are reimbursable. Contractors are strongly encouraged to request the lowest available rate when making the lodging reservations.

Hotel bills must show the hotel name and locations, dates room was occupied and the rate per day. Other items appearing on the hotel bill should be identified as to the business reason for the charges.

Contractor will not be reimbursed for the following expenses appearing on the hotel bill:

- Alcohol (alone or part of meal)
- Entertainment
- Personal services
- Laundry/Dry cleaning if travel is less than five days

When accommodations are shared with other than an official Contractor employee, reimbursement is limited to the cost that would have been incurred had the Contractor been traveling alone.

#### **3.2 Non-Commercial Lodging**

Contractor lodging in non-commercial facilities such as house trailers or field camping are reimbursed actual expenses up to the maximum applicable GSA lodging rate. No reimbursement is provided for housing as a guest in a private home.

#### **3.3 Meals Expense**

Meals expense for travel within the Continental United States (CONUS) are reimbursed at actual cost, up to the maximum rate established in the U. S. General Services Administration (GSA) Federal Travel Regulation Domestic Per Diem Rates.

Meal expenses for the first and last day of travel are reimbursed at the lower of actual costs or the pro-rated GSA per diem rate listed below:

Beginning of "Official Travel Time" Date of Departure		Ending of "Official Travel Time" Date of Departure	
Prior to 11:00 am	100% per diem	Prior to 11:00 am	33% per diem
11:01 am to 5:00 pm	66% per diem	11:01 am to 5:00 pm	66% per diem
After 5:00 pm	33% per diem	After 5:00 pm	100% per diem

For travel of more than 12 hours but less than 24 hours; meals are reimbursed at the pro-rated GSA per diem rates defined above.

Daily expenses incurred within the vicinity of the Contractor employee's primary work site shall not be reimbursed.

**3.4 Incidental Expenses**

Payments for tolls, parking charges, cab fares can be reimbursed with proper documentation. Reasonable laundry and dry cleaning expenses will be allowed if travel is over a period of 5 consecutive days. Additionally, reasonable gratuities may be reimbursed if itemized.

Expenses for entertainment and personal convenience items such as alcohol, in-room movies, reading materials and clothing are not reimbursable.

**3.5 Daily Allowance and Lodging Allowance for Extended Travel**

Travel during which a Contractor remaining at one work location for 30 days or more in any calendar year months shall be considered an extended travel assignment. The 30 days begins on the first day at the work location. The Contractor's return home for weekends does not break the continuity of an extended travel assignment.

The maximum reimbursable rate for extended travel assignments will be the lesser of actual costs of lodging (housekeeping, utilities and furniture rental), meals, and incidentals (as previously outlined above) or 60% of the maximum rate established in the U. S. General Services Administration (GSA) Federal Travel Regulation Domestic Per Diem Rates.

All extended travel must be approved in advance by the Aviation Director or designee prior to Contractor committing to any extended lodging arrangement.

## 4. Relocation Assistance

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### 4.1 Requirements

Relocation assistance is generally not provided to Contractors. However, in rare Aviation Department agreements, relocation of key personnel may be allowed for long term capital projects. The expenses related to the Contractor employee relocation must be budgeted in advance at the time the agreement is signed. Additionally, all requests must be approved by the Aviation Director in advance of offering any relocation assistance to a Contractor employee. The request must include a justification why this position could not be filled by hiring an employee locally and why the assistance is needed. Evidence will be required demonstrating the efforts made to hire the employee locally. Any relocation assistance will be limited based on the type of employee as explained below.

### 4.2 Limitations

Relocation assistance will only be considered when a Contractor employee is required to change his/her place of residence more than 50 miles because of work location and the employee's duties are deemed in the best interest of the Aviation Department agreement requirements. Once the relocation assistance is approved, the employee shall receive reimbursement for the lesser of the actual documented necessary and reasonable relocation expenses or the maximum allowable assistance based on type of employee as defined below:

<b>Relocation Assistance Limitations</b>		
<i>Personnel Type</i>	<i>The lower of:</i>	
Key Position	Actual Allowable Expenses	\$10,000 max
Professional Positions	Actual Allowable Expenses	\$5,000 max

### 4.3 Allowable Expenses In General

Relocation assistance will only be paid for reasonable expenses of moving household goods and personal effects (including storage expenses), and travel expenses to a new residence. The cost of traveling will only include the shortest and direct route available by conventional transportation. Any expenses incurred for additional overnight stays or side trips for sightseeing purposes will not be reimbursed.

### 4.4 Travel Expenses by Car

Use of personal vehicle to relocate the household goods and personal effects will be reimbursed at the lesser of:

- Actual expenses for gas and oil for the personal vehicle, if accurate records are maintained for these expenses, or
- The standard mileage reimbursement rate for moving expenses, as the Internal Revenue Service regulations.

In either method, parking fees and tolls paid as a part of the relocation will be reimbursed. Reimbursement will not be allowed for general repairs, general maintenance, insurance, or depreciation on the vehicle.

**4.5 Household Goods and Personal Effect Expenses**

Relocation assistance will be allowed for the cost of packing, crating, and transporting household goods and personal effects. Reimbursement will also be allowed for costs of connecting or disconnecting utilities required because of moving the household goods, appliances, or personal effects.

**4.6 Storage Expenses**

Relocation assistance will be allowed for reasonable costs of storing and insuring household goods and personal effects within any period of 30 consecutive days after the day the household goods and personal effects are moved from the former home and before their delivery to the new home.

**4.7 Travel Expenses**

Relocation assistance will be allowed for reasonable costs of transportation and lodging for the Contractor employee and members of their household while traveling from their former home to their new home. This will include reasonable lodging expenses that do not exceed one day in the area of the former home.

**4.8 Non-reimbursable Relocation Expenses**

Relocation assistance will not extend to the following types of expenses:

- Any part of the purchase price of the new home.
- Expenses of buying or selling a home (including closing costs, mortgage fees, and points).
- Expenses of entering into or breaking a lease.
- Home improvements to help sell the former residence.
- Loss on the sale of the former residence.
- Mortgage penalties.
- Real estate taxes.
- Refitting of carpet and/or draperies.
- Return trips to former residence.
- Security deposits of any kind.
- Storage charges except as defined above.
- Registration fees for automobile license plates, tags, etc.
- Fees associated with acquiring a Texas driver's license.

**4.9 Relocation Assistance Recovery**

If the City of San Antonio has paid for relocation assistance to a Contractor's employee and the employee leaves the Contractor's employment before six (6) months of relocation, the City will be entitled to recovery the full amount of the relocation assistance paid from Contractor.

## **5. Miscellaneous Expenses**

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### **5.1 General**

Miscellaneous expenses that are ordinary and necessary to accomplish the official business purpose of the trip are reimbursable. Receipts are required for all miscellaneous expenses. The most common of these expenses are as follows:

- Use of computers, printers, faxing machines, and scanners.
- Postage and delivery.
- Office supplies specific to the project.

Expenses that will not be reimbursed will be items for personal use or items that do not have a direct business reason or benefit to the project. Examples of these expenses are:

- Business gifts.
- Snacks or other entertainment items for staff meetings and/or meetings with sub-Contractors.
- Mileage expense for purchase of items where the direct project related item purchased was not the sole reason for the trip.
- Carrying cases for cell phones or computers.
- Items that could be used on more than one project.

### **5.2 Telephone Calls**

Telephone charges should be made per a calling plan with reasonable calling rates. If City, in its sole determination, finds that a calling plan is unreasonable, City may reimburse Contractor at a rate that City determines to be reasonable. Claims for phone call require a statement of the date, person called, phone number, and business reason for the call.

Personal phone calls are not reimbursable.

### **5.3 Local Business Meetings**

Costs associated with local business meetings must be reasonable and have a direct business reason for the City of San Antonio. Local business meeting exceeding \$150 must be approved in advance of the scheduled meeting. As stated in previous sections, entertainment is not reimbursable. If alcohol is served at the business meeting this will deem the event as a social event and the entire event will not be reimbursable.

Meals served at an approved business meeting event will be reimbursed at the lesser of the actual cost or the daily per diem rate as specified by GSA for that particular meal. The GSA has established per diem meal rates by breakfast, lunch and dinner. Facility charges associated with this event must be reasonable and approved in advance.

## **6. Travel Expense Settlement**

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### **6.1 Reimbursement**

A travel expense statement must be prepared and submitted with the appropriate supporting documents. At a minimum, the expense statement should be in a legible format consistent with business standards and must contain the following elements:

- Name of Contractor being reimbursed.
- Name of Contractor employee that incurred the expenses.
- Dates covered in the expense report.
- Business reason for incurring expenses on behalf of City.
- Legible format and consistent with business standards.

All required receipts must be legible and submitted with the expense statement. If required receipts cannot be obtained or have been lost a statement providing the reason for the unavailability or loss should be noted. In the absence of a satisfactory explanation, the amount involved will not be reimbursed.

Because lodging receipts may include non-reimbursable charges, lodging will not be reimbursed without a copy of the receipt or facsimile document containing itemized charges for the room, e.g., taxes, telephone, etc. from the hotel.

Expenses should be itemized chronologically according to the nature and type of travel expense (i.e. airfare, hotel, meals, etc.). The completed and supported travel expense statement should be submitted in the first billing cycle following the incurrence of the expense.

### **6.2 Right to Audit**

The City reserves the right to audit actual expenses. Expenses will be reimbursed in accordance with the procedures setout herein at actual cost within the limits and requirements established by this policy or, if applicable, the Agreement

**EXHIBIT 4**  
**SBEDA PLAN**

**GOOD FAITH EFFORT PLAN**

(Page 1 of 4)

**NAME OF PROJECT:** Stinson Municipal Airport Master Plan

**BIDDER/PROPOSER INFORMATION:**

Name of Bidder/Proposer: Kimley-Horn and Associates, Inc.

Address: 45 NE Loop 410, Suite 890

City: San Antonio State: TX Zip Code: 78216-5831

Telephone: 210-541-9166 E-mail Address: amanda.okrongley@kimley-horn.com

Is your firm certified?  Yes  No (If yes, please submit Certification Certificate.)

1. List all subcontractors/suppliers that will be used for this contract. (Indicate all MBEs-WBEs-AABEs-SBEs. Use additional sheets as needed.)

NAME AND ADDRESS OF SUBCONTRACTOR'S/SUPPLIER'S COMPANY	CONTRACT AMOUNT	% LEVEL OF PARTICIPATION	MBE-WBE-AABE-SBE CERTIFICATION NUMBER
Bain Medina Bain, Inc. 7073 San Pedro Avenue San Antonio, TX 78216-6209	\$10,500	3%	WBE (#210049096)
Gendex, Inc. 1802 NE Loop 410 # 500 San Antonio, TX 78217-5206	\$17,500	5%	SBE (#208122823)
Ricondo & Associates, Inc. 20 North Clark Street, Suite 1500 Chicago, IL 60602	\$14,000	4%	MBE (#209066625)
Williams CAD Consulting 10438 Tiger Field San Antonio, TX 78251	\$14,000	4%	SBE, MBE, WBE, AABE (#209090260)
Ximines & Associates, Inc. 421 6 <sup>th</sup> Street #1 San Antonio, TX 78215-1805	\$21,000	6%	SBE, MBE, WBE (#209118929)
Raba-Kistner 12821 W. Golden Lane San Antonio, TX 78249	\$10,500	3%	N/A
Kutchins & Groh, L.L.C. 7 Trailside Court Mansfield, TX 76063	\$52,500	15%	N/A

Only companies certified as an MBE, WBE, AABE or SBE by the City of San Antonio or its certifying organization can be applied toward the contracting goals. All MBE-WBE-AABE-SBE subcontractors or suppliers must submit a copy of their certification certificate through the Prime Contractor. Proof of certification must be attached to this form. If a business is not certified, please call the Aviation Department's Small Business Office at (210) 207-3505 for information and details on how subcontractors and suppliers may obtain certification.

**GOOD FAITH EFFORT PLAN**  
(Page 2 of 4)

It is understood and agreed that, if awarded a contract by the City of San Antonio, the Contractor will not make additions, deletions, or substitutions to this certified list without consent of the Director of International and Economic Development and Director of the appropriate contracting department (through the proposal of the Request for Approval of Change to Original Affirmed Good Faith Effort Plan).

**NOTE: If MBE-WBE-AABE-SBE contracting goals were met, skip to #9.**

2. If MBE-WBE-AABE-SBE contracting goals were not achieved in a percentage that equals or exceeds the City's goals, please give explanation.

Kimley-Horn has compiled a team of professionals and firms that would provide meaningful roles and contribution to the project, and would assist us in meeting the City's goals for the WBE and AABE categories. We selected additional firms with certification status as MBE, SBE and HUB status; however the anticipated project scope would not warrant a percentage of the effort to meet the goals for those categories. Should the scoring reveal that greater participation of MBE and SBE firms on the KHA Team become necessary, we would redistribute efforts where appropriate, with City coordination and approval.

3. List all MBE-WBE-AABE-SBE Listings or Directories utilized to solicit participation.

South Central Texas Regional Certification Agency

City of San Antonio Pre-Proposal Attendance

4. List all contractor associations and other associations solicited for MBE-WBE-AABE-SBE referrals.

Kimley-Horn is not aware of associations that would be relevant to the scope of this project.

5. Discuss all efforts aimed at utilizing MBE-WBE-AABE-SBEs.

Kimley-Horn considered many components for subconsultant participation and looked to fill these components with certified MBE-WBE-AABE-SBE firms where possible. We discussed (verbally and via email) about teaming opportunities since before the RFP was released and later, specified roles after details of the scope were available from the City. Further consideration was given to other firms, searching the SCTRCA website for public relations, airport planning, engineering, environmental and surveying firms. Kimley-Horn selected firms who we either know from previous projects or have appropriate relevant experience specific to the scope of this project, that may not have been available in a local, MBE-WBE-AABE-SBE firm.

6. Indicate advertisement mediums used for soliciting bids from MBE-WBE-AABE-SBEs.

Kimley-Horn conducted numerous searches on the SCTRCA website, and solicited information from other public relations firms when searching to fill that component of this effort.

**GOOD FAITH EFFORT PLAN**  
(Page 3 of 4)

7. List all MBE-WBE-AABE-SBE bids received but rejected. (Use additional sheets as needed.)

COMPANY NAME	MBE-WBE-AABE-SBE CERTIFICATION NUMBER	REASON FOR REJECTION
No official bids were received from other firms. Two other firms were non-responsive.	N/A	N/A

8. Please attach a copy of your company's MBE-WBE-AABE-SBE policy. Qualified minority and woman-owned firms received first priority consideration when Kimley-Horn looks for suppliers to support our business operations. These businesses receive first consideration in any proposal we submit for government work, as well as special consideration for proposals we submit for private work. Kimley-Horn has a company policy of meeting or exceeding our clients' stated minority business participation goals. A primary goal of the firm and our project managers is to engage the services of qualified MBE-WBE-AABE-SBE firms for goods and services. In addition, it is the firm's philosophy to assist in the training and development of MBE-WBE-AABE-SBE firms in both private and public sectors whenever possible.

In 2009, Kimley-Horn paid over \$13 million (against a goal of \$8 million) to 311 MBE-WBE-AABE-SBE firms for goods and services. Kimley-Horn will continue its long-standing practice of using minority business enterprises on current and future projects.

9. Name and phone number of person appointed to coordinate and administer the Good Faith Efforts of your company on this project.

Floyd C. Webb, Vice President

(210) 541-9166

10. This Good Faith Effort Plan is subject to the International and Economic Development Department's approval.

