

AN ORDINANCE 2013-04-04-0217

APPROVING ON-CALL PROFESSIONAL SERVICES AGREEMENTS WITH WESTON SOLUTIONS, INC. AND FREESE AND NICHOLS, INC. EACH IN AN AMOUNT NOT TO EXCEED \$1,750,000.00 FOR ON-CALL ENVIRONMENTAL CONSULTING AND ENGINEERING SERVICES FOR THE SAN ANTONIO AIRPORT SYSTEM.

* * * * *

WHEREAS, these on-call environmental consulting and engineering firms will provide services to include environmental assessments, subsurface investigations, asbestos sampling, air monitoring, well installation, well plugging and engineering design to support construction projects and property acquisitions at San Antonio International and Stinson Municipal Airports; and

WHEREAS, these services are needed to comply with requirements of the Texas Commission for Environmental Quality and the U.S. Environmental Protection Agency for various environmental projects at San Antonio International Airport and Stinson Municipal Airport; and

WHEREAS, the City released a Request for Qualifications to firms for these services in December 2012 with ten firms responding, and based upon the review of the proposals by an evaluation committee composed of representatives from the Aviation and Solid Waste Management Departments, the Committee concluded that the proposals from Weston Solutions, Inc. and Freese and Nichols, Inc. were the most qualified respondents and therefore recommend the award of on-call Professional Services Agreements to these firms; and

WHEREAS, it is necessary to authorize the execution of two Professional Services Agreement each with a three year term with a two one-year extension options in an amount not to exceed \$1,750,000.00 with Weston Solutions, Inc. and Freese and Nichols, Inc. for this work; **NOW THEREFORE:**

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

SECTION 1. The award of Professional Services Agreements to Weston Solutions, Inc. and Freese and Nichols, Inc. each in an amount not to exceed \$1,750,000.00 for environmental consulting and engineering services for the San Antonio Airport System is hereby approved. The City Manager, or her designee, is authorized to execute the Agreements, copies of which are set out in **Exhibit 1**.

SECTION 2. Funding for this Ordinance will be identified when work orders are issued. If funding for any work orders is not previously appropriated, funding will be identified and appropriated through subsequent City Council action. Payment is limited to the amounts budgeted in the Operating and/or Capital Budget funding sources identified. All expenditures will comply with Operating and/or Capital Budgets for current and future fiscal years.

SECTION 3. Payment not to exceed \$1,750,000.00 is authorized to be encumbered with a purchase order and made payable to Weston Solutions, Inc. for environmental consulting and engineering services.

SECTION 4. Payment not to exceed \$1,750,000.00 is authorized to be encumbered with a purchase order and made payable to Freese and Nichols, Inc. for environmental consulting and engineering services.

SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 6. This Ordinance shall be effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED and APPROVED this 4th day of April, 2013.

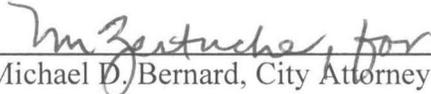

M A Y O R
Julián Castro

ATTEST:

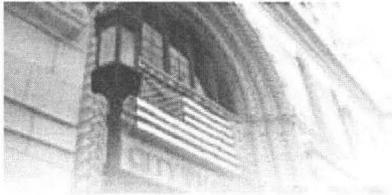


Leticia M. Vacek, City Clerk

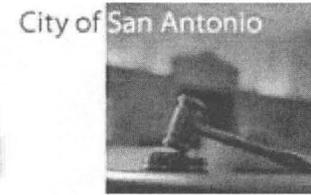
APPROVED AS TO FORM:



Michael D. Bernard, City Attorney



Request for
**COUNCIL
ACTION**



Agenda Voting Results - 7

Name:	5, 6, 7, 9, 10, 13, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32						
Date:	04/04/2013						
Time:	09:32:37 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing two professional service agreements in the amount not to exceed \$1,750,000.00 each with Weston Solutions, Inc. and Freese and Nichols, Inc. to provide on-call environmental consulting and engineering services for the Aviation Department on an as-needed basis for a three-year term with a two one-year renewal options. [Ed Belmares, Assistant City Manager; Frank Miller, Director, Aviation]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x			x	
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

EXHIBIT 1

**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

**Weston Solutions, Inc.
70 NE Loop 410, Suite 600
San Antonio, TX 78216**

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.

INDEX

<u>ARTICLE NO.</u>	<u>TITLE</u>	<u>PAGE</u>
ARTICLE I.	DEFINITIONS.....	2
ARTICLE II.	COMPENSATION	3
ARTICLE III.	METHOD OF PAYMENT	4
ARTICLE IV.	SCOPE OF SERVICES	5
ARTICLE V.	TIME AND PERIOD OF SERVICE.....	6
ARTICLE VI.	PROJECT SERVICES REQUEST PROCESS.....	7
ARTICLE VII.	COORDINATION WITH THE CITY	8
ARTICLE VIII.	REVISIONS TO DOCUMENTS	8
ARTICLE IX.	OWNERSHIP OF DOCUMENTS.....	8
ARTICLE X.	TERMINATION AND/OR SUSPENSION	9
ARTICLE XI.	CONSULTANT'S WARRANTY	13
ARTICLE XII.	DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS.....	13
ARTICLE XIII.	ASSIGNMENT OR TRANSFER OF INTEREST	14
ARTICLE XIV.	INSURANCE REQUIREMENTS	15
ARTICLE XV.	INDEMNIFICATION	17
ARTICLE XVI.	CLAIMS AND DISPUTES	18
ARTICLE XVII.	SEVERABILITY	19
ARTICLE XVIII.	INTEREST IN CITY CONTRACTS PROHIBITED.....	20
ARTICLE XIX.	CONFLICTS OF INTEREST DISCLOSURE	20
ARTICLE XX.	STANDARD OF CARE/LICENSEING.....	21
ARTICLE XXI.	RIGHT OF REVIEW AND AUDIT	21
ARTICLE XXII.	ENTIRE AGREEMENT	21
ARTICLE XXIII.	VENUE.	21
ARTICLE XXIV.	NOTICES	22
ARTICLE XXV.	INDEPENDENT CONTRACTOR.....	22
ARTICLE XXVI.	CAPTIONS.....	22
ARTICLE XXVII.	CONTRACT CONSTRUCTION.....	22
ARTICLE XXVIII.	EQUAL EMPLOYMENT OPPORTUNITY.....	23
ARTICLE XXIX.	AMENDMENTS.....	23
ARTICLE XXX.	FAMILIARITY WITH LAW AND CONTRACT TERMS.....	23
ARTICLE XXXI.	SUCCESSORS.....	23
ARTICLE XXXII.	NON-WAIVER OF PERFORMANCE.....	23
ARTICLE XXXIII.	RELATIONSHIP OF THE PARTIES.....	24
ARTICLE XXXIV.	CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED	

DEBARMENT, AND OTHER RESPONSIBILITY MATTERS.....	24
ARTICLE XXXV. AIRPORT SECURITY.....	24
EXHIBIT 1 SCOPE OF SERVICES	26
EXHIBIT 2 FEE SCHEDULE.....	29
EXHIBIT 3 DBE COMPLIANCE AND ENFORCEMENT.....	33
EXHIBIT 4 FEDERAL CONTRACT PROVISIONS.....	34
EXHIBIT 5 CONSULTANT AND CONTRACTOR TRAVEL, LIVING & RELOCATION EXPENSE POLICY.....	38

**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 Weston Solutions, Inc. 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 ONE MILLION, SEVEN HUNDRED FIFTY THOUSAND AND NO/100 CENTS (\$1,750,000.00)**. 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:

TYPE	AMOUNTS
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: <ul style="list-style-type: none"> 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 of \$1,000,000 per occurrence(\$5,000,000 if AOA access is required)</u>
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:

Weston Solutions, Inc.
Attention: Joe Lewandowski
70 NE Loop 410, Suite 600
San Antonio, Texas 78216

**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

WESTON SOLUTIONS, INC.

Ed Belmares
Assistant City Manager


Name

APPROVED AS TO FORM:

VICE PRESIDENT
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

Fee Schedule

Item #1: Laboratory Rates

PARAMETER ⁽¹⁾	EPA or TCEQ Approved Method	Proposed Alternate Approved Method	Soil/Water Cost (\$)/per sample	Air Cost (\$)/per sample	Bldg/ Const. Material (\$)/per sample	Add \$ for Rush (3 Business Days)	Add \$ for Rush (1 Business Day)
Organics ⁽⁸⁾							
Total Petroleum Hydrocarbon	1005		\$60.00			\$30.00	\$60.00
BTEX	8021 B	8260 B	\$50.00			\$25.00	\$50.00
MTBE	8021 B	8260 B	\$50.00			\$25.00	\$50.00
Polyaromatic Hydrocarbons	8270		\$150.00			\$75.00	\$150.00
Total Organic Carbon	9060	9060/415.1	\$60.00			\$30.00	\$60.00
Total Oil & Grease	415.1	9071 B/1664 A	\$58.50			\$29.25	\$58.50
TCLP Volatiles	1311/8260		\$179.00			\$89.50	\$179.00
Volatiles	8260 B		\$144.00			\$72.00	\$144.00
Total Organic Halogens	EPA 450 1/SW 9020	9020	\$120.00			\$60.00	\$120.00
Semi-Volatiles	8270 C		\$252.00			\$126.00	\$252.00
TCLP Semi Volatiles	1311/8270		\$287.00			\$143.50	\$287.00
Properties ⁽⁸⁾							
Total Organic Halides	9020		\$120.00			\$60.00	\$120.00
Reactivity, Corrosivity, Ignitability	1010		\$95.00			\$47.50	\$95.00
Cyanide, Sulfide	9010/9030		\$35.00			\$17.50	\$35.00
Corrosive	9040		\$35.00			\$17.50	\$35.00
Flash Point	1010/1020		\$35.00			\$17.50	\$35.00
Polychlorinated Biphenyls	8082		\$80.00			\$40.00	\$80.00
Biochemical Oxygen Demand	405.1	SM5210 B	\$42.00			\$21.00	\$42.00
Chemical Oxygen Demand	410.4	H6000	\$42.00			\$21.00	\$42.00
Total Suspended Solids	160.2	SM2540 D	\$25.00			\$12.50	\$25.00
Metals ⁽⁸⁾							
Total Metals (RCRA 8)	6010		\$140.00			\$70.00	\$140.00
Total Metals (RCRA 11)	6010		\$185.00			\$92.50	\$185.00
Individual Metal Analyses			\$20.00			\$10.00	\$20.00
TCLP Metals (RCRA 8)	1311/6010/7470		\$175.00			\$87.50	\$175.00
TCLP Metals (RCRA 11)	6010/7471		\$200.00			\$100.00	\$200.00
Individual Metal Analyses (TCLP)		1311/6010	\$60.00			\$30.00	\$60.00
Hexavalent Chromium		7196 A/-1235-85	\$40.00			\$20.00	\$40.00
Pesticides/Herbicides ⁽⁸⁾							
Pesticides/ Organo Phosphorus	8141 A		\$325.00			\$162.50	\$325.00
Herbicides/ Organo Chlorine	8081 A/8151		\$225.00			\$112.50	\$225.00
TCLP Pesticides	1311/8081 A		\$160.00			\$80.00	\$160.00
TCLP Herbicides	1311/8151		\$260.00			\$130.00	\$260.00

PARAMETER ⁽¹⁾	EPA or TCEQ Approved Method	Proposed Alternate Approved Method	Soil/Water Cost (\$)/per sample	Air Cost (\$)/per sample	Bldg./ Const. Material (\$)/per sample	Add \$ for Rush (3 Business Days)	Add \$ for Rush (1 Business Day)
Ambient Air							
Volatile Organics ⁽²⁾	T0-2	TO-17		\$225.00		\$112.50	⁽³⁾
Volatile Organics ⁽²⁾	T0-3			\$150.00		\$75.00	⁽³⁾
Particulate Matter ⁽²⁾	PM-10			\$20.00		\$10.00	\$20.00
Heavy Metals ⁽²⁾	N7300			\$200.00		\$100.00	\$200.00
BTEX ⁽²⁾	N 1501			\$50.00		\$25.00	\$50.00
Volatiles ⁽²⁾	T014			\$200.00		\$100.00	⁽³⁾
Pesticides ⁽²⁾	T04			\$225.00		\$112.50	⁽³⁾
Mold Analysis (Tape lift) ⁽⁴⁾		FNG 150		\$55.00		\$0.00	\$10.00
Mold Analysis (air-o-cell) ⁽⁴⁾		SAP 710		\$65.00		\$0.00	\$10.00
Lead ⁽⁵⁾							
Paint chips		6010 B			\$25.00	\$12.50	\$25.00
Air Analysis		OSHA 1125G/6010 B		\$25.00		\$12.50	\$25.00
Asbestos ⁽⁶⁾							
PLM Analysis (Bulk)		600/R-93/116			\$6.30	\$0.00	\$2.52
PCM Analysis* (Bulk) (\$ per hr)		NIOSH 7400		\$66.66		\$0.00	\$33.33

⁽¹⁾ All tests above shall be inclusive of collection and analysis.

⁽²⁾ Laboratory analyses is proposed to be conducted by EMSL, Inc. or Pure Earth Environmental (mold) that will be contracted by Argus Environmental Consultants, Inc.

⁽³⁾ Laboratory analyses is proposed to be conducted by San Antonio Testing Laboratory, Inc. that will be contracted by WESTON.

⁽⁴⁾ 1 day turn around time is not possible for these analytes and the minimum will be 3 to 5 business days.

WESTON NOTES:

1). The rush fees provided is only the additional surcharge. The total price will be the rate provided for the "Soil/Water Cost (\$)/per sample" plus rush fee.

Item #2: WESTON Labor

Job Title	Rate
Project Principal	\$67.53
Project Manager	\$51.60
Project Engineer, PE	\$44.72
Project Geologist, PG	\$34.57
Project Scientist	\$35.00
Regulatory Specialist	\$56.78
Staff Engineer	\$26.53
Staff Geologist	\$23.06
Staff Scientist	\$23.68
Technician	\$19.11
Sr. Technician	\$27.33
Drafts Person/CADD/GIS	\$32.25
Subcontractor Coordinator	\$33.86
Financial Administrator	\$26.81
Clerical	\$20.33

WESTON NOTES:

1). Raw rates provided above for WESTON employees will be burdened with an overhead rate of 133.24% and profit of 10%

ARGUS Labor

Job Title	Rate
Project Principal (CIH)	\$30.94
Project Manager	\$30.08
Technician	\$23.69
Drafts Person/CADD	\$24.31
Clerical	\$15.80
Financial Administrator	\$19.45

ARGUS NOTES:

1). Raw rates provided above for ARGUS employees will be burdened with an overhead rate of 91.5% and profit of 10%.

Survey & Appraisal Services Labor

Job Title	Rate
Registered Professional Surveyor	\$50.00
2 Person Survey Crew	\$42.25
3 Person Survey Crew	\$55.75
Survey-CADD	\$25.00
Clerical & Research	\$20.00
G.P.S. Processing	\$25.00

SURVEY & APPRAISAL SERVICES NOTES:

1). Raw rates provided above for Survey & Appraisal Services employees will be burdened with an overhead rate of 122% and profit of 10%.

Weston Solutions, Inc.

March 12, 2013

Overhead

Consultant's overhead rate shall be 133.24% on labor. Consultant's overhead rates will not be allowed on work performed by sub-consultants.

Sub-consultant Argus' overhead rate shall be 91.5% on labor.

Sub-consultant Survey & Appraisal Services' overhead rate shall be 122% on labor.

Profit

The profit rate shall be 10%. The profit rate shall be applied to the sum of Consultant's or sub-consultant's direct labor costs, as applicable, and the overhead allowed on such direct labor costs. Consultant shall not be allowed overhead or profit on the overhead or profit received by sub-consultant

Item #3: Direct Charges & Miscellaneous

Equipment & Miscellaneous Charges	Rate
PID/day	\$100.00
FID/day	\$120.00
Low Flow Sample Pump/day	\$165.00
Interface Probe/day	\$80.00
Electric Submersible Pump/day	\$140.00
Gas and Oxygen Monitor/day	\$105.00
pH and Conductivity Meter/day	\$60.00
GeoProbe/half day	\$1,200.00
GeoProbe/full day	\$1,900.00
GeoProbe Mobilization/each	\$225.00
Soil Boring (per foot) H.S.A	\$20.00
Drilling Rig Mobilization/each	\$250.00
Survey Equipment/day	\$150.00
2" Monitoring Well Installation/ ft.	\$30.00
Well Pad Installation/each	\$300.00

NOTE: In the event that the City requires additional tests to be performed or other types of equipment, for which no rates are set out in the Agreement, Consultant and City shall negotiate and mutually agree upon pricing for such tests or equipment in writing prior to Consultant performing such test.

WESTON NOTES:

- 1). Other direct charge expenses not listed above will be provided at current catalog or subcontractor rates, plus shipping as applicable.
- 2). Vehicle charges incurred will be the current federal mileage rate at the time of each task order on this contract. In the event that a rental truck is required to conduct field activities, the associated expenses will be invoiced at cost.

Consultant shall not be allowed overhead or profit on the overhead or profit received by sub-consultant.

**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

Freese and Nichols, Inc.
4055 International Plaza, Suite 200
Fort Worth, TX 76109

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.

INDEX

<u>ARTICLE NO.</u>	<u>TITLE</u>	<u>PAGE</u>
ARTICLE I.	DEFINITIONS.....	2
ARTICLE II.	COMPENSATION	3
ARTICLE III.	METHOD OF PAYMENT	4
ARTICLE IV.	SCOPE OF SERVICES	5
ARTICLE V.	TIME AND PERIOD OF SERVICE	6
ARTICLE VI.	PROJECT SERVICES REQUEST PROCESS.....	7
ARTICLE VII.	COORDINATION WITH THE CITY	8
ARTICLE VIII.	REVISIONS TO DOCUMENTS	8
ARTICLE IX.	OWNERSHIP OF DOCUMENTS.....	8
ARTICLE X.	TERMINATION AND/OR SUSPENSION	9
ARTICLE XI.	CONSULTANT'S WARRANTY	13
ARTICLE XII.	DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS.....	13
ARTICLE XIII.	ASSIGNMENT OR TRANSFER OF INTEREST	14
ARTICLE XIV.	INSURANCE REQUIREMENTS	15
ARTICLE XV.	INDEMNIFICATION	17
ARTICLE XVI.	CLAIMS AND DISPUTES	18
ARTICLE XVII.	SEVERABILITY	19
ARTICLE XVIII.	INTEREST IN CITY CONTRACTS PROHIBITED	20
ARTICLE XIX.	CONFLICTS OF INTEREST DISCLOSURE	20
ARTICLE XX.	STANDARD OF CARE/LICENSING.....	21
ARTICLE XXI.	RIGHT OF REVIEW AND AUDIT	21
ARTICLE XXII.	ENTIRE AGREEMENT	21
ARTICLE XXIII.	VENUE.....	21
ARTICLE XXIV.	NOTICES	22
ARTICLE XXV.	INDEPENDENT CONTRACTOR.....	22
ARTICLE XXVI.	CAPTIONS.....	22
ARTICLE XXVII.	CONTRACT CONSTRUCTION.....	22
ARTICLE XXVIII.	EQUAL EMPLOYMENT OPPORTUNITY.....	23
ARTICLE XXIX.	AMENDMENTS.....	23
ARTICLE XXX.	FAMILIARITY WITH LAW AND CONTRACT TERMS.....	23
ARTICLE XXXI.	SUCCESSORS.....	23
ARTICLE XXXII.	NON-WAIVER OF PERFORMANCE.....	23
ARTICLE XXXIII.	RELATIONSHIP OF THE PARTIES.....	24
ARTICLE XXXIV.	CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED	

DEBARMENT, AND OTHER RESPONSIBILITY MATTERS.....	24
ARTICLE XXXV. AIRPORT SECURITY.....	24
EXHIBIT 1 SCOPE OF SERVICES	26
EXHIBIT 2 FEE SCHEDULE.....	29
EXHIBIT 3 DBE COMPLIANCE AND ENFORCEMENT.....	37
EXHIBIT 4 FEDERAL CONTRACT PROVISIONS.....	38
EXHIBIT 5 CONSULTANT AND CONTRACTOR TRAVEL, LIVING & RELOCATION EXPENSE POLICY.....	42

**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 Freese and Nichols, Inc. 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 ONE MILLION, SEVEN HUNDRED FIFTY THOUSAND AND NO/100 CENTS (\$1,750,000.00)**. 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 Contractor 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:

TYPE	AMOUNTS
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:	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
a. Premises operations	
b. Independent Contractors	
c. Products/completed operations	
d. Personal Injury	
e. Contractual Liability	
f. Damage to property rented by you	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:

Freese and Nichols, Inc.
Attention: Richard Kelley
4040 Broadway
San Antonio, TX 78209

**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

FREESE AND NICHOLS, INC.

Ed Belmares
Assistant City Manager



Name ROBERT W. CHAMBERS

APPROVED AS TO FORM:

VICE PRESIDENT

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

Freese and Nichols, Inc.
February 24, 2013

Fee Schedule

Item #1: Laboratory Rates - See worksheet for San Antonio Testing Laboratory (Soil & Water), Benchmark Environmental Consulting (Ambient Air, Paint, Asbestos)

PARAMETER ⁽¹⁾	EPA or ICEQ Approved Method	Soil/Water Cost (\$/per sample)	Air Cost (\$/per sample)	Bldg./ Const. Material (\$/per sample)	Add \$ for Rush
Organics					
Total Petroleum Hydrocarbon	1005				
BTEX	8021 B				
MTBE	8021 B				
Polyaromatic Hydrocarbons	8270				
Total Organic Carbon	9060				
Total Oil & Grease	415.1				
TCLP Volatiles	1311/8260				
Volatiles	8260 B				
Total Organic Halogens	EPA 450.1/ SW 9020				
Semi-Volatiles	8270 C				
TCLP Semi Volatiles	1311/8270				
Properties					
Total Organic Halides	9020				
Reactivity, Corrosivity, Ignitability	1010				
Cyanide, Sulfide	9010/ 9030				
Corrosive	9040				
Flash Point	1010/ 1020				
Polychlorinated Biphenyls	8082				
Biochemical Oxygen Demand	405.1				
Chemical Oxygen Demand	410.4				
Total Suspended Solids	160.2				
Metals					
Total Metals (RCRA 9)	6010				
Total Metals (RCRA 11)	6010				
Individual Metal Analyses					
TCLP Metals (RCRA 9)	1311/ 6010/ 7470				
TCLP Metals (RCRA 11)	6010/ 7471				
Individual Metal Analyses (TCLP)					
Hexavalent Chromium					
Pesticides/Herbicides					
Pesticides/ Organo Phosphorus	8141 A				
Herbicides/ Organo Chlorine	8081 A/ 8151				
TCLP Pesticides	1311/ 8081 A				
TCLP Herbicides	1311/ 8151				
Ambient Air					
Volatile Organics	T0-2				
Volatile Organics	T0-3				
Particulate Matter	PM-10				
Heavy Metals	N7300				
BTEX	N 1501				
Volatiles	T014				
Pesticides	T04				
Mold Analysis (Tape lift)					
Mold Analysis (air-6-cell)					
Lead					
Paint chips					
Air Analysis					
Asbestos					
PLM Analysis (Bulk)					
PCM Analysis* (Bulk) (\$ per hr)					

⁽¹⁾ All tests above shall be inclusive of collection and analysis.

Item #2: Labor - Fivese and Nichols, Inc.

Job Title	Rate ¹
Project Principal	\$76.10
Project Manager	\$58.34
Senior Engineer, PE	\$58.31
Project Engineer, PE	\$43.68
Project Geologist, PG	\$39.83
Project Surveyor, RPS	N/A - See Sub
Senior Scientist	\$61.71
Project Scientist	\$40.38
Project Hygienist	N/A - See Sub
Regulatory Specialist	\$43.06
Staff Engineer	\$32.39
Staff Geologist	\$32.31
Staff Scientist	\$24.11
Staff Hygienist	N/A - See Sub
Technician	N/A - See Sub
Sr. Technician	N/A - See Sub
Drafts Person/CADD/GIS	\$27.07
Archaeologist	N/A - See Sub
Clerical	\$22.54

¹ FNI rates shown are avg. of employee rates likely to be assigned to task orders. Loaded rates will be calculated using total overhead rate of 178.16% based on independent audit and profit of 10%.

Item #3: Direct Charges & Miscellaneous

Equipment & Miscellaneous Charges	Rate	
Black & White Report Printing (per page)	\$0.10	
Color Report Printing (per page)	\$0.35	
Report Binding (per book)	\$5.75	
FID/ day		
0 - 5,000 ppm	\$55.00	
0 - 15,000 ppm	\$60.00	
FID/ day	\$75.00	
Low Flow Air Sample Pump/ day	\$20.00	
Groundwater Sampling Equipment (per day)		
Cyclone - 25 feet	\$93.00	
Mini-Typhoon - 40 feet	\$113.00	
Typhoon - 50 feet	\$163.00	
Tempest Twister - 60 feet	\$179.00	
Mini-Monsoon - 70 feet	\$203.00	
Mega-Typhoon - 80 feet	\$205.00	
Tsunami - 100 feet	\$400.00	
Monsoon - 120 feet	\$455.00	
Hurricane - 150 feet	\$539.00	
Mega-Monsoon - 200 feet	\$599.00	
Interface probe/ day		
100 feet	\$40.00	
200 feet	\$45.00	
300 feet	\$50.00	
Electric submersible pump/ day		
SS Monsoon - 120 feet	\$85.00	
SS Hurricane - 150 feet	\$90.00	
SS Mega-Monsoon - 200	\$95.00	
Gas and Oxygen monitor/ day	\$45.00	
Generator/ day		
Honda EU2000i - 2000 watts	\$35.00	
Honda EU3000i - 3000 watts	\$45.00	
Honda EB6500 - 6500 watts	\$65.00	
pH and conductivity meter/ day	\$25.00	
XRF rental/ day	\$500.00	
GeoProbe/ 1/2 day	Vortex	
GeoProbe/ full day	Vortex	
GeoProbe Mobilization	Vortex	
Drilling Rsp/ 1/2 day	Vortex	
Drilling Rsp/ full day	Vortex	
Drilling Rig Mobilization	Vortex	
Disposal of IDW/ drum		
Class I	\$80.00	Waste Management Covet Gardens
Class II	\$50.00	Waste Management Covet Gardens
Disposal of hazardous IDW/ drum		
Metals	\$125.00	US Ecology
Organics	\$300.00	US Ecology
Trimble GPS Unit (sub meter accuracy)	\$50.00	
2" Monitoring Well Installation/ ft.	Vortex	
Well Pad Installation	Vortex	

NOTE: In the event that the City requires additional tests to be performed or other types of equipment, for which no rates are set out in the Agreement, Consultant and City shall negotiate and mutually agree upon pricing for such tests or equipment in writing prior to Consultant performing such test.

Overhead

Consultant's overhead rate shall be 178.16% on labor. Consultant's overhead rates will not be allowed on work performed by sub-consultants.

Profit

Consultant's profit rate shall be 10%. Consultant's profit rate shall be applied to the sum of Consultant's direct labor costs and the overhead allowed on the direct labor costs.

Consultant shall not be allowed overhead or profit on the overhead or profit received by sub-consultant.

SUB CONSULTANTS' FEE SCHEDULES

Vortex Drilling, Inc.
February 24, 2013

Fee Schedule

Item #1: Laboratory Rates

PARAMETER ⁽¹⁾	EPA or ICEQ Approved Method	Soil/Water Cost (\$/per sample)	Air Cost (\$/per sample)	Bldg/ Const. Material (\$/per sample)	Add \$ for Rush
Organics					
Total Petroleum Hydrocarbon	1005				
BTEX	8021 B				
MTBE	8021 B				
Polyaromatic Hydrocarbons	8270				
Total Organic Carbon	9060				
Total Oil & Grease	415.1				
TCLP Volatiles	1311/8260				
Volatiles	8260 B				
Total Organic Halogens	EPA 450 1/ SW 9020				
Semi-Volatiles	8270 C				
TCLP Semi Volatiles	1311/8270				
Properties					
Total Organic Halides	9020				
Reactivity, Corrosivity, Ignitability	1010				
Cyanide, Sulfide	9010/ 9030				
Corrosive	9040				
Flash Point	1010/ 1020				
Polychlorinated Biphenyls	8082				
Biochemical Oxygen Demand	405.1				
Chemical Oxygen Demand	410.4				
Total Suspended Solids	160.2				
Metals					
Total Metals (RCRA 8)	6010				
Total Metals (RCRA 11)	6010				
Individual Metal Analyses					
TCLP Metals (RCRA 8)	1311/ 6010/ 7470				
TCLP Metals (RCRA 11)	6010/ 7471				
Individual Metal Analyses (TCLP)					
Hexavalent Chromium					
Pesticides/Herbicides					
Pesticides/ Organo Phosphorus	8141 A				
Herbicides/ Organo Chlorine	8081 A/ 8151				
TCLP Pesticides	1311/ 8081 A				
TCLP Herbicides	1311/ 8151				
Ambient Air					
Volatile Organics	T0-2				
Volatile Organics	T0-3				
Particulate Matter	PM-10				
Heavy Metals	N7300				
BTEX	N 1501				
Volatiles	T014				
Pesticides	T04				
Mold Analysis (Tape lift)					
Mold Analysis (air-o-cell)					
Lead					
Paint chips					
Air Analysis					
Asbestos					
PLM Analysis (Bulk)					
PCM Analysis* (Bulk) (\$ per hr)					

⁽¹⁾ All tests above shall be inclusive of collection and analysis.

Item #2: Labor

Job Title	Rate
Project Principal	
Project Manager	
Project Engineer, PE	
Project Geologist, PG	
Project Surveyor, RPS	
Project Scientist	
Project Hygienist	
Regulatory Specialist	
Staff Engineer	
Staff Geologist	
Staff Scientist	
Staff Hygienist	
Technician	
Sr. Technician	
Drafts Person/CADD/GIS	
Archaeologist	
Clerical	

Item #3: Direct Charges & Miscellaneous

Equipment & Miscellaneous Charges	Rate
PID/ day	
FID/ day	
Low Flow sample pump/ day	
Interface probe/ day	
Electric submersible pump/ day	
Gas and Oxygen monitor/ day	
Generator/ day	
pH and conductivity meter/ day	
XRF rental/ day	
GeoProbe/ 1/2 day	\$1,200.00
GeoProbe/ full day	\$1,900.00
GeoProbe Mobilization	\$225.00
Conventional Drilling (i.e. HSA) - Soil Boring (per foot)	\$20.00
Decontamination / day	\$175.00
Drum Moving / trip	\$250.00
Drums / each	\$45.00
2" Well Completion / foot	\$20.00
1" Well Completion / foot	\$11.00
Drilling Rtg Mobilization	\$250.00
JetVac Services	\$1,500.00
Disposal of IDW/ drum	
Disposal of hazardous IDW/ drum	
Survey Equipment/ day	
Well Pad Installation	\$250.00

NOTE: In the event that the City requires additional tests to be performed or other types of equipment, for which no rates are set out in the Agreement, Consultant and City shall negotiate and mutually agree upon pricing for such tests or equipment in writing prior to Consultant performing such test.

**Poznecki-Camarillo
February 24, 2013**

Fee Schedule

Item #1: Laboratory Rates

PARAMETER ⁽¹⁾	EPA or TCEQ Approved Method	Soil/Water Cost (\$)/per sample	Air Cost (\$)/per sample	Bldg./Const. Material (\$)/per sample	Add \$ for Rush
Organics					
Total Petroleum Hydrocarbon	1005				
BTEX	8021 B				
MTBE	8021 B				
Polyaromatic Hydrocarbons	8270				
Total Organic Carbon	9060				
Total Oil & Grease	415.1				
TCLP Volatiles	1311/8260				
Volatiles	8260 B				
Total Organic Halogens	EPA 450.1/ SW 9020				
Semi-Volatiles	8270 C				
TCLP Semi Volatiles	1311/8270				
Properties					
Total Organic Halides	9020				
Reactivity, Corrosivity, Ignitability	1010				
Cyanide, Sulfide	9010/ 9030				
Corrosive	9040				
Flash Point	1010/ 1020				
Polychlorinated Biphenyls	8082				
Biochemical Oxygen Demand	405.1				
Chemical Oxygen Demand	410.4				
Total Suspended Solids	160.2				
Metals					
Total Metals (RCRA 8)	6010				
Total Metals (RCRA 11)	6010				
Individual Metal Analyses					
TCLP Metals (RCRA 8)	1311/ 6010/ 7470				
TCLP Metals (RCRA 11)	6010/ 7471				
Individual Metal Analyses (TCLP)					
Hexavalent Chromium					
Pesticides/Herbicides					
Pesticides/ Organo Phosphorus	8141 A				
Herbicides/ Organo Chlorine	8081 A/ 8151				
TCLP Pesticides	1311/ 8081 A				
TCLP Herbicides	1311/ 8151				
Ambient Air					
Volatile Organics	T0-2				
Volatile Organics	T0-3				
Particulate Matter	PM-10				
Heavy Metals	N7300				
BTEX	N 1501				
Volatiles	T014				
Pesticides	T04				
Mold Analysis (Tape lift)					
Mold Analysis (air-o-cell)					
Lead					
Paint chips					
Air Analysis					
Asbestos					
PLM Analysis (Bulk)					
PCM Analysis* (Bulk) (\$ per hr)					

⁽¹⁾ All tests above shall be inclusive of collection and analysis

Item #2: Labor

Job Title	Rate
Project Principal	
Project Manager	
Project Engineer, PE	
Project Geologist, PG	
Project Surveyor, RPS	\$180.00
Survey Manager	\$160.00
Three Man Survey Crew	\$150.00
Four Man Crew	\$175.00
Project Scientist	
Project Hygienist	
Regulatory Specialist	
Staff Engineer	
Staff Geologist	
Staff Scientist	
Staff Hygienist	
Technician	\$92.00
Sr. Technician	\$119.00
Drafts Person/CADD/GIS	\$80.00
Archaeologist	
Clerical	\$50.00

¹ Poznecki-Camarillo rates shown are calculated on basis of (1) avg. of employee rates likely to be assigned to task orders, (2) Total overhead rate of 175.94% based on independent audit, and profit of 10%.

Item #3: Direct Charges & Miscellaneous

Equipment & Miscellaneous Charges	Rate
PID/ day	
FID/ day	
Low Flow sample pump/ day	
Interface probe/ day	
Electric submersible pump/ day	
Gas and Oxygen monitor/ day	
Generator/ day	
pH and conductivity meter/ day	
XRF rental/ day	
GeoProbe/ 1/2 day	
GeoProbe/ full day	
GeoProbe Mobilization	
Drilling Rig/ 1/2 day	
Drilling Rig/ full day	
Drilling Rig Mobilization	
Disposal of IDW/ drum	
Disposal of hazardous IDW/ drum	
Survey Equipment/ day (GPS)	\$200.00
2" Monitoring Well Installation/ ft.	
Well Pad Installation	

NOTE: In the event that the City requires additional tests to be performed or other types of equipment, for which no rates are set out in the Agreement, Consultant and City shall negotiate and mutually agree upon pricing for such tests or equipment in writing prior to Consultant performing such test.

Overhead

Sub-consultant Poznecki-Camarillo's overhead rate shall be 175.94% on labor. Consultant's overhead rates will not be allowed on work performed by sub-consultants.

Profit

Sub-consultant Poznecki-Camarillo's profit rate shall be 10%. Sub-consultant's profit rate shall be applied to the sum of sub-consultant's direct labor costs and the overhead allowed on such direct labor costs.

Benchmark Environmental Consultants
February 24, 2013

Fee Schedule

Item #1: Laboratory Rates

PARAMETER ⁰¹	EPA or TCFQ Approved Method	Soil/Water Cost (\$/per sample)	Air Cost (\$/per sample)	Bldg/ Const. Material (\$/per sample)	Add \$ for Rush
Organics					
Total Petroleum Hydrocarbon	1005				
BTEX	8021 B				
MTBE	8021 B				
Polyaromatic Hydrocarbons	8270				
Total Organic Carbon	9060				
Total Oil & Grease	415.1				
TCLP Volatiles	1311/8260				
Volatiles	8260 B				
Total Organic Halogens	EPA 450.1/ SW 9020				
Semi-Volatiles	8270 C				
TCLP Semi Volatiles	1311/8270				
Properties					
Total Organic Halides	9020				
Reactivity, Corrosivity, Ignitability	1010				
Cyanide, Sulfide	9010/ 9030				
Corrosive	9040				
Flash Point	1010/ 1020				
Polychlorinated Biphenyls	8082				
Biochemical Oxygen Demand	405.1				
Chemical Oxygen Demand	410.4				
Total Suspended Solids	160.2				
Metals					
Total Metals (RCRA 8)	6010				
Total Metals (RCRA 11)	6010				
Individual Metal Analyses					
TCLP Metals (RCRA 8)	1311/ 6010/ 7470				
TCLP Metals (RCRA 11)	6010/ 7471				
Individual Metal Analyses (TCLP)					
Hexavalent Chromium					
Pesticides/Herbicides					
Pesticides/ Organo Phosphorus	8141 A				
Herbicides/ Organo Chlorine	8081 A/ 8151				
TCLP Pesticides	1311/ 8081 A				
TCLP Herbicides	1311/ 8151				
Ambient Air					
Volatile Organics	TO-2		\$295.00		\$600.00
Volatile Organics	TO-3		\$295.00		\$600.00
Particulate Matter	PM-10		\$35.00		\$60.00
Heavy Metals	N7300				
BTEX	N 1501		\$150.00		\$260.00
Volatiles	TO14		\$135.00		\$260.00
Pesticides	TO4				
Mold Analysis (Tape lift)			\$35.00		\$65.00
Mold Analysis (air-o-cell)			\$25.00		\$50.00
Lead					
Paint chips				\$26.00	\$35.00
Air Analysis			\$24.00		\$35.00
Asbestos					
PLM Analysis (Bulk)				\$15.00	\$16.00
PCM Analysis* (Bulk) (\$ per hr)			\$16.00		\$35.00

⁰¹ All tests above shall be inclusive of collection and analysis

Item #2: Labor

Job Title	Rate
Project Principal	\$57.69
Senior Scientist	\$36.93
Project Scientist	\$26.73
Project Hygienist	\$37.50
Staff Scientist	\$16.38
Technician	\$16.18
Drafts Person/CADD/CIS	\$29.57
Archaeologist	\$19.23
Clerical	\$20.66

Benchmark rates shown are avg of employee rates likely to be assigned to task orders. Loaded rates will be calculated on basis of total overhead rate of 155.92% and profit of 10%.

Item #3: Direct Charges & Miscellaneous

Equipment & Miscellaneous Charges	Rate
PI/DJ day	
PI/DV day	
Low Flow sample pump/ day	\$20.00
Interface probe/ day	
Electric submersible pump/ day	
Gas and Oxygen monitor/ day	
Generator/ day	
pH and conductivity meter/ day	
RTU rental/ day	\$500.00
GeoProbe/ 1/2 day	
GeoProbe/ full day	
GeoProbe Mobilization	
Oriling Rig/ 1/2 day	
Oriling Rig/ full day	
Oriling Rig Mobilization	
Disposal of hazardous IDW/ drum	
Disposal of hazardous IDW/ drum	
Survey Equipment/ day	
Monitoring Well Installation/ ft.	
Well Pad Installation	

NOTE: In the event that the City requires additional tests to be performed or other types of equipment for which no rates are set out in the Agreement, Consultant and City shall negotiate and mutually agree upon pricing for such tests or equipment in writing prior to Consultant performing such test.

Overhead

Sub-consultant Benchmark Environmental Consultant's overhead rate on labor shall be 155.92%. Consultant's overhead rates will not be allowed on work performed by sub-consultants.

Profit

Sub-consultant Benchmark Environmental Consultant's profit rate shall be 10%. Sub-consultant's profit rate shall be applied to the sum of sub-consultant's direct labor costs and the overhead allowed on such direct labor costs.