

**ON-CALL ENVIRONMENTAL CONSULTING  
PROFESSIONAL SERVICES AGREEMENT  
FOR THE SAN ANTONIO AIRPORT SYSTEM**

STATE OF TEXAS

COUNTY OF BEXAR

CITY OF SAN ANTONIO

This Agreement is made and entered into in San Antonio, Bexar County, Texas, between the City of San Antonio, a Municipal Corporation in the State of Texas, hereafter referred to as "City" and

**FIRM NAME  
ADDRESS**

hereafter referred to as "Consultant", said Agreement being executed by City pursuant to the City Charter, Ordinances, and Resolutions of the City Council, and by Consultant for on-call environmental consulting services services, hereinafter set forth.

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**ARTICLE I.  
DEFINITIONS**

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

- 1.1 "Application for Compensation" means written form for a request from Consultant to be paid for completed work.
- 1.2 "City" or "Owner" means the City of San Antonio, Texas.
- 1.3 "Compensation" means amounts paid for services under this Agreement.
- 1.4 "Consultant" means NAME OF FIRM and its officers, partners, employees, agents and representatives, and all sub-contractors, if any, as well as all other persons or entities for which Consultant legally is responsible.
- 1.5 "Director" means the Director of City's Aviation Department or his designee.
- 1.6 "FAA" means the Federal Aviation Administration.
- 1.7 "Plans and Specifications" means the construction documents.
- 1.8 "Project" means the specific environmental consulting services for which a Finalized Task Order is negotiated and executed by both Parties hereto.
- 1.9 "Proposal" means Consultant's Proposal to provide services for this Project.
- 1.10 "SAMSA" means the San Antonio Metropolitan Statistical Area or Relevant Marketplace, which collectively is comprised by Bexar County and the seven (7) surrounding counties of Atascosa, Bandera, Comal, Guadalupe, Kendall, Medina and Wilson.
- 1.11 "SAWS" means the San Antonio Water System, Inc.
- 1.12 "Scope of Services" means the services described in Article IV Scope of Services.
- 1.13 "Services" means those services described in the Scope of Services as set out in a Finalized Task Order.
- 1.14 "Total Compensation" means the Not-to-Exceed amount of this Agreement.
- 1.15 "Finalized Task Order" means a written agreement, executed by both and made a part of this Agreement, setting forth the agreed to scope, pricing and associated terms for an individual Project as further defined herein.

- 1.16 "Proposed Task Order Request" means a request to Consultant to submit a Proposal for a specific Project as further defined herein.

## **ARTICLE II. COMPENSATION**

- 2.1 The Compensation for all services included in this Agreement **SHALL NOT EXCEED** \_\_\_\_\_ **AND NO/100 CENTS (\$\_\_\_\_\_ .00)**. 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.
- 2.2 Consultant shall submit a Proposal for each Project that City requests to be performed under this Agreement. City either will approve or disapprove each Proposal. City's approval shall be evidenced by the Finalized Task Order executed by both parties. Finalized Task Orders shall be numbered sequentially starting with number one (1) and must reference this Agreement. Each Finalized Task Order will become a part of this Agreement.
- 2.2.1 Consultant understands, accepts and agrees that City has entered into multiple professional services agreements with other Consultants and has the authority to assign work tasks at its sole discretion.
- 2.2.2 Consultant understands, accepts and agrees that City makes no minimum guarantees with regard to the amount of services, if any, Consultant may be extended under this Agreement.
- 2.3 Each Task Order amount shall be based on the scope of services for a particular Project and will be based on the or hourly rates included in Exhibit 2, Fee Schedule, attached hereto, incorporated herein and made a part of this Agreement.
- 2.4 Reimbursable Expenses

When authorized by City in writing, Consultant will be entitled to reimbursement at actual incurred cost without markup for services and related expenses for the following items:

- 2.4.1 Travel outside SAMSA only if approved in writing by City prior to such travel. Reimbursement for travel costs will be limited to costs directly associated with Consultant's performance of Service under this Agreement and must comply with the Aviation Department Consultant and Contractor Reimbursable Expense Policy, Exhibit 5 hereto. Travel costs are limited to the per diem rates set annually by the Federal Government's General Services Administration. Consultant shall provide detailed receipts for all reimbursable charges. Travel expenses, if any, shall be negotiated with each Finalized Task Order issued. City does not pay for Consultant's travel within SAMSA.
- 2.4.2 Mailing, courier services and copies of documents requested by City in writing in excess of the copies to be provided under Article IV of this Agreement. These costs, if any, shall not exceed the amount noted in Article IV herein without further written approval of City. Consultant shall bear these costs unless agreed to, in writing, by City, upon the issuance of a Finalized Task Order.
- 2.4.3 Graphics, physical models, and presentation boards requested by City in writing in excess of the copies to be provided under Article IV of this Agreement. These costs shall not exceed the amount noted in Article IV herein without further approval of City. Consultant shall bear these costs unless agreed to, in writing, by City, upon the issuance of a Finalized Task Order. City does not allow a markup on any of the above reimbursable items and only will reimburse approved hard costs incurred.
- 2.4.4 City will not pay markups for Subcontractor work. There shall be no markup on reimbursables from Subcontractors.

**ARTICLE III.  
METHOD OF PAYMENT**

- 3.1 Consultant shall submit invoices no more than once monthly. Payments to Consultant shall be in the amount shown on the invoices consistent with the Finalized Task Order and its supporting documentation submitted and shall be subject to City's approval. All services shall be performed to City's satisfaction, which satisfaction shall be judged by the Director in his/her sole discretion, and City shall not be liable for any payment under this Agreement for services which are unsatisfactory and/or which have not been previously approved by the Director. The final payment due hereunder will not be paid until all reports, data and documents have been submitted, received, accepted and approved by City.
- 3.1.1 Payment may be made based solely on the services completed and approved by City and the associated hourly rates for such service as set out in Consultant's Fee Schedule, included on Exhibit 2 hereto, and the Finalized Task Order.
- 3.2 Consultant shall, within ten (10) days following receipt of Compensation from City, pay all bills for services performed and furnished by others in connection with the Project and the performance of the work and shall, if requested, provide City with evidence of such payment. Consultant's failure to make payments within such time shall constitute a material breach of this Agreement, unless Consultant is able to demonstrate to City bona fide disputes associated with the unpaid subcontractor and its services. Consultant shall include a provision in each of its sub-agreements imposing the same payment obligations on subcontractors as are applicable to Consultant hereunder and, if City so requests, shall provide copies of such payments by Consultant to City. If Consultant has failed to make payment promptly to a subcontractor for the Services for which City has made payment to Consultant, City shall be entitled to withhold payment to Consultant to the extent necessary to protect City.
- 3.3 Consultant warrants that title to all Services covered by an Application for Payment will pass to City no later than the time of payment. Consultant further warrants that upon submittal of an Application for Compensation, all Services for which Applications for Compensation previously have been issued and payments received from City shall, to the best of Consultant's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrance in favor of Consultant or other persons or entities making a claim by reason of having provided labor or services relating to this Agreement. **CONSULTANT SHALL INDEMNIFY AND HOLD CITY HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY ANYONE CLAIMING BY, THROUGH OR UNDER THE ITEMS COVERED BY PAYMENTS MADE BY CITY TO CONSULTANT.**
- 3.4 Consultant may submit a request for partial compensation prior to Finalized Task Order's completion. A request for partial compensation must be accompanied by a progress report detailing the Services performed. Any partial payment made shall be in proportion to the Services performed as reflected in the progress report and approved by City at its sole discretion. Compensation shall also be based solely on the services completed by Consultant and approved by City, which compensation shall be billed in accordance with the Fee Schedule included in Exhibit 2 hereto.
- 3.5 Project Close Out and Final Payment:
- 3.5.1 Final billing for each Project shall indicate: "Final Bill - no additional compensation is due to Consultant".
- 3.5.2 City may withhold compensation to such extent as may be necessary, in City's opinion, to protect City from damage or loss for which Consultant is responsible due to:
- 3.5.2.1 delays in the performance of Consultant's work;
- 3.5.2.2 third-party claims filed or reasonable evidence indicating the probable filing of such claims, unless security acceptable to City is provided by Consultant;

- 3.5.2.3 failure of Consultant to make payments properly to Subcontractors or vendors for labor, materials or equipment;
  - 3.5.2.4 reasonable evidence that Consultant's work cannot be completed for the amount remaining unpaid under this Agreement;
  - 3.5.2.5 damage to City; or
  - 3.5.2.6 persistent failure by Consultant to carry out the performance of its services in accordance with this Agreement.
- 3.5.3 When the above reasons for withholding are removed or remedied by Consultant, compensation of the amount withheld shall be made by City within a reasonable time. City shall not be deemed in default of this Agreement by reason of withholding compensation as provided for in this Article III.
- 3.5.3.1. In the event of any dispute(s) between the parties, regarding the amount properly compensable for any phase of work or as final compensation or regarding any amount that may be withheld by City, Consultant shall be required to make a claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided in the Agreement documents for the resolution of such dispute. In the event Consultant does not initiate and follow the claims procedures provided in the Agreement documents in a timely manner and as required by the terms thereof, any such claim shall be deemed waived by Consultant.
  - 3.5.3.2 City shall make final compensation of all sums due Consultant not more than thirty (30) days after Consultant's execution and delivery of an accurate final Pay Application.
  - 3.5.3.3 Acceptance of final compensation by Consultant shall constitute a waiver of claims except those previously made in writing and identified by Consultant as unsettled at the time of final application for compensation.
  - 3.5.3.4 Consultant agrees to maintain adequate books, payrolls and records satisfactory to City in connection with any and all Services performed hereunder. Consultant agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than four (4) years after completion of Services. In the event that a dispute arises over any aspect of Work performed by Contactor within the four (4) years after completion of Services provided under this Agreement, Consultant shall retain all such books, payrolls and records (including data stored in computer) for a period of not less than four (4) years after final resolution of any dispute. At all reasonable times, City and its duly authorized representatives shall have access to all personnel of Consultant and all such books, payrolls and records and shall have the right to audit same.

**ARTICLE IV.  
SCOPE OF SERVICES**

- 4.1 Consultant understands, accepts and agrees that City has entered or may enter into multiple On-Call environmental consulting services Agreements with other contractors and City has the authority to assign services under this and other Agreements at its sole discretion. Consultant understands, accepts and agrees that City makes no minimum guarantees with regard to the amount of work, if any, which Consultant may be extended under this Agreement.
- 4.2 This Agreement is an On-Call Agreement, Task Order, or indefinite delivery agreement for on-call environmental consulting services and other such services that are required for Consultant to provide or are associated with on-call environmental consulting services including but not limited to the services set out in Exhibit 1, Scope of Services.

Specific requirements as to location, conditions, procedures and associated services pertaining to a Project, shall be negotiated and set out in individual Finalized Task Orders for each request, which Finalized Task Orders shall be incorporated into and shall become a part of this Agreement.

- 4.3 Consultant shall provide all labor, equipment and transportation necessary to complete all services, agreed to by Task by Consultant pursuant to this Agreement, in a timely manner throughout the term of this Agreement. Additionally, Consultant shall provide staff for regular, overtime, night, weekend and holiday service, as requested or required by City. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or Subcontractors of Consultant.
- 4.4 Consultant shall not commence service on any Finalized Task Order authorized under this Agreement until being thoroughly briefed on the scope of a project and being notified in writing by City to proceed. Should the scope of a Finalized Task Order subsequently change, either Consultant or City may request a review of the anticipated services with an appropriate adjustment in compensation.
- 4.5 Consultant, in consideration for the compensation herein provided, shall render the professional services described in this Section IV necessary for the advancement of the Project to substantial completion.
- 4.6 Consultant shall perform its obligations under this Agreement in accordance with the Scope of Services set out in Exhibit 1, Scope of Services and in each Finalized Task Order, in accordance with the Consultant's Fee Schedule in Exhibit 2 hereto. 4.7. All services and work performed and reports and deliverables required pursuant to this Agreement shall be in compliance with all laws, rules, and regulations to include, but not limited to Texas Commission for Environmental Quality and U.S. Environmental Protection Agency requirements and FAA Advisory Circulars.
- 4.7 Consultant's Fee Schedule, which includes hourly rates, is incorporated by reference herein, attached hereto and labeled as Exhibit 2.

#### **ARTICLE V. TIME AND PERIOD OF SERVICE**

- 5.1 The term of this Agreement shall commence upon its approval by the San Antonio City Council and the execution by both parties and shall remain in full force and effect for a period of three (3) years, herein referred to as the "Initial Term", unless otherwise terminated in accordance with the terms of this Agreement. The City shall retain an option to extend this Agreement for two additional one year periods, hereinafter referred to as "Extension Periods". The Director shall have the authority to exercise such options at his discretion without City Council action.
- 5.2 Time is of the essence for this Agreement. Consultant shall perform and complete its obligations for the various Projects in a prompt and continuous manner so as to not delay the development of the design services and so as to not delay the construction of the work for the Project, in accordance with the schedules approved by City and construction contractor. If, upon review of Finalized Task Orders, corrections, modifications, alterations or additions are required of Consultant, these items shall be completed by Consultant before that Finalized Task Order is approved.
- 5.3 Consultant shall not proceed with the next appropriate Finalized Task Order without written authorization from City. City may elect to discontinue Consultant's services at any time and for any reason or for no reason. However, if circumstance dictates, City may make adjustments to the scope of Consultant's obligations at any time to achieve the required services.
- 5.4 Consultant shall not be liable or responsible for any delays due to strikes, riots, acts of

God, national emergency, acts of the public enemy, governmental restrictions, laws or regulations or any other causes beyond Consultant's reasonable control. Within twenty one (21) days from the occurrence of any such event, for which time for performance by Consultant shall be significantly extended under this provision, Consultant shall give written notice thereof to City stating the reason for such extension and the actual or estimated time thereof. If City determines that Consultant is responsible for the need for extended time, City shall have the right to make a Claim as provided in this Agreement and/or deny Consultant's request for an extension.

- 5.5 This Agreement, and all Finalized Task Orders issued prior to the expiration of this Agreement, shall remain valid for a period which reasonably may be required for the completion of all Projects, including any extra work and any required extensions thereto, unless discontinued as provided for elsewhere in this Agreement.

**ARTICLE VI.  
PROJECT SERVICES REQUEST PROCESS**

- 6.1 Necessary on-call environmental consulting services requirements shall be established with each Project-specific Finalized Task Order.
- 6.2 When City has a Project for which it desires to procure on-call environmental consulting services, City shall notify Consultant by issuing a Task Order Request. Each Task Order Request shall include, at a minimum: name of Project, location of Project, copies of or access to Project documentation (such as specifications, environmental reports, drawings, etc.) needed by Consultant to prepare a Proposal, Project schedule and any specific deadlines for performance of on-call environmental consulting services, and a deadline for providing City with a Proposal based on the above.
- 6.3 Consultant shall prepare and submit to City, within the timeline stated in a Task Order Request, a Proposal for the requested services which will include, at minimum: Scope of Services; specific staffing; an estimate of Task cost, based on rates and fees agreed upon in Exhibit 2. Consultant shall submit the Proposal in editable electronic format to the City. By submitting a Proposal, Consultant agrees to perform the requested service(s) within the time stated in the Task Order Request.
- 6.4 Consultant and City shall negotiate the Proposal. Once Consultant and City reach mutual agreement as to scope, staffing, scheduling and cost, City shall issue a Finalized Task Order to be executed by both parties evidencing the agreed to scope, staffing, schedule and costs.
- 6.5 The Director or his/her designee has the authority to execute a Finalized Task on behalf of City, so long as such finalized Task Order does not exceed the total Agreement value and funds are provided for in the Project budget as allocated by City Council.
- 6.6 Consultant shall not proceed with services until a Finalized Task Order has been executed, Consultant receives a written notice to proceed by City and all documents required by City in advance of commencement of work, to include proof of insurance, have been provided by Consultant to City. Any services provided or expenses incurred, prior to receiving a written notice to proceed from City or provided or incurred after the expiration of this Agreement on a particular Finalized Task Order will be at Consultant's sole risk and expense and may not be reimbursable by City.
- 6.7 Actual amounts billed shall not exceed the total amount set out in the Finalized Task Order.
- 6.8 Each Finalized Task Order shall be incorporated herein for all purposes. Each Finalized Task Order shall be numbered sequentially, starting with number one (1) and must reference this Agreement.
- 6.9 Consultant shall not invoice for any work associated with the Project Task Order Request process, including development of Proposal and the associated Task Order

negotiation.

**ARTICLE VII.  
COORDINATION WITH THE CITY**

- 7.1 Consultant shall hold periodic conferences with City representatives through the end of the Project. The Project shall have the full benefit of City's experience and knowledge of existing needs and facilities and be consistent with City's current policies and standards. To assist Consultant in this coordination, City shall make available, for Consultant's use in planning and designing the Project, all existing plans, maps, statistics, computations and other data in City's possession, relative to existing facilities and to this particular Project, at no cost to Consultant. However, any and all such information shall remain the property of City and shall be returned by Consultant upon termination, completion of the Project or if instructed to do so by City.
- 7.2 The Director and/or his/her designee shall act on behalf of City, with respect to the services to be performed under this Agreement. The Director and/or his/her designee 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.
- 7.3 City promptly shall give written notice to Consultant whenever City observes, discovers or otherwise becomes aware of any defect in Consultant's services or any development that affects the scope or timing of Consultant's services.
- 7.4 Unless otherwise required by City, Contractor shall furnish permits and approvals obtained from all governmental authorities having jurisdiction over the Project and other such approvals and consents from others, as may be necessary, for the completion of the Project. Contractor will notify City of permits to be obtained prior to the Consultant submitting a Task Proposal. City shall provide Contractor reasonable assistance with regard to furnishing such approvals and permits, such as the furnishing of data compiled by City pursuant to other provisions of the Agreement, but City shall not be obligated to develop additional data, prepare extensive reports or appear at hearings or the like.

**ARTICLE VIII.  
REVISIONS TO DOCUMENTS**

Consultant shall make, without expense to City, such revisions to the drawings, reports or other documents as may be required to meet the needs of City and which are within the Scope of Services. After the approval of reports or other documents by City, any City request for revisions, additions or other modifications which involve extra Consultant services and expenses shall be by means of a negotiated Finalized Task Order

**ARTICLE IX.  
OWNERSHIP OF DOCUMENTS**

- 9.1 All documents not related to any Task performed by Consultant, including drawings, estimates, specifications and all other documents and data previously owned by Consultant, shall remain the property of Consultant as instruments of service. However, it is to be understood that City shall have free access to all such information and City retains the right to make and retain copies of drawings, estimates, specifications and all other documents and data of Consultant. Any reuse by City of any Consultant drawings, estimates, specifications and any other documents and data previously owned by Consultant, without specific written verification or adaptation by Consultant will be at City's sole risk and without liability or legal exposure to Consultant.
- 9.2 Consultant acknowledges and agrees that City exclusively shall own any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to or as

a result of a Task and this Agreement and said information shall be used as City desires. Any and all documents, including the original drawings, estimates, specifications and all other documents and data shall be delivered to City, at no additional cost to City, upon request, termination or completion of this Agreement without restriction on future use. City will be providing reports developed pursuant to this Agreement to the FAA.

- 9.3 Consultant agrees and covenants to protect any and all proprietary rights of City in any materials provided to Consultant. Such protection of proprietary rights by Consultant shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to City. Additionally, any materials provided to Consultant by City shall not be released to any third party without the written consent of City and shall be returned intact to City upon request by City and/or upon termination or completion of this Agreement.
- 9.4 Consultant hereby assigns all statutory and common law copyrights to any copyrightable work to City that, in part or in whole, was produced from this Agreement, including all equitable rights. No reports, maps, project logos, drawings, documents or other copyrightable works, produced in whole or in part by this Agreement, shall be subject of an application for copyright by Consultant. All reports, maps, project logos, drawings or other copyrightable work produced under this Agreement shall become the property of City (excluding any instrument of services, as otherwise specified herein). Consultant shall, at its own expense, defend all suits or proceedings instituted against City and Consultant shall pay any award of damages or loss resulting from an injunction against City, insofar as the same is based on any claim that materials or work provided under this Agreement constitute an infringement of any patent, trade secret, trademark, copyright or other intellectual property rights.
- 9.5 Consultant may make copies of any and all documents and items for its files. Consultant shall have no liability for changes made to or use of the drawings, specifications and other documents by Architects and/or Engineers or other persons, subsequent to the completion of the Project. City requires that Consultant appropriately mark all changes or modifications on all drawings, specifications and other documents by Architects and/or Engineers or other persons, including electronic copies, subsequent to the completion of the Project.
- 9.6 Copies of documents, which may be relied upon by City, are limited to the printed copies (also known as hard copies) and PDF electronic versions that are sealed and signed by Consultant. Files in editable electronic media format of text, data, graphics or other types, (such as DWG or DGN) that are furnished by Consultant to City or public utility only are for convenience of City or public utility. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- 9.7 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of Consultant including, but not limited to, any computer software (object code and source code), tools, systems, equipment or other information used by Consultant or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies or processes used by Consultant to provide the services or protect deliverables to City, including without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights inherent therein and appurtenant thereto, shall remain the sole and exclusive property of Consultant or its suppliers.

## **ARTICLE X. TERMINATION AND/OR SUSPENSION**

### 10.1 Termination Without Cause.

10.1.1 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.

- 10.1.2 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.
- 10.1.3 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.
- 10.1.4 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.
- 10.1.5 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 10.1.3 of this clause.
- 10.1.6 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.
- 10.1.7 This Agreement may be terminated by the Consultant, at any time after issuance of the Director's notice to proceed, upon sixty (60) calendar days written notice provided in accordance with the Notice provisions contained in this Agreement.
- 10.2 Defaults With Opportunity for Cure. Should Consultant fail, as determined by the Director, to satisfactorily perform the duties set out in Article IV. 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.
- 10.3 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":
- 10.3.1 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
- 10.3.2 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
- 10.3.3 Consultant violates any rule, regulation or law to which Consultant is bound or shall be bound under the terms of this Agreement; or

- 10.3.4 Consultant attempts the sale, transfer, pledge, conveyance or assignment of this Agreement contrary to the terms of the Agreement; or
- 10.3.5 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: or
- 10.3.6 Consultant fails to comply in any respect with the insurance requirements set forth in this Agreement.
- 10.4 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.
- 10.5 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 specifications, designs, plans, exhibits, documents, papers, records, charts, reports, and any other materials or information produced by, or provided to Consultant, in connection with the services rendered by Consultant under this Agreement, to include all reproductions of such work products, 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.
- 10.6 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.**
- 10.7 City, as a public entity, has a duty to document the expenditure of public funds. Consultant acknowledges this duty imposed upon City. Consultant further acknowledges that the failure of Consultant to comply with the submittal of the statement and documents, as required above, shall constitute a waiver by Consultant of any and all rights or claims to payment for services performed under this Agreement by Consultant.
- 10.8 Failure of Consultant to comply with the submittal of the statement and documents, as required above, shall constitute a waiver by Consultant of any and all rights or claims to collect monies that Consultant otherwise may be entitled to for services performed under this Agreement.
- 10.9 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.
- 10.10 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. Such suspension shall take effect upon the date set forth in the notice, or if no date is set forth, immediately upon Consultant's receipt of said notice.

10.11 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 8.5 and 8.6 above, related to the Orderly Transfer and Fee Payment.

10.12 Procedures Upon Receipt of Notice of Suspension.

10.12.1 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.

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

10.12.3 All completed or partially completed designs, plans, specifications, studies, 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.

10.12.4 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.

10.12.5 Any documents prepared in association with this Agreement shall be delivered to City by Consultant, as a pre-condition to final payment, within thirty (30) calendar days after receipt by City of Consultant's notice of termination.

10.12.6 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.

10.12.7 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.

10.13 City, as a public entity, has a duty to document the expenditure of public funds. Consultant acknowledges this duty on the part of City. To this end, Consultant understands that failure of

Consultant to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by Consultant of any portion of the fee for which Consultant did not supply such necessary statements and/or documents.

## **ARTICLE XI. CONSULTANT'S WARRANTY**

Consultant warrants that the services required under this Agreement shall be performed with the same degree of professional skill and care that typically are exercised by similar consulting professionals performing similar services in Bexar County, Texas. Consultant further 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 or agreed to pay any company or person any commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach of this warranty, City shall have the right to terminate this Agreement under the provisions of **Article X** herein.

## **ARTICLE XII. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS**

- 12.1 It is the policy of the City of San Antonio that disadvantaged business enterprises (DBEs) as defined under 49 CFR Part 26, shall have "equality of opportunity" to participate in the awarding of federally-assisted Aviation Department contracts and related subcontracts, to include sub-tier subcontracts. This policy supports the position of the U.S. Department of Transportation (DOT) and the FAA in creating a level playing field and removing barriers by ensuring nondiscrimination in the award and administration of contracts financed in whole or in part with federal funds under this contract. Therefore, on all Department of Transportation or FAA-assisted projects the DBE program requirements of 49 CFR Part 26 apply to the contract.
- 12.2 The Consultant agrees to employ good-faith efforts (as defined in the Aviation Department's DBE Program) to carry out this policy through award of sub-consultant contracts to disadvantaged business enterprises to the fullest extent participation is consistent with the performance of the Aviation Department Contract, and/or the utilization of DBE suppliers where feasible. Consultants are expected to solicit bids from available DBE's on contracts which offer subcontracting opportunities.
- 12.3 Consultant specifically agrees to comply with all applicable provisions of the Aviation Department's DBE Program. The DBE Program may be obtained through the airport's DBE Liaison Officer at (210) 207-3505 or by contacting the City's Aviation Department.
- 12.4 The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate. Consultant agrees to include this clause in each sub-consultant contract the prime consultant signs with a sub-consultant.
- 12.5 The Consultant agrees to pay each sub-consultant under this Contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment the prime contract receives from the City of San Antonio. The Consultant further agrees to return retainage payments to each sub-consultant within fifteen (15) days after the sub-consultant's work is satisfactorily completed. Any delay or postponement of payment from the above referenced

timeframe may occur only for good cause following written approval from the City of San Antonio. This Clause applies to both DBE and non-DBE sub-consultants.

- 12.6 All changes to the list of sub-consultants submitted with the proposal and approved by the City or Aviation Department, excluding vendors shall be submitted for review and approval by Aviation Department's DBE Liaison Office for approval when adding, changing, or deleting sub-consultants on airport projects. Consultants shall make a good-faith effort to replace DBE sub-consultants unable to perform on the contract with another DBE.
- 12.7 Consultant shall not terminate for convenience a DBE sub-consultant submitted with the proposal and approved by the City or the Aviation Department (or an approved substitute DBE firm) and then perform the work of the terminated sub-consultant with its own forces or those of an affiliate, without prior written permission by the City.
- 12.8 During the term of this Agreement, the Consultant must report the actual payments made to all subcontractors to the City in a time interval and a format determined by the City. The City reserves the right, at any time during the term of this Agreement, to request additional information, documentation or verification of payments made to subcontractors in connection with this Agreement. Verification of amounts being reported may take the form of requesting copies of cancelled checks paid to participating DBEs and/or confirmation inquiries directly with participating DBEs. Proof of payment such as copies of check must properly identify the project name or project number to substantiate payment.
- 12.9 The Consultant shall comply with the DBE Compliance and Enforcement Policy attached hereto as Exhibit 3.
- 12.10 Failure or refusal by a Proposer or Consultant to comply with the DBE provisions herein or any applicable provisions of the DBE Program, either during the proposal process or at any time during the term of the Contract, may constitute a material breach of Contract, whereupon the Contract, at the option of the Aviation Department, may be cancelled, terminated, or suspended in whole or in part.

### **ARTICLE XIII. ASSIGNMENT OR TRANSFER OF INTEREST**

- 13.1 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.
- 13.2 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.

- 13.3 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 the terms hereof.

**ARTICLE XIV.  
INSURANCE REQUIREMENTS**

- 14.1 Prior to the commencement of any Task or work under this Agreement, Consultant shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to City's Aviation Department, which clearly shall be labeled "On-Call Environmental Consulting Services" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept Memorandum of Insurance or Binders as Consultant's proof of insurance. The certificate(s) or form must have the agent's signature, phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's Aviation Department. No officer or employee other than City's Risk Manager shall have authority to waive this requirement.
- 14.2 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 whereupon City may incur increased risk.
- 14.3 Consultant's financial integrity is of interest to City. Therefore, subject to the Consultant's right to maintain reasonable deductibles in such amounts as are approved by 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 not less than A- (VII), in the following types and for an amount not less than the amount listed:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$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 <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage  f. \$100,000

5) g. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability.	
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit for Bodily Injury and Property Damage</u> of \$1,000,000 per occurrence(\$5,000,000 if AOA access is required)
5. Professional Liability – Claims made policies are to be maintained and in effect for no less than two years subsequent to the completion of the professional services	\$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.

- 14.4 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. Respondent 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.
- 14.5 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.

City of San Antonio  
Attn: Planning & Development Department  
9800 Airport Boulevard  
San Antonio, Texas 78218

- 14.6 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.
- 14.7 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.

- 14.8 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.
- 14.9 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.
- 14.10 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.
- 14.11 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..
- 14.12 Consultant and any Subcontractors are responsible for all damage to their own equipment and/or property.

#### **ARTICLE XV. INDEMNIFICATION**

- 15.1 **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 (including but not limited to direct, indirect, special, exemplary, punitive, incidental and consequential 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, intellectual property infringements, 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 negligent acts, errors or omissions under this Agreement, including any negligent acts, errors or omissions of Consultant, any agent, officer, director, representative, employee, consultant or subcontractor 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.**
- 15.3 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.

- 15.3 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.
- 15.4 Acceptance of any deliverable or final designs, drawings, plans, specifications, or exhibits 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 designs, working drawings, plans, specifications, exhibits or other documents and Services; nor shall such acceptance be deemed an assumption of responsibility or liability by the City for any defect in the in the Services, designs, working drawings, plans, specifications, or exhibits or other documents and work prepared by said Consultant.

**ARTICLE XVI.  
CLAIMS AND DISPUTES**

- 16.1 A Claim is a demand or assertion by one of the parties seeking, as a matter of right, an adjustment or interpretation of the Agreement terms, payment of money, an extension of time or other relief, with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between City and Consultant arising out of or relating to this Agreement. Claims must be initiated by written notice. Every Claim of Consultant, whether for additional compensation, additional time or other relief, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind Consultant by his/her signature) of Consultant, verifying the truth and accuracy of the Claim. The responsibility to substantiate Claims shall rest with the party making the Claim.
- 16.2 Claims by Consultant or by City must be initiated in writing to the other party within twenty-one (21) days after the occurrence of the event giving rise to such Claim.
- 16.3 Pending final resolution of a Claim, except as otherwise agreed to in writing, Consultant shall proceed diligently with performance of the Agreement and City shall continue to make payments in accordance with this Agreement.
- 16.4 If Consultant wishes to make a Claim for an increase in the time for performance, written notice, as stated in this Section XVI, shall be given. Consultant's Claim shall include an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.
- 16.5 Except as otherwise provided in this Agreement, in calculating the amount of any Claim or any measure of damages for breach of this Agreement (such provision to survive any termination following such breach), the following standards will apply both to claims by Consultant and to claims by City:
- 16.5.1 No consequential damages will be allowed.
- 16.5.2 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong for which the other party is claimed to be responsible.
- 16.5.3 No profit will be allowed on any damage claim.
- 16.6 **NOTHING IN THIS SECTION XVI SHALL BE CONSTRUED TO WAIVE CITY'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY STATE LAW.**

## 16.7 Alternative Dispute Resolution.

16.7.1 Each party is required to continue to perform its obligations under this Agreement, pending a final resolution of any dispute arising out of or relating to this Agreement, unless it would be impossible or impracticable under the circumstances.

16.7.2 Before invoking mediation or any other alternative dispute process set forth herein, the parties hereto agree that they first shall try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the parties' senior management representatives cannot resolve the dispute within thirty (30) days after a party delivers a written notice of such dispute, the parties then shall proceed with mediation. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

### 16.7.3 Mediation.

16.7.3.1 In the event that City or Consultant shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

16.7.3.2 Request for mediation shall be in writing to the other party and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon mutual written agreement of both parties.

16.7.3.3 In the event City and Consultant are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.

16.7.3.4 The parties shall share the mediator's fee and any filing fees equally. Venue for any mediation or lawsuit arising under this Agreement shall be in Bexar County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is a consent to suit.

## **ARTICLE XVII. SEVERABILITY**

If, for any reason, any one or more Articles or Sections of this Agreement are held invalid or unenforceable, such invalidity or unenforceability shall not affect, impair or invalidate the remaining Articles or Sections of this Agreement but shall be confined in its effect to the specific Article, Section, sentences, clauses or parts of this Agreement held invalid or unenforceable, and the invalidity or unenforceability of any Article, Section, sentence, clause or parts of this Agreement, in any one or more instance, shall not affect or prejudice in any way the validity of this Agreement in any other instance.

**ARTICLE XVIII.  
INTEREST IN CITY CONTRACTS PROHIBITED**

- 18.1 No officer or employee of City shall have a financial interest, directly or indirectly, in any Agreement with City or shall be financially interested, directly or indirectly, in the sale to City of any land, materials, supplies or service, except on behalf of City as an officer or employee. This prohibition extends to City's Public Service Board, SAWS and other City boards and commissions, which are more than purely advisory. The prohibition also applies to subcontracts on City projects.
- 18.2 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 the Ethics Code, from having a financial interest in any contract with City or any City agency, such as the City-owned utilities. Consultant's officer(s) or employee(s) 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 Agreement or sale:
- a. a City officer or employee;
  - b. a City officer or employee's parent, child or spouse;
  - c. a business entity in which the City officer or employee, or the officer or employee's parent, child or spouse, owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) or more of the fair market value of the business entity; or
  - d. a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- 18.3 Consultant warrants and certifies, and this Agreement is made in reliance thereon, that Consultant, its officers, employees and agents are neither officers nor employees of City. Consultant further warrants and certifies that it has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

**ARTICLE XIX.  
CONFLICTS OF INTEREST DISCLOSURE**

Consultant must disclose if it is associated in any manner with a City officer or employee in a business venture or business dealings. Failure to do so will constitute a violation of City Ordinance No. 76933. To be "associated" in a business venture or business dealings includes:

- a. being in a partnership or joint venture with a City officer or employee;
- b. having a contract with a City officer or employee;
- c. being joint owners of a business with a City officer or employee;
- d. owning at least ten percent (10%) of the stock in a corporation in which a City officer or employee also owns at least ten percent (10%); or
- e. having an established business relationship with a City Officer or employee as a client or customer.

**ARTICLE XX.  
STANDARD OF CARE/LICENSING**

- 20.1 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.
- 20.2 Consultant shall be represented by personnel with appropriate certification(s) at meetings of any official nature concerning the Project including, but not limited to, scope meetings, review meetings, pre-bid meetings and preconstruction meetings.
- 20.3 Consultant is responsible for and shall retain a certified and registered engineer(s) and/or architect(s) as needed to perform the services set out in a Finalized Task Order.

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

- 21.1 Consultant grants City, or its designees, the right to audit, examine or inspect, at City's election, all of Consultant'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. Consultant 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. "Consultant'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 Consultant 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 Consultant's records only during regular business hours. Consultant agrees to allow City's designee access to all of Consultant's Records, Consultant's facilities and current or former employees of Consultant, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Consultant also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.
- 21.3 Consultant 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 Consultant 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: Assistant Director of  
Planning & Development Construction  
9800 Airport Boulevard  
San Antonio, Texas 78201

If intended for Consultant, to:

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

**ARTICLE XXV.  
INDEPENDENT CONTRACTOR**

In performing services under this Agreement, the relationship between City and Consultant is that of an independent contractor. By the execution of this Agreement, Consultant and City do not change the independent contractor status of Consultant. Consultant 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 Consultant, in the performance of this Agreement, shall be construed as making Consultant the agent, servant or employee of City, or as making Consultant 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**

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.

**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 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.

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

- 30.1 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, FAA Advisory Circulars and guidelines, Texas Commission for Environmental Quality (TCEQ) and the U.S. Environmental Protection Agency (USEPA) regulations, 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 Consultant 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 Consultant accepts this relationship of trust and confidence established with the City and covenants with the City to furnish the Consultant's professional skill and judgment in furthering the interests of the City. The Consultant shall furnish consulting services as set forth herein and shall use the Consultant's professional efforts to perform the services in an expeditious and economical manner consistent with the interests of the City. The Consultant 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 Consultant shall require each sub-consultant, to the extent of the Services to be performed by the sub-consultant, to be bound to Consultant by the terms of the Agreement, and to assume toward Consultant all the obligations and responsibilities that Consultant, 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 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).

- 34.2 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.
- 34.3 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.

**ARTICLE XXXV  
AIRPORT SECURITY**

- 35.1 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 Transportation Security Administration ("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.

- 35.2 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 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 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.
- 35.4 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.

**EXECUTED ON THIS, THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2013.**

**CITY OF SAN ANTONIO**

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

\_\_\_\_\_  
Name

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Title

\_\_\_\_\_  
City Attorney

## EXHIBIT 1

### SCOPE OF SERVICES

A. Consultant shall provide environmental consulting and remediation services in support of City operations, construction projects, and property acquisitions. Consultant shall perform activities including, but not limited to, the following as more fully set out in Finalized Task Orders negotiated in accordance with this Agreement:

1. Develop landfill gas and leachate management plans;
2. Construct and maintain gas collection and leachate collection systems;
3. Provide groundwater monitoring well system design, installation, sampling, testing and plugging;
4. Provide assistance with groundwater monitoring events at select landfills. Consultant will be responsible for analyzing select parameters, evaluating analytical data, and preparing a report, as required by Texas Commission for Environmental Quality. Consultant may also be responsible for continuing groundwater sampling events at selected landfills;
5. Provide assistance with the evaluation and maintenance of existing leachate and methane collection systems at select landfills. Consultant will be responsible for making recommendations, acquiring equipment, and supplying labor to ensure systems are operating effectively and efficiently;
6. Provide assistance with air monitoring, permitting and reporting to meet Title V permit requirements and New Source Performance Standard (NSPS) requirements and permit rule requirements or other air quality requirements at selected sites. These services may include air monitoring, landfill gas sampling and analyses, or landfill gas surface monitoring;
7. Develop work plans including Sampling Plans, Quality Assurance/Quality Control Plans, and Health and Safety Plans;
8. Development of a waste management plan to address health and safety issues and waste management procedures associated with impacted projects;
9. Conduct Risk Assessments;
10. Design, implement, and manage site specific remediation plans;
11. Operate and maintain all remediation equipment, including any equipment and labor as may be required such as pumps, compressors, gas analyzers, bailers, and other testing equipment;
12. Obtain site closure on projects pertaining to impacted soil, water, air and other affected media in accordance with federal, state and local requirements;
13. Perform Environmental Compliance auditing;
14. Provide Engineering, design, surveying and over-sight of construction activities required at selected sites;
15. Provide regulatory coordination and other services, as required;
16. Assist with the preparation, inspection, updates and certification of Spill Prevention Control and Countermeasures SPCC plans for City facilities in accordance with the Oil Pollution Prevention Regulation under the authority of the federal Clean Water Act requirements; Consultant will also provide assistance with design and implementation of SPCC containment measures required for

facility compliance;

17. Prepare monthly reports describing tasks completed, tasks anticipated to be completed and expenses incurred for all assigned projects;
18. Conduct Phase I Environmental Site Assessments (ESAs) on proposed or existing City property or right-of-way (ROW) in accordance with ASTM E1527-05 or USEPA All Appropriate Inquiry (AAI) requirements;
19. Conduct Phase I ESAs for Brownfield sites in accordance with AAI (All Appropriate Inquiry) requirements. Prepare Quality Assurance Project Plans (QAPP) for phase II subsurface investigation reports. Prepare and submit reports with findings and recommendations associated with investigative results;
20. Perform Phase II ESAs which may include: performing subsurface investigations on proposed or existing City property or ROW to identify the presence or absence of potential contaminants, and to delineate the vertical and horizontal extent of contamination, if encountered. The investigation must be conducted in accordance with federal, state and local requirements and applicable industry standards to afford the City Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) protections as an innocent land owner, contiguous property owner, or a bona fide prospective purchaser;
21. Drilling below ground to depths of 30 feet and collecting samples of soil and groundwater. Some bores may be converted into permanent monitoring wells for groundwater monitoring purposes;
22. Analyze sample results by an authorized independent laboratory and render conclusions and recommendations;
23. Phase III ESAs are the remediation phase and may involve, but not be limited to waste management plans, environmental closure by statistical analysis and risk-based assessment and additional investigation;
24. Oversight of a remediation activity by others to ensure that work is being conducted appropriately, which may include preparing, managing and signing waste manifests;
25. Assist with the preparation, inspection and certification of Storm Water Pollution Prevention Plans (SWP3) plans for City facilities in accordance with the Texas Pollutant Discharge Elimination System (TPDES) under the authority of the federal Clean Water Act requirements.
26. Prepare SWP3 records, conduct storm water sampling and monitoring, and assist with BMP design and implementation;
27. Conduct employee and tenant SWP3 training;
28. Monitoring, reporting, removal, and site closure of above ground and underground tanks, in accordance with applicable Texas Commission on Environmental Quality (TCEQ) requirements. This includes possible Leaking Petroleum Storage Tanks (LPST) assessments.
29. Perform asbestos surveys, collect bulk samples and analyze sample results by an authorized independent laboratory per state requirements.
30. Perform asbestos oversight of asbestos abatement activities and perform required air monitoring activities.
31. Draft responses to regulatory agencies, local governments, or others on behalf of the San Antonio Airport System to inquiries regarding environmental issues.
32. Investigate and recommend structural controls as necessary, to control discharge velocities to the extent necessary to prevent the destruction by erosion of the natural physical characteristics of receiving waters.

B. Specific requirements as to location, conditions, procedures, and associated services pertaining to a Project shall be negotiated and set out in individual Finalized Work Plans, which Finalized Work Plans are incorporated into and shall become a part of this Agreement. The City does not guarantee a particular volume of work or a minimum number of units of work.

C. Consultant shall provide environmental remediation services and all associated services required for Consultant to provide such environmental remediation services pursuant to this Agreement, as further defined in individual Finalized Work Plans.

D. All services and work performed under this Agreement must be conducted in a professional manner and in full conformance with the provisions of this Agreement and be in compliance with all Federal Aviation Administration, Texas Commission for Environmental Quality, and U.S. Environmental Protection Agency requirements.

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

**EXHIBIT 2**  
**FEE SCHEDULE**

## EXHIBIT 3

### 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 4

### 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 Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

1.1 Compliance with Regulations. The Consultant 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 Consultant, 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 Consultant 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 Consultant 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 Consultant of the Consultant'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 Consultant 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 Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant 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 Consultant'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 Consultant under the contract until the Consultant complies,  
and/or
- b. Cancellation, termination, or suspension of the contract, in whole or in part.

1.6 Incorporation of Provisions. The Consultant 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 Consultant 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 Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the Sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the Consultant 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 Consultant 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 Consultants, this provision binds the Consultants 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 Consultant or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

3.2 Prompt Payment (§26.29) - The Consultant 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 Consultant receives from the City. The Consultant 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 Consultant, 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 Consultant 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 Consultant shall maintain an acceptable cost accounting system. The Consultant 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 Consultant which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Consultant 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

Any violation or breach of terms of this contract on the part of the Consultant 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

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 Consultant 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 Consultant or subcontractor who is unable to certify to the above. If the Consultant 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 Consultant 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 Consultant may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

8.4 The Consultant shall provide immediate written notice to the sponsor if the Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant's obligations, the Sponsor 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 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 Consultant 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 Consultant, 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 Consultant or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this contract.

**EXHIBIT 5**

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



**City of San Antonio**

**As of 6/2/08**

Reimbursable Expense Policy  
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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 Consultants and contractors (both of which shall hereinafter be referred to as "Consultant") 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 Consultants 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 Consultant shall be responsible for ensuring that all subcontractor or sub-consultants adhere to this Policy.

The Consultant 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. Consultant is expected to exercise good judgment in the type and amount of expense incurred.

For travel expenses, Consultant is expected to plan in advance of the departure date to obtain lowest cost fares, rates and accommodations. In addition, Consultant 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 Consultant employee leaves their home, office, or other authorized point and ends on the day and time the Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant while engaged in activities outside the scope of the Consultant 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 Consultant 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**

Consultant 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. Consultant 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), Consultant 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 Consultant's expense will not require advance approval. However, Consultant 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 Consultant had not extended the trip.

In determining if an extended stay will result in any cost savings, Consultant 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 Consultant. 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 Consultant, reimbursement of transportation costs by private automobile shall not exceed the documented amount of airfare Consultant would have paid had the Consultant traveled by air.

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

When a Consultant 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. Consultant 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 Consultant, 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 Consultant 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 Consultant 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 Consultant 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. Consultants 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 Consultant 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. Consultants 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.

Consultant 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 Consultant employee, reimbursement is limited to the cost that would have been incurred had the Consultant been traveling alone.

**3.2 Non-Commercial Lodging**

Consultant 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 Consultant 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 Consultant 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 Consultant’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 Consultant committing to any extended lodging arrangement.

**4. Relocation Assistance**

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**4.1 Requirements**

Relocation assistance is generally not provided to Consultants. However, in rare Aviation Department agreements, relocation of key personnel may be allowed for long term capital projects. The expenses related to the Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant's employee and the employee leaves the Consultant's employment before six (6) months of relocation, the City will be entitled to recovery the full amount of the relocation assistance paid from Consultant.

### **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-Consultants.
- 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 Consultant 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 Consultant being reimbursed.
- Name of Consultant 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.