

**ARTICLE XXI.  
RIGHT OF REVIEW AND AUDIT**

- 21.1 Contractor grants City, or its designees, the right to audit, examine or inspect, at City's election, all of Contractor's records relating to the performance of the Work under the Agreement, during the term of the Agreement and retention period herein. The audit, examination or inspection may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Contractor agrees to retain its records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under the Agreement which last beyond the four-year retention period, then, such retention period shall extend until final resolution of the dispute. "Contractor's records" include any and all information, materials and data of every kind and character generated as a result of the work under this Agreement. Example of Contractor records include, but are not limited to, billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state tax filings for issue in question and any and all other agreements, sources of information and matters that may, in City's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.
- 21.2 City agrees that it will exercise the right to audit, examine or inspect Contractor's records only during regular business hours. Contractor agrees to allow City's designee access to all of Contractor's Records, Contractor's facilities and current or former employees of Contractor, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Contractor also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.
- 21.3 Contractor must include this audit clause in any subcontractor, supplier or vendor Agreement.

**ARTICLE XXII.  
ENTIRE AGREEMENT**

This Agreement, and all Exhibits attached to and incorporated herein, represents the entire and integrated Agreement between City and Contractor and supersedes all prior negotiations, representations or agreements, either oral or written.

**ARTICLE XXIII.  
VENUE**

THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS AND COURT DECISIONS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

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.

**ARTICLE XXIV.  
NOTICES**

Except as may be provided elsewhere herein, all notices, communications, and reports required or permitted under this Agreement shall be personally delivered or mailed to the respective party by depositing the same in the United States Postal Service, addressed to the applicable address shown below, unless and until either party is otherwise notified in writing by the other party of a change of such address. Mailed notices shall be deemed communicated as of five (5) days of mailing.

If intended for City to:

Aviation Department  
Attention: Planning & Development  
Division  
9800 Airport Boulevard  
San Antonio, Texas 78216

If intended for Contractor, to:

**NAME OF FIRM**  
**Attention: POC**  
**FIRM'S ADDRESS**

**ARTICLE XXV.  
INDEPENDENT CONTRACTOR**

In performing services under this Agreement, the relationship between City and Contractor is that of an independent contractor. By the execution of this Agreement, Contractor and City do not change the independent contractor status of Contractor. Contractor shall exercise independent judgment in performing its duties and obligations under this Agreement and solely is responsible for setting working hours, scheduling or prioritizing the work flow and determining how the work is to be performed. No term or provision of this Agreement or act of Contractor, in the performance of this Agreement, shall be construed as making Contractor the agent, servant or employee of City, or as making Contractor or any of its agents or employees eligible for any fringe benefits, such as retirement, insurance and worker's compensation, which City provides to or for its employees.

**ARTICLE XXVI  
CAPTIONS**

The captions for the individual provisions of this Agreement are for informational purposes only and shall not be construed to effect or modify the substance of the terms and conditions of this Agreement to which any caption relates.

**ARTICLE XXVII  
CONTRACT CONSTRUCTION**

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.

**ARTICLE XXVIII  
EQUAL EMPLOYMENT OPPORTUNITY**

Contractor 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, Contractor agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's office.

**ARTICLE XXIX  
AMENDMENTS**

Any alterations, additions, or deletions to the terms of this Agreement shall be effected by amendment, in writing, executed by City and Contractor. 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.

**ARTICLE XXX  
FAMILIARITY WITH LAW AND CONTRACT TERMS**

- 30.1 Contractor represents that, prior to signing this Agreement; Contractor 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.
- 30.2 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.

**ARTICLE XXXI  
SUCCESSORS**

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.

**ARTICLE XXXII  
NON-WAIVER OF PERFORMANCE**

- 32.1 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.
- 32.2 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.

**ARTICLE XXXIII.  
RELATIONSHIP OF THE PARTIES**

- 33.1 Contractor accepts the relationship of trust, good faith and fair dealing established by this Agreement and shall cooperate with the City in furthering the City's interests. The Contractor accepts this relationship of trust and confidence established with the City and covenants with the City to furnish the Contractor's professional skill and judgment in furthering the interests of the City. The Contractor shall furnish consulting services as set forth herein and shall use the Contractor's professional efforts to perform the services in an expeditious and economical manner consistent with the interests of the City. The Contractor will perform the required services consistent with sound and generally accepted consulting practices, exercising the degree of skill, care and judgment consistent with such practices in San Antonio, Texas.

- 33.2 Contractor shall require each sub-consultant, to the extent of the Services to be performed by the sub-consultant, to be bound to Contractor by the terms of the Agreement, and to assume toward Contractor all the obligations and responsibilities that Contractor, by this Agreement, assumes toward City. Each subcontract agreement shall preserve and protect the rights of City under the Agreement with respect to the Services to be performed by the Sub-consultant so that subcontracting thereof will not prejudice such rights.

**ARTICLE XXXIV  
CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS**

- 34.1 By execution of this Agreement, the undersigned authorized representative of Contractor certifies, and the City relies thereon, that neither Contractor, 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).

- 34.2 Contractor 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, Contractor learns that this certification was erroneous when made or has become erroneous by reason of changed circumstances.
- 34.3 Contractor’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.

**ARTICLE XXXV  
AIRPORT SECURITY**

- 35.1 To the extent Contractor 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. Contractor 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 Transportation Security Administration (“TSA”) or the FAA may deem necessary. Further, in the event of any threat to civil aviation, Contractor must promptly report any information in accordance with those regulations promulgated by the FAA, the TSA and the City. Contractor 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.
- 35.2 Contractor 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, Contractor must adopt procedures to control and limit access to the Airport Premises utilized by Contractor 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, Contractor must have in place and in operation a security program for the Airport Premises utilized by Contractor that complies with all applicable laws and regulations. All employees of Contractor that require regular access to sterile or secure areas of the Airport must be badged in accordance with City and TSA rules and regulations.

- 35.3 Gates and doors located in and around the Airport Premises utilized by Contractor that permit entry into sterile or secured areas at the Airports, if any, must be kept locked by Contractor at all times when not in use, or under Contractor'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 Contractor until the malfunction is remedied.
- 35.4 In connection with the implementation of its security program, Contractor may receive, gain access to or otherwise obtain certain knowledge and information related to the City's overall Airport security program. Contractor acknowledges that all such knowledge and information is of a highly confidential nature. Contractor 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. Contractor 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.

IN WITNESS WHEREOF, the City of San Antonio lawfully has caused these present to execute this Agreement by the hand of the City Manager, or designee; Contractor, acting by the hand of \_\_\_\_\_ thereunto authorized, does now sign, execute and deliver this document.

Executed on this \_\_\_\_ day of \_\_\_\_\_, A. D. \_\_\_\_\_.

**CITY OF SAN ANTONIO**

\_\_\_\_\_  
Ed Belmares  
Assistant City Manager

\_\_\_\_\_  
Name

**APPROVED AS TO FORM:**  
Michael D. Bernard  
City Attorney

\_\_\_\_\_  
Title

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

**EXHIBIT 1  
FEE SCHEDULE**

## EXHIBIT 2

### DBE COMPLIANCE AND ENFORCEMENT

DBE Subcontracting Obligation - Upon approval of the required DBE utilization documentation, the Submitting Firm receiving award of the contract shall enter into a subcontract with each approved DBE subcontractor listed in their Submittal. The contract shall be for the scope of work and amount stated in the Submittal documents. DBE subcontracts shall not be terminated, nor shall the scope of work or the amount to be paid to the DBE be altered by the prime consultant prior to the written approval of the Aviation Department's DBE Liaison Officer (DBELO).

Subcontractor Substitutions, Addition or Deletions - The Prime Consultant/Contractor must notify the DBELO in writing of the necessity to substitute, add or delete a subcontractor in order to fulfill the DBE requirements. A change in the scope of work and/ or amount stated in the submittal shall not be made before the DBELO approval. Requests should be submitted with sufficient time for review and approval, which may take up to 3 working days. The request shall be made utilizing DBE Form 3 (Change of Subcontractor/Supplier).

Failure to Meet DBE Contract Requirements - Failure to utilize the listed DBE subcontractors as stated in the Consultant's/Contractor's Submittal constitutes breach of contract and may lead to the cancellation or termination of the Contract.

Relief from DBE Requirements - After award of the Contract, no relief of the DBE requirements will be granted except in exceptional circumstances. Requests for complete or partial waiver of the DBE requirements of this Contract must be submitted in writing to the DBELO. The request for relief must contain details of the request, the circumstances that make the request necessary, and any additional relevant information. The request must be accompanied by a record of all efforts taken by the Consultant/Contractor to contract with the DBEs listed in the Submittal documents, and supporting documentation of efforts made to locate and solicit replacement or substitution of DBE subcontractor.

Penalties for Noncompliance - Failure to comply with any portion of the DBE Program, and whose failure to comply continues for a period of 30 calendar days after the Consultant/Contractor receives written notice of such noncompliance, may be subject to any or all of the following penalties:

- a. Withholding of ten percent of all future payments for the Eligible project until it is determined the Consultant/Contractor is in compliance.
- b. Withholding of all future payments for the Eligible project until it is determined the Consultant/Contractor is in compliance.
- c. Cancellation of the Eligible Project.
- d. Refusal of all future contracts or sub-contracts with the San Antonio Airport System for a minimum of one year and a maximum of three years from the date upon which this penalty is imposed. In the event a penalty is imposed, the Consultant/Contractor continues to be obligated to pay its subcontracts, laborer, suppliers, etc.

The San Antonio International Airport System will provide a cure-period to allow Consultants/Contractors to comply with the terms of the contract and associated default provisions.

### EXHIBIT 3

#### FEDERAL CONTRACT PROVISIONS – PROFESSIONAL SERVICES CONTRACTS

##### PROVISION 1. CIVIL RIGHTS ACT OF 1964, TITLE VI – CONSULTANT CONTRACTUAL REQUIREMENTS

During the performance of this contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

- 1.1 Compliance with Regulations. The Contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- 1.2 Nondiscrimination. The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 1.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- 1.4 Information and Reports. The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- 1.5 Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to the Contractor under the contract until the Contractor complies, and/or
  - b. Cancellation, termination, or suspension of the contract, in whole or in part.
- 1.6 Incorporation of Provisions. The Contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the Sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

PROVISION 2. AIRPORT & AIRWAY IMPROVEMENT ACT OF 1982, SECTION 520 –  
GENERAL CIVIL RIGHTS PROVISIONS

- 2.1 The Contractor assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport a program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of Contractors, this provision binds the Contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

PROVISION 3. DISADVANTAGED BUSINESS ENTERPRISES

- 3.1 Contract Assurance (§26.13) - The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- 3.2 Prompt Payment (§26.29) - The Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the Contractor receives from the City. The Contractor agrees further to return retainage payments to each subcontractor within [specify the same number as above] days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

PROVISION 4. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

- 4.1 No Federal appropriated funds shall be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.
- 4.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the Contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

## PROVISION 5. ACCESS TO RECORDS AND REPORTS

- 5.1 The Contractor shall maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, 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 Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

## PROVISION 6. BREACH OF CONTRACT TERMS

- 6.1 Any violation or breach of terms of this contract on the part of the Contractor or their subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

## PROVISION 7. RIGHTS TO INVENTIONS

- 7.1 All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

## PROVISION 8. TRADE RESTRICTION CLAUSE

- 8.1 The Contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:
- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
  - b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
  - c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.
- 8.2 Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a Contractor or subcontractor who is unable to certify to the above. If the Contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.
- 8.3 Further, the Contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.
- 8.4 The Contractor shall provide immediate written notice to the sponsor if the Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

- 8.5 This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.
- 8.6 Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 8.7 This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

#### PROVISION 9. TERMINATION OF CONTRACT

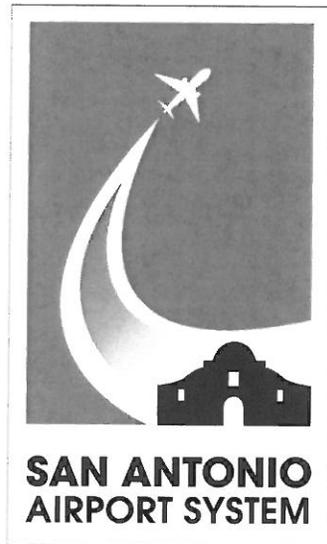
- 9.1 The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.
- 9.2 If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- 9.3 If the termination is due to failure to fulfill the Contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Contractor shall be liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
- 9.4 If, after notice of termination for failure to fulfill contract obligations, it is determined that the Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price shall be made as provided in paragraph 2 of this clause.
- 9.5 The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

#### PROVISION 10. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

- 10.1 The Contractor, by acceptance of this contract, certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by acceptance of this contract, that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the Contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this contract.

**EXHIBIT 4**

**Consultant  
and  
Contractor  
Travel, Living & Relocation Expense Policy**



**City of San Antonio**

**As of 6/2/08**

Reimbursable Expense Policy  
Table of Contents

- 1. General Information**
  - 1.1 Introduction
  - 1.2 Scope
  - 1.3 Policy
  - 1.4 Definitions
  - 1.5 Reimbursements
  - 1.6 Interrupted Itinerary
  
- 2. Transportation Expenses**
  - 2.1 Guideline
  - 2.2 Air Travel
  - 2.3 Travel by Private Automobile
  - 2.4 Travel by Private Aircraft
  - 2.5 Rental Cars
  - 2.6 Ground Transportation
  
- 3. Living Expenses**
  - 3.1 Lodging
  - 3.2 Non-Commercial Lodging
  - 3.3 Meals Expense
  - 3.4 Incidental Expenses
  - 3.5 Extended Travel Daily and Lodging Allowances
  
- 4. Relocation Assistance**
  - 4.1 Requirements
  - 4.2 Limitations
  - 4.3 Allowable Expenses in General
  - 4.4 Travel Expenses by Car
  - 4.5 Household Goods and Personal Effect Expense
  - 4.6 Storage Expenses
  - 4.7 Travel Expenses
  - 4.8 Non-reimbursable Relocations Expenses
  - 4.9 Relocation Assistance Recovery
  
- 5. Miscellaneous Expenses**
  - 5.1 General
  - 5.2 Telephone Calls
  - 5.3 Local Business Meetings
  
- 6. Travel Expense Settlement**
  - 6.1 Reimbursement
  - 6.2 Right to Audit

## 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:

<b>Beginning of "Official Travel Time"</b>		<b>Ending of "Official Travel Time"</b>	
<b>Date of Departure</b>		<b>Date of Departure</b>	
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:

<i>Personnel Type</i>	<b>Relocation Assistance Limitations</b>	
	<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 set out herein at actual cost within the limits and requirements established by this policy or, if applicable, the Agreement.