KRH
4/2/15
Item No. 45A

AN ORDINANCE 2015-04-02-0243

AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH THC, INC. IN AN AMOUNT NOT TO EXCEED $4,178,094.00 FOR MANAGEMENT OF THE RESIDENTIAL ACOUSTICAL TREATMENT PROGRAM FOR THE SAN ANTONIO AIRPORT SYSTEM.

* * * * * *

WHEREAS, the Residential Acoustical Treatment Program (the "Program") is an ongoing multi-year program providing acoustical treatment to reduce noise to qualifying homes and multi-family dwellings in aviation noise impacted neighborhoods near the San Antonio International Airport which is 80% federally funded with a 20% City match; and

WHEREAS, the City of San Antonio uses an acoustical treatment consultant to manage the Program including all design, construction, public relations, and legal components; and

WHEREAS, the City received one response to a Request for Qualifications (RFQ) to manage the Program released in October 2014, and based on the evaluation criteria established in the RFQ, an evaluation committee with representatives from the City Manager's Office, Aviation Department and Airport Advisory Commission reviewed the proposal and recommends awarding the professional services agreement to THC, Inc.; and

WHEREAS, it is necessary to authorize the execution of a Professional Services Agreement with a three year term with two one-year options in an amount not to exceed $4,178,094.00 with THC, Inc.; **NOW THEREFORE,**

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

SECTION 1. The City Manager, or her designee, is authorized to execute a Professional Services Agreement with THC, Inc. in an amount not to exceed $4,178,094.00 for management of the Residential Acoustical Treatment Program for the San Antonio Airport System, a copy of which is set out in **Exhibit 1**.

SECTION 2. Payment in an amount not to exceed $4,178,094.00 for a 3 year contract with two one-year extensions, in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00170, Residential Acoustical Treatment Program, is authorized to be encumbered and made payable to THC, Inc., for professional services.

SECTION 3. 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.

KRH
4/2/15
Item No. 45A

SECTION 4. 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 2nd day of April, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

for Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Agenda Item:	**45A (in consent vote: 45A, 45B)**
Date:	04/02/2015
Time:	03:04:34 PM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a professional services agreement for the management of the Residential Acoustical Treatment Program with THC, Inc. in an amount not-to-exceed $4,178,094.00 commencing on April 19, 2015.
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Trevino	District 1	x					
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				x
Joe Krier	District 9		x				
Michael Gallagher	District 10		x			x	

Exhibit 1

PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS

COUNTY OF BEXAR

CITY OF SAN ANTONIO

ACOUSTICAL TREATMENT PROGRAM CONSULTANT AT SAN ANTONIO INTERNATIONAL AIRPORT

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

THC, Inc.
1755 North Brown Road
Suite 125
Lawrenceville, GA 30043

a Georgia corporation (hereinafter called "Acoustical Treatment Consultant", "ATC" or "Consultant) City and Consultant hereafter individually referred to as "a Party" and collectively referred to as "the Parties", said Agreement being executed by City pursuant to City Charter, Ordinances and Resolutions of the San Antonio City Council, and by Consultant for management of the Residential Acoustical Treatment Program as set forth herein.

INDEX

ARTICLE NO.	TITLE	PAGE
ARTICLE I	DEFINITIONS	4
ARTICLE II	COMPENSATION	6
ARTICLE III	METHOD OF PAYMENT	6
ARTICLE IV	SCOPE OF SERVICES	8
ARTICLE V	TIME AND PERIOD OF SERVICE	9
ARTICLE VI	DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS	9
ARTICLE VII	COORDINATION WITH CITY	11
ARTICLE VIII	OWNERSHIP OF DOCUMENTS	11
ARTICLE IX	TERMINATION AND/OR SUSPENSION OF SERVICES	12
ARTICLE X	CONSULTANT'S WARRANTY	15
ARTICLE XI	NON-DISCRIMINATION POLICY	15
ARTICLE XII	ASSIGNMENT OR TRANSFER OF INTEREST	15
ARTICLE XIII	INSURANCE REQUIREMENTS	15
ARTICLE XIV	INDEMNIFICATION	18
ARTICLE XV	CLAIMS AND DISPUTES	20
ARTICLE XVI	SEVERABILITY	22
ARTICLE XVII	INTEREST IN CITY CONTRACTS PROHIBITED	22
ARTICLE XVII	CONFLICTS OF INTEREST DISCLOSURE	23
ARTICLE XIX	STANDARD OF CARE/LICENSING	23
ARTICLE XX	RIGHT OF REVIEW AND AUDIT	23
ARTICLE XXI	ENTIRE AGREEMENT	24
ARTICLE XXII	VENUE	24
ARTICLE XXIII	NOTICES	24
ARTICLE XXIV	INDEPENDENT CONTRACTOR	25
ARTICLE XXV	CAPTIONS	25
ARTICLE XXVI	ATTORNEY FEES	25
EXHIBIT 1	SCOPE OF SERVICES	26
EXHIBIT 2	FEE SCHEDULE	463
EXHIBIT 3	DBE COMPLIANCE AND ENFORCEMENT	46
EXHIBIT 4	FEDERALLY REQUIRED CONTRACT LANGUAGE	48

EXHIBIT 5 **CONSULTANT & CONTRACTOR REIMBURSABLE EXPENSE POLICY** **58**

I. DEFINITIONS

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

1.1 "Acoustical Treatment Consultant" or "ATC" means THC, Inc. and its officers, partners, employees, agents and representatives, and all sub-consultants, if any, as well as all other persons or entities for which ATC is legally responsible that will manage Program in accordance with the terms of this Agreement.

1.2 "Acoustical Treatment Design Package" means the documents created by the Acoustical Design Team (architect, mechanical and electrical engineer and ventilation technician) which define the work to be performed to meet the noise reduction goals as set forth by the FAA. The Acoustical Treatment Design Package includes a summary of all window, door, attic insulation, ventilation, mechanical / electrical / plumbing modifications necessary to treat the home. For the purposes of pre-qualified Construction Contractors, this document is referred to as the "Scope of Work".

1.3 "Architect's Estimate" means the estimated cost of construction labor for the acoustical treatments ("Scope of Work").

1.4 "Avigation Easement" means the legal document signed by participating Homeowners which grants to the City of San Antonio the "right of over-flight" for the free and unobstructed passage of aircraft across the Property which lies at or above one hundred (100) feet above ground level (airspace).

1.5 "Bid Cycle" means a monthly grouping of a defined number of eligible homes, along with the associated timelines of all activities necessary to complete the 7-month acoustical treatment process (from Homeowner Orientation through construction completion).

1.6 "Bid Package" means the documents used by the Construction Contractor for bidding purposes. The Bid Package consists of: a) bidder's checklist; b) bid form and bidder's certificate; c) DBE Good Faith Effort Plan for Federally Funded Projects; d) DBE Letter of Intent for Federally Funded Projects; and e) DBE Subcontractor Compliance Plan.

1.7 "Block Grouping Prioritization Methodology" means an orderly strategy for bringing eligible homes into the Acoustical Treatment Program, giving priority to residences within higher noise contour levels. This methodology, approved by the FAA, ensures equitable treatment among eligible homes and allows for efficient implementation of the program.

1.8 "CCMS" means City's Contract Management System whereby payments made by Consultants to, and confirmed by, Sub-Consultants, pursuant to this Project, are entered by Consultants and Sub-Consultants and which are monitored by City for compliance.

1.9 "City" means the City of San Antonio, Texas.

1.10 "Construction Contract" means the agreement between ATC and the Construction Contractor for the performance of the "Scope of Work" at each individual Project home for the awarded bid amount.

1.11 "Construction Contractor(s)" means the business entities which enter into construction contracts with ATC for the construction of Residential Acoustical Treatment Projects, either through the use of the contractor's own forces or through general contractor's management of subcontractors and trade contractors.

1.12 "Consultant" shall mean "Acoustical Treatment Consultant" or "ATC".

1.13 "Disadvantaged Business Enterprise" or "DBE" means disadvantaged business enterprise as defined under 49 CFR Part 26.

1.14 "Day" means calendar day unless specifically referred to otherwise.

1.15 "Design Review and Inspection Team" or "DRIT" means the City's third party contractor that will review and inspect work performed for the Acoustical Treatment Design Packages developed by ATC and their sub-consultants.

1.16 "Director" means the City's Aviation Director, or his duly authorized representative.

1.17 "Homeowner" means the property owner of a single private residence, a grouping of residences or a qualifying multifamily residential complex that is participating in the Program.

1.18 "Homeowner Work Agreement" means the legal agreement between participating Homeowner and ATC which outlines the acoustical treatment project to be completed and each parties' responsibilities. The agreement includes, as an exhibit, the Acoustical Treatment Design Package.

1.19 "Master Program Schedule" means the Master Program Schedule as developed and maintained by ATC pursuant to this Agreement which shall be updated to include new phases using critical path methodology to coordinate and integrate Project design and construction work in a reasonable and expeditious manner.

1.20 "Minor Pre-Existing Deficiency" means an existing structural, ventilation, code, moisture, mold and environmental, construction obstruction and/or health and safety deficiency(ies) at a Property requiring official written documentation before the initiation of the bid and construction phases in an effort to protect the liability of the City.

1.21 "PRIME*Link*" means City's internet-based, project management software for approving Applications for Compensation.

1.22 "Program" means the Residential Acoustical Treatment Program.

1.23 "Project" means the design, acoustical treatment and other work and services performed at or in support of a particular Property pursuant to this Agreement and the Program.

1.24 "Property" means a single private residence, a grouping of residences or a qualifying multifamily residential complex participating in the Program.

1.25 "Scope of Work" means the set of documents which define the work to be performed at a Property and used by the Construction Contractor for bid development. For the purposes of the Homeowner, this document is called the "Acoustical Treatment Design Package".

1.26 "Severe Pre-Existing Deficiency" means a condition whereby the severity of structural, code, moisture, mold, environmental, ventilation, construction obstruction and/or health/safety deficiencies prohibit the continuation of the design process until all required corrections have been made.

1.27 "Sub-Consultant(s)" means sub-consultant(s) to Consultant providing professional services pursuant to this Agreement.

1.28 "Work" means the management, architectural, design, construction or other services that ATC shall perform pursuant to this Agreement.

II. COMPENSATION

2.1 The total compensation for all services included in this Agreement and in the Scope of Services for this Agreement shall not exceed **FOUR MILLION, ONE HUNDRED SEVENTY-EIGHT THOUSAND, NINETY-FOUR AND 00/100 U.S. DOLLARS, ($4,178,094.00).** The amount to be paid to Consultant, including authorized adjustments, is the total amount payable by City to Consultant for performance of the Services under this Agreement without further amendment. Consultant shall submit a budget for the initial term of this Agreement within 30 days of the effective date of this Agreement for City's review and approval. ATC shall notify the City when costs incurred to date equal 80% of the maximum limitation set forth in this **Section 2.1** or any established funding level.

2.2 The City shall reimburse ATC for allowable expenses at the lesser of the actual cost incurred or the amount specified in the Consultant and Contractor Reimbursable Expense Policy, attached hereto as **Exhibit 5.** Notwithstanding the foregoing, routine, daily personal employee vehicle travel expenses of ATC's San Antonio-area employees to and from the Program office(s) and Project(s) are non-reimbursable. Any ATC personal employee vehicle travel expenses while on official Program business traveling from Project to Project, Program office-to-office, or in support of a Project are reimbursable to the extent that they exceed an employee's daily commute to and from his residence and the Program office and are in accordance with the Consultant and Contractor Reimbursable Expense Policy.

III. METHOD OF PAYMENT

3.1 Payments to Consultant shall be in the amount shown on the invoices 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 or which are not within the Scope of Services set out in **Article IV**.

3.2 ATC shall enter all Consultant invoices, itemized and containing all required backup, in PRIME*Link*. By the twentieth day of each month, Consultant shall enter invoices for Program

administration and Sub-Consultant services in PRIME*Link*. Twice every month, by the 10th and 25th day respectively, ATC shall enter invoices for construction work in *PRIMELink* to include American Institute of Architects form G702 Application and Certification for Payment.

3.3 Any charges submitted by ATC must be substantiated by documentation. Reimbursable and direct expenses will be disallowed if supporting documentation is inaccurate or inadequate.

3.4 Undisputed amounts invoiced shall be paid within thirty (30) days of the date of City's receipt of the invoice. Any paid invoice that requires correction due to an under or overpayment by City will be corrected in the invoice immediately following the discovery of the error.

3.5 A disputed payment will be initially referred to senior management of both entities for attempted informal resolution, and if unsuccessful, then pursued in accordance with Article 9, "Dispute Resolution."

3.6 Consultant shall, within ten (10) calendar days following receipt of compensation from City, pay all bills for services performed and furnished by Sub-consultants, in connection with the Program and the performance of the work, and shall provide City with evidence of such payment through City's electronic Contract Management System ("CCMS"). 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 Sub-consultant and its services. Consultant shall include a provision in each of its sub-agreements imposing the same payment obligations on the Sub-consultants as are applicable to Consultant hereunder. If Consultant has failed to make payment promptly to the Sub-consultant 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 except in the event of a valid dispute between Consultant and that Sub-consultant.

3.7 Consultant warrants that, upon submittal of an invoice, all Services for which invoices have been previously 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.

3.8 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, because of:

3.8.1 delays in the performance of Consultant's work;

3.8.2 third-party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to City is provided by Consultant;

3.8.3 failure of Consultant to make payments properly to Sub-consultants or vendors for labor, materials or equipment;

3.8.4 reasonable evidence that Consultant's work cannot be completed for the amount unpaid under this Agreement;

3.8.5 damage to City; or

3.8.6 persistent failure by Consultant to carry out the performance of its services in accordance with this Agreement

3.9 When the above reasons for withholding are removed or remedied by Consultant, compensation of the amount withheld shall be made within a reasonable time. City shall not be deemed in default by reason of withholding compensation as provided for in this **Article III.**

3.10 In the event of any dispute(s) between the Parties, regarding the amount properly compensable for any Phase 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 herein for the resolution of such dispute. In the event Consultant does not initiate and follow the claims procedures provided in this Agreement in a timely manner and as required by the terms thereof, any such claim shall be waived.

3.11 City shall make payment of all sums due Consultant not more than thirty (30) calendar days after Consultant's execution and delivery of an accurate and correct invoice.

3.12 Consultant agrees to maintain adequate books, payrolls and records satisfactory to City in connection with any and all Work and 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 or the termination of this Agreement, unless there is an ongoing dispute under the contract; then, such retention period shall extend until final resolution of the 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.

3.13 Consultant shall adhere to the Aviation Department Consultant and Contractor Reimbursable Expense Policy, attached hereto as **Exhibit 5**, governing expenditures.

3.14 City shall not allow a markup on any reimbursable expenses and shall reimburse only actual costs incurred which are in compliance with the Aviation Department Consultant and Contractor Reimbursable Expense Policy.

IV. SCOPE OF SERVICES

4.1 Consultant in consideration for the compensation herein provided. shall render the required Program services, as more specifically outlined in **Exhibit 1, Scope of Services**, and include in its Scope of Services all associated services required for Consultant to provide such services, pursuant to this Agreement, and any and all services which normally would be required by law or common due diligent practice.

4.2 Consultant shall complete all services within the Scope of Services in compliance with

this Agreement, and agrees to provide sufficient qualified staff necessary, in order not to delay or disrupt the progress of the Program. Time is of the essence.

4.3 All work performed and reports and deliverables required pursuant to this Agreement shall be in compliance with all laws, rules, regulations and FAA Advisory Circulars, if applicable.

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

4.5 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 service, as requested by City. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees, Sub-consultants or subcontractors of Consultant.

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 its execution by both Parties and shall remain in full force and effect for a period of three (3) years, 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. 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 services under **Article IV** herein in a prompt and continuous manner, so as to not delay the development of services and so as to not delay the Program, in accordance with the schedules approved by City. City shall perform its obligations of review and approval in a prompt and continuous manner so as to not delay the project.

5.3 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) calendar days from the occurrence of any 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.

VI. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

6.1 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.

6.2 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.

6.3 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.

6.4 The Consultant shall not discriminate on the basis of race, creed, color, national origin, sex, age or disability 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.

6.5 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.

6.6 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.

6.7 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.

6.8 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.

6.9 The Consultant shall comply with the DBE Compliance and Enforcement Policy attached hereto as Exhibit 3.

6.10 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.

VII. COORDINATION WITH CITY

7.1 Consultant shall hold periodic conferences with City through the term of the Agreement. The Program 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 designing the Program, all existing Program documentation to include Program handbooks, forms, guidelines and schedules in City's possession at no cost to Consultant. However, any and all such information shall remain the property of City and shall be returned by Consultant to City upon termination or the completion of the Project or if instructed to do so by the Director.

7.2 The Director or his/her representative shall act on behalf of City, with respect to the services to be performed under this Agreement. The Director 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 shall promptly 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.

VIII. OWNERSHIP OF DOCUMENTS

8.1 All documents, including 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 hold the right to make and retain copies of drawings, estimates, specifications and all other documents and data. Any reuse, without specific written verification or adaptation by Consultant, shall be at City's sole risk and without liability or legal exposure to Consultant.

8.2 Consultant acknowledges and agrees that upon payment 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 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.

8.3 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 consent of City and shall be returned intact to City upon termination or completion of this Agreement or if instructed to do so by the Director.

8.4 Consultant hereby assigns all statutory and common law copyrights to any copyrightable work that, in part or in whole, was produced from this Agreement is the property of City, including all equitable rights. No reports, maps, 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, unless otherwise specified herein). Consultant shall, at its own expense, defend all suits or proceedings instituted against City and pay any award of damages or loss resulting from an injunction against City, insofar as the same are 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.

8.5 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.

IX. TERMINATION AND/OR SUSPENSION OF SERVICES

9.1 City's Right to Terminate for Default

9.1.1 This Agreement may be terminated by City for substantial failure by Consultant to perform, through no fault of City, in accordance with the terms of this Agreement and a failure to cure as provided in this **Article IX.**

9.1.2 City must issue a written and signed Notice of Termination, citing this **Paragraph 9.1.2**, to Consultant declaring Consultant to be in default and stating the reason(s) why it is in default. Upon receipt of such written Notice of Default, Consultant shall have a period of ten (10) calendar days to cure any failure to perform under this Agreement. Upon the completion of said ten-day period, commencing upon receipt of Notice of Termination, if Consultant has not cured any failure to perform, such termination shall

become effective without further written notice.

9.2 Right of City to Terminate. City reserves the right to terminate this Agreement, for reasons other than substantial failure by Consultant to perform, by issuing a signed Notice of Termination, citing this **Paragraph 9.2**, which shall take effect on the twentieth (20th) calendar day following receipt of said notice or upon the scheduled completion date of the performance phase in which Consultant then currently is working, whichever effective termination date occurs first.

9.3 Right of City to Suspend Giving Rise to Right of Consultant to Terminate

9.3.1 City reserves the right to suspend this Agreement for the convenience of City by issuing a written and signed Notice of Suspension, citing this paragraph, which shall outline the reasons for the suspension and the expected duration of the suspension, but such expected duration shall, in no way, guarantee what the total number of calendar days of suspension shall occur. Such suspension shall take effect immediately upon receipt of said Notice of Suspension by the Consultant.

9.3.2 Consultant hereby is given the right to terminate this Agreement in the event such suspension extends for a period in excess of one hundred twenty (120) calendar days. Consultant may exercise this right to terminate by issuing a signed, written Notice of Termination, citing this paragraph, to City after the expiration of one hundred 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.

9.4 Procedures Consultant to follow upon Receipt of Notice of Termination

9.4.1 Upon receipt of a Notice of Termination and prior to the effective date of termination, unless the notice otherwise directs or Consultant immediately takes action to cure a failure to perform under the cure period set out hereinabove, Consultant immediately shall begin the phase-out and the discontinuance of all services, in connection with the performance of this Agreement, and shall proceed promptly to cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) calendar days after receipt of such Notice of Termination, unless Consultant successfully has cured a failure to perform, Consultant shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination. City retains the option to grant an extension to the time period for submittal of such statement.

9.4.2 Copies of all completed or partially completed and work prepared under this Agreement, prior to the effective date of termination, shall be delivered to City, in the form requested by City, as a pre-condition to final payment.

9.4.3 Upon the above conditions being met, absent any reason why City may be compelled to withhold fees, City promptly shall pay Consultant that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less any previous payments of the fee.

9.4.4 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.

9.4.5 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.

9.5 Procedures Consultant to Follow upon Receipt of Notice of Suspension

9.5.1 Upon receipt of written Notice of Suspension, which date also shall be the effective date of the suspension, Consultant shall, unless the Notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and promptly shall proceed to suspend all existing orders and contracts, insofar as such orders and contracts are chargeable to this Agreement.

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

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

9.5.4 In the event that Consultant exercises the right to terminate one hundred twenty (120) calendar days after the effective suspension date, within thirty (30) calendar days after receipt by City of Consultant's Notice of Termination, Consultant promptly shall cancel all existing orders and contracts, insofar as such orders and contracts are chargeable to this Agreement, and shall submit the above referenced statement showing, in detail, the services performed under this Agreement prior to the effective date of suspension.

9.5.5 Any documents prepared in association with this Agreement shall be delivered to City as a pre-condition to final payment.

9.5.6 Upon the above conditions being met, absent any reason why City may be compelled to withhold fees, City promptly shall pay Consultant that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less any previous payments of the fee.

9.6 City, as a public entity, has a duty to document the expenditure of public funds.

9.7 Consultant acknowledges this duty imposed upon City. Consultant further acknowledges that the failure of Consultant substantially to 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.

X. 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 a 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 IX** herein.

XI. NON-DISCRIMINATION POLICY

As a Party to a contract with City, Consultant understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. Consultant represents and warrants that it has complied with City's Non-Discrimination Policy throughout the course of this solicitation and Agreement award process and shall continue to comply with said Non-Discrimination Policy. As part of said compliance, Consultant shall adhere to City's *Non-Discrimination Policy* in the solicitation, selection, hiring or commercial treatment of Sub-Consultants, vendors, suppliers or commercial customers, nor shall Consultant retaliate against any person for reporting instances of such discrimination. Consultant shall provide equal opportunity for Sub-Consultants, vendors and suppliers to participate in all of its public sector and private sector sub-consulting and supply opportunities. Consultant acknowledges that it understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Consultant from participating in City contracts, or other sanctions. This **Article XI** is not enforceable by or for the benefit of, nor creates any obligation to, any third party. Consultant shall incorporate this clause into each of its Sub-Consultant and supplier agreements entered into, pursuant to City agreements/contracts.

XII. ASSIGNMENT OR TRANSFER OF INTEREST

Consultant shall not assign or transfer Consultant's interest in this Agreement without the written consent of City.

XIII. INSURANCE REQUIREMENTS

13.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City's TCI/Contract Services Department, which clearly shall be labeled "Acoustical Treatment Program Consultant at San Antonio International Airport" Project in the Description of Operations block of the Certificate. The Certificate(s) shall be completed and signed by an Agent. If City so requests, said Certificates also shall be accompanied by an affidavit signed by Consultant, attesting that the furnished Certificate(s) represent Consultant's current coverages. City shall not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to 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 TCI Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

13.2 City reserves the right to review the insurance requirements of this **Article XIII** during the effective period of this Agreement and any extension or renewal hereof and to request the modification of insurance coverage and 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 shall City allow modification whereby City may incur increased risk.

13.3 Consultant's financial integrity is of interest to City; therefore, subject to Consultant's obligation to maintain reasonable deductibles in such amounts as are approved by Consultant's insurance companies, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement and any extension hereof at Consultant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. These listed insurance limits are standard limits for all City projects. If a project does not justify these standard limits of insurance coverages, Consultant may request a review of the City's insurance requirements, to be considered on a project-by-project basis:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/$500,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c.Products/Completed Operations d. Personal Injury e. Contractual Liability	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages to the extent caused by any negligent act, error, or omission in performance of professional services.

City may request, and without expense to City, to inspect copies of Consultant's policies and endorsements as they apply to the limits and forms required by City.

13.4 Consultant agrees to require, by written contract, that all Sub-Consultants and/or Subcontractors providing goods or services hereunder obtain the same insurance coverage required of Consultant herein, and provide to Consultant a certificate of insurance and endorsement that names Consultant and City as additional insureds. Consultant shall maintain said certificate and endorsement prior to the commencement of any work by any Sub-Consultant and/or Subcontractor and through the period referenced in **Section 13.3.5** above. 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.

13.5 If City requests a copy/copies of an insurance policy, Consultant shall promptly comply and Consultant shall mark those portions of the policy, if any, Consultant regards as confidential. In the event a third party makes an Open Records Request, under the Texas Freedom of Information Act or other public information law asking to view or copy Consultant's policy, City shall submit the received request, along with Consultant's information, to the Texas Attorney General (hereafter referred to as "AG") for an opinion regarding the release of Consultant's policy information. Consultant and City agree that City shall be bound by the AG opinion/decision. Similarly, Consultant agrees and accepts City shall provide all Consultant information pursuant to a court order or a litigation discovery rule requiring or directing City to disclose any of Consultant's information.

13.6 Consultant agrees, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions, to the extent permitted by policy provisions, terms and conditions:

13.6.1 Name City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement or within policy provisions, terms or conditions, with respect to operations and activities of, or on behalf of, the named insured performed under contract with City, with the exception of the workers' compensation and professional liability policies;

13.6.2 Provide for an endorsement that the "other insurance" clause shall not apply to the

City of San Antonio where City is an additional insured shown on the policy, as allowed by respective policy provisions, terms and conditions;

13.6.3 Workers' compensation, employers' liability, general liability and automobile liability policies shall provide a waiver of subrogation in favor of City; and

13.6.4 Where allowed by respective policy provisions, terms and conditions, provide thirty (30) calendar days advance written notice to City of any cancellation or non-renewal or material change in coverage, any change in policy limits by endorsement and not less than ten (10) calendar days advance notice for nonpayment of premium.

13.7 Within ten (10) calendar days of notice to Consultant of a 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.

13.8 In addition to any other remedies 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, City shall have the right to order Consultant to stop work hereunder until Consultant demonstrates compliance with the requirements hereof.

13.9 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 Sub-Consultants' and/or Subcontractors' performance of the work covered under this Agreement.

13.10 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.

13.11 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 City shall be limited to insurance coverage provided..

13.12 Consultant and any Sub-Consultants and/or Subcontractors are responsible for all damage to their own equipment and/or property.

XIV. INDEMNIFICATION

14.1 CONSULTANT FULLY SHALL HOLD HARMLESS AND UNCONDITIONALLY INDEMNIFY, PROTECT AND DEFEND CITY AND ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, VOLUNTEERS, DIRECTORS AND REPRESENTATIVES (HEREAFTER INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS "INDEMNITEE") FROM AND AGAINST ANY AND ALL THIRD PARTY CLAIMS, DEMANDS, ACTIONS, LIABILITIES, LIENS, LOSSES, DAMAGES, COSTS AND

EXPENSES, OF EVERY KIND AND CHARACTER WHATSOEVER, INCLUDING WITHOUT LIMITATION BY ENUMERATION THE AMOUNT OF ANY JUDGMENT, PENALTY, INTEREST, COURT COSTS AND REASONABLE ATTORNEY FEES INCURRED IN CONNECTION WITH THE SAME, OR THE DEFENSE THEREOF, CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED, OR VIOLATIONS OF ANY STATUTE, REGULATION, ORDINANCE OR PROVISION OF THIS AGREEMENT BY CONSULTANT OR ITS AGENT, CONSULTANT UNDER CONTRACT OR ANOTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL WHILE IN THE EXERCISE OF RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. THIS INDEMNIFICATION SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM INDEMNITEE'S NEGLIGENCE OR WILLFUL MISCONDUCT IN INSTANCES WHERE THE NEGLIGENCE OR WILLFUL MISCONDUCT CAUSES PERSONAL INJURY, BODILY INJURY, DEATH OR PROPERTY DAMAGE. IF A COURT OF COMPETENT JURISDICTION FINDS CONSULTANT AND CITY JOINTLY LIABLE, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

14.2 The provisions of this **Article XIV** solely are 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 City in writing within twenty four (24) hours of any claim or demand against City or Consultant known to Consultant related to or arising out of Consultant's activities under this Agreement.

14.3 Intellectual Property Indemnification. Consultant shall protect, indemnify, and defend and/or handle at its own cost and expense any claim or action against City, its elected officials, employees, officers, directors, volunteers and representatives of City, individually or collectively, for infringement of any United States Patent, copyright or similar property right including, but not limited to, misappropriation of trade secrets and any infringement by Consultant and its employee or its Subconsultants or subcontractors and their agents, servants and employees, based on any deliverable or any other materials furnished hereunder by Consultant and used by either City or Consultant within the scope of this Agreement (unless said infringement results directly from Consultant's compliance with City's written standards or specifications). Consultant shall have the sole right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise, unless otherwise mutually agreed upon, expressed in writing and signed by the parties hereto. Consultant agrees to consult with City's attorney during such defense or negotiations and make good faith efforts to avoid any position adverse to the interest of City. City will make available to Consultant any deliverables and/or works made for hire by Consultant necessary to the defense of Consultant against any claim of infringement for the duration of Consultant's legal defense.

14.4 The indemnification obligations under this **Article XIV** shall not be limited in any way by the limits of any insurance coverage or any limitation on the amount or type of damages, compensation or benefits payable by, for or to Consultant or any Subcontractor, supplier or any

other individual or entity under any insurance policy, workers' compensation acts, disability benefit acts or other employee benefits acts.

14.5 The indemnities contained herein shall survive the termination of this Contract for any reason whatsoever.

14.6 Consultant shall, within twenty-one (21) calendar days, advise City in writing of any potential or actual claim or demand against City or Consultant, as the case may be, known to Consultant and related to or arising out of Consultant's activities under this Contract and Consultant shall see to the investigation and defense of such claim or demand at Consultant's sole cost. 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 **Article XIV.**

14.7 City shall have the right to approve defense counsel, which approval shall not be unreasonably withheld, to be retained by Consultant in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Consultant shall retain City-approved defense counsel within ten (10) calendar days of City's written notice that City is invoking its right to Indemnification under this Contract. If Consultant fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf and Consultant shall be liable for all costs incurred by City. City also shall have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

XV. CLAIMS AND DISPUTES

15.1 Definition. A Claim is a demand or assertion by one of the Parties hereto seeking, as a matter of right, adjustment or interpretation of an Agreement's terms, payment of money, or other relief, with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question arising out of or relating to this Agreement. Claims must be initiated by written notice. Every Claim of Consultant, whether for additional compensation or other relief, shall be signed and sworn to by an authorized corporate officer (if Consultant is 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.

15.2 Time Limit on Claims. Claims by Consultant must be initiated in writing to City within ninety (90) calendar days after the occurrence of the event giving rise to such Claim.

15.3 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing, Consultant shall proceed diligently with performance of the Agreement and City shall continue to make payments in accordance with this Agreement.

15.4 Claims for Consequential Damages. Except as otherwise provided in this Agreement, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards shall apply both to claims by Consultant and to claims by City:

15.4.1 No consequential damages shall be allowed; and

15.4.2 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; and

15.4.3 No profit shall be allowed on any damage claim.

15.5 No Waiver of Governmental Immunity. NOTHING IN THIS ARTICLE XV 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.

15.6 Waive Rights to Payment of Attorneys' Fees. Consultant and City expressly agree that, in the event of litigation, both Parties waive rights to payment of attorneys' fee that otherwise might be recoverable pursuant to the Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code Section 271.153, the Prompt Payment Act, common law or any other provision for payment of attorneys' fees.

15.7 Alternative Dispute Resolution.

15.7.1 Continuation of Services Pending Dispute Resolution. 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.

15.7.2 Requirement for Senior Level Negotiations. Before invoking mediation or any other alternative dispute process set forth herein, the Parties 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) calendar days, after a Party delivers a written notice of such dispute, then the Parties shall proceed with the mediation alternative dispute resolution process contained herein. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

15.7.3 Mediation.

15.7.3.1 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.

15.7.3.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) calendar days following the date of the request, except upon agreement of both Parties.

15.7.3.3 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) calendar days following the date of the request for mediation, all conditions precedent in this **Article XIV** shall be deemed to have occurred.

15.7.3.4 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.

XVI. SEVERABILITY

If, for any reason, any one or more Articles and/or paragraphs of this Agreement are held invalid or unenforceable, such invalidity or unenforceability shall not affect, impair or invalidate the remaining Articles and/or paragraphs of this Agreement but shall be confined in its effect to the specific Article, sentences, clauses or parts of this Agreement held invalid or unenforceable, and the invalidity or unenforceability of any Article, 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.

XVII. INTEREST IN CITY CONTRACTS PROHIBITED

17.1 No officer or employee of City shall have a financial interest, directly or indirectly, in any contract 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 Sub-Contracts on City projects.

17.2 Consultant acknowledges that it is informed that the Charter of City 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 City-owned utilities. Consultant's officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

17.2.1 a City officer or employee;

17.2.2 a City officer or employee's parent, child or spouse;

17.2.3 a business entity in which 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

17.2.4 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.

17.3 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 is has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

XVIII. CONFLICTS OF INTEREST DISCLOSURE

18.1 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 shall constitute a violation of City's Ethics Code. To be "associated" in a business venture or business dealings includes:

18.1.1 being in a partnership or joint venture with a City officer or employee;

18.1.2 having a contract with a City officer or employee;

18.1.3 being joint owners of a business with a City officer or employee;

18.1.4 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

18.1.5 having an established business relationship with a City Officer or employee as a client or customer.

XIX. STANDARD OF CARE/LICENSING

19.1 Services provided by Consultant under this Agreement shall 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.

19.2 Consultant shall be represented by personnel with appropriate licensure, registration and/or 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.

XX. RIGHT OF REVIEW AND AUDIT

20.1 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 this Agreement, during the term of this 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 contract, 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.

20.2 City agrees that it shall exercise the right to audit, examine or inspect Consultant's records only during City's 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.

20.3 Consultant shall include this audit clause in any subcontractor, supplier or vendor contract.

XXI. ENTIRE AGREEMENT

This Agreement represents the entire and integrated Agreement between City and Consultant and supersedes all prior negotiations, representations or agreements, either oral or written. This Agreement may be amended only by written instrument signed by both City and Consultant.

XXII. VENUE

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

XXIII. NOTICES

Except as may be provided elsewhere herein, all notices, communications, and reports required or permitted under this Agreement shall personally be 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 otherwise is notified in writing by the other Party of a change of such address. Mailed notices shall be deemed communicated as of five (5) calendar days of mailing.

If intended for City to:	If intended for Consultant, to:
Aviation Department	THC, Inc.
Attention: Assistant Director of	Attention: Joe A. Carroll

Planning & Development 9800 Airport Boulevard San Antonio, Texas 78216	1755 North Brown Road Suite 125 Lawrenceville, GA 30043

XXIV. 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.

XXV. 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.

XXVI. ATTORNEY FEES

The Parties expressly agree that neither Party shall be responsible for payment of attorney's fees pursuant to Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code §271.153, common law or any other provision for payment of attorney's fees. Both Parties expressly waive any claim to attorney's fees should litigation result from any dispute in this Agreement.

Executed on this _____ day of _____, 2015.

CITY OF SAN ANTONIO	**THC, INC.**
_____	**By:** _____
SHERYL SCULLEY **CITY MANAGER**	**PRESIDENT**

APPROVED:

_____

CITY ATTORNEY

EXHIBIT 1

SCOPE OF SERVICES

ATC shall perform the following services:

Administrative Services

ATC shall provide Administrative services during the term of this Agreement including, but not be limited to, the following tasks:

1. Program Management. ATC shall manage the Program including its design, public relations, legal and construction elements and provide all resources necessary for Program implementation in accordance with the City of San Antonio's: a) Residential Acoustical Treatment Program Policies & Procedure Manual (Policy Manual); b) Construction Specification Manual (Construction Manual); and c) ATC Homeowner Handbook and Homeowner Orientation Session presentation, all of which shall be maintained and updated by ATC, as needed to meet FAA requirements or requested by City, for City's approval.

   ATC shall manage the development of design and construction strategies; maintain and update comprehensive management information, control and documentation systems; and provide management for the administration, coordination and completion of the design and construction phases for the Program.

   ATC shall utilize the single parcel bidding method, whereby each Project will represent an independent design-build construction contract, as the basis for management of the Projects to be completed under the Program. The single parcel bidding method is specifically designed to provide maximum attention to participating homes, ensuring superior quality, Homeowner satisfaction, contractor success and program cost efficiencies.

   Per the Program, ATC will treat eligible properties, as determined by the City's third party Program eligibility consultant and the FAA, based on 14 CFR Part 150. Treatment will utilize the established Block Grouping Prioritization Methodology.

   ATC shall develop and monitor an effective system of Program cost control and revise and refine the approved Program budget, incorporate approved changes as they occur and develop cash flow reports and forecasts as needed. ATC also shall identify variances between projected and actual costs and advise the City whenever projected costs will be exceeded.

   ATC will assist City, as requested, with administration, monitoring/reporting and close-out of the Federal grant(s) which fund the Program.

2. Customer Service. Since Acoustical Treatments are provided to private property, ATC shall seek in all ways possible to reduce the potential for negative impacts on property, Homeowners, and City. ATC shall ensure that Program processes are implemented with

Homeowners to enhance the Homeowners' experience with the Program. ATC will pursue 100% Homeowner satisfaction and develop the Program's policies and procedures to maximize Homeowner satisfaction with the Program and the City.

3. Master Program Schedule. ATC shall prepare a Master Program Schedule, in a mutually agreeable format, for each Program Phase. The Master Program Schedule shall be subsequently updated by ATC, as requested by the City or as necessary to maintain control of the Program.

    - Within the Master Program Schedule, each Bid Cycle of design and construction shall proceed continuously through to completion. Except when caused by events beyond ATC's reasonable control, any continued failure of ATC to maintain Program progress in accordance with the Master Program Schedule shall be a breach of this Agreement.

4. The ATC Team. ATC shall provide a team consisting of all ATC personnel, sub-consultants and pre-qualified Construction Contactors necessary to accomplish this Scope of Services. The City and ATC will continuously monitor ATC's team and mutually agree in writing if adjustments to the composition (individuals or firms) of the team are required. Key ATC personnel and subconsultants, as identified in Attachment A to this exhibit, shall not be replaced or reassigned without City's written consent. City's consent, however, shall not be unreasonably withheld. Following such City consent, any replacement of ATC's key personnel or subconsultants must receive City's written approval.

    City retains the right to request replacement, for reasonable cause, of any employee assigned by ATC to the Program. City's decisions in this regard shall not be the basis for any claim for additional compensation by ATC. However, in no event shall City's direction be construed as the City's assumption of ATC's duties to direct, coordinate or manage Program implementation.

    ATC shall provide full-time supervision of ATC's employees. ATC shall manage and monitor the performance of all its Sub-consultants and Construction Contractors. ATC shall ensure that its employees, Sub-consultants and Construction Contractors are qualified to perform their respective functions.

5. Program Outreach. ATC will perform extensive outreach to both potential homeowner participants and potential Construction Contractors.

    a. Homeowner Outreach and Orientation. Based on the Master Program Schedule, ATC will contact all eligible homeowners within an assigned Bid Cycle simultaneously. Upon the identification of homes within a specific phase, a letter will be sent to Homeowners, along with a Residential Acoustical Treatment Program Homeowner brochure and a Program Homeowner selection sheet. Upon receipt of responses from interested participants, a mailing will be sent to the homeowners of each eligible property within an assigned Bid Cycle, inviting them to attend a Homeowner orientation session. The mailing will also contain the House Information Sheet, Homeowner Availability Form and Notice of Participating Property Form to be

completed and returned at the orientation session.

At the orientation session, ATC will provide homeowners with a copy of the Homeowner Handbook and present a Homeowner orientation presentation to provide: a) a complete overview of the Program and its goals, rules, procedures and processes including Bid Cycle timetables and the typical Project timeline; b) an explanation of City and Consultant team organization; c) ATC Contact numbers; d) a description of eligible acoustical treatment modifications; and e) the responsibilities of all the parties involved. In addition, ATC will answer homeowners' questions. Homeowners interested in proceeding with the acoustical treatment process will sign up for a House Inspection Visit.

b. Construction Contractor Outreach. Throughout the term of this Agreement, ATC will conduct outreach to maximize the participation of local general contractors and subcontractors in the Program. The Construction Contractor outreach process will be designed to eventually lead local general contractors to qualification and inclusion in ATC implementation team. ATC will periodically review and refine the contractor outreach brochure and presentation materials. ATC will assist the City with development and placement of Program outreach advertisements in local newspapers, trade publications and with local builders' associations.

At the City's request, ATC will conduct a Contractor Outreach meeting with interested local general contractors. During Contractor Outreach, ATC will provide a complete summary of all Program contractor requirements and expectations to include: i) general contractor qualifications; ii) Program process review; iii) contractor performance requirements; iv) contractor meeting requirements; v) contractor commitment; vi) DBE participation; vii) Program specifications and payment; viii) contractor training requirements.

6. Construction Contractor Participation. ATC shall ensure the following requirements are met in conjunction with Construction Contractor participation in the Program:

a. Pre-Qualification. ATC shall implement a pre-qualification process to determine the eligibility and qualifications of contractors interested in being included on ATC team. The pre-qualification process will include review of application, reference checks and inspection of current work in progress. ATC shall present a list of contractors it deems to be qualified for City's approval. Upon approval, ATC shall conduct training that shall include the following topics: i) Contractor qualification requirements; ii) Contractor performance requirements; iii) Program process; iv) construction specifications; v) homeowner selection process; vi) product showroom and warehouse procedures; vii) Contractor Participation Agreement; viii) bidding process; ix) payment process; and x) notification that certification will not assure receipt of any Project assignments. ATC will enter into General Contractor Participation Agreements only with local general contractors that successfully complete the training. ATC will provide each new Construction Contractor with a construction manual. ATC will maintain the list of qualified Construction Contractors and periodically provide the list to City. ATC will provide on-going Construction Contractor training as a part of the monthly Construction Contractor meeting as

otherwise required herein.

b. Construction Contracts. ATC shall enter into construction contracts with pre-qualified Construction Contractors for construction services and procurement of incidental (non-acoustical) products for each Project. ATC shall select a Construction Contractor for each Project based on both, the lowest, responsive and responsible pre-qualified bid and the Construction Contractor's current workload, scheduling and capability.

c. Prevailing Wage Rate and General Labor Conditions. The provisions of Chapter 2258 of the Texas Government Code, as amended, are expressly made a part of this contract. ATC shall comply with Federal and State law regarding wages to be paid to or hours worked pursuant to this Agreement, including but not limited to the Davis Bacon labor requirements as set out in 29 CFR Part 5.5. Additionally, ATC and all Contractors and subcontractors shall abide by all applicable terms of City ordinance 2008-11-20-1045 governing wage and labor standards and practices, as amended.

d. Construction Contractor Monitoring. ATC will observe, monitor and evaluate the performance of ATP Construction Contractors upon the completion of each Project. Additionally, ATC will hold an evaluation conference with each Construction Contractor at least once per calendar year as a means of communicating strengths, weaknesses and overall performance. Evaluation criteria include, but are not limited to, Construction Contractor's quality of work and adherence to specifications, program policies and procedures and construction schedules. The evaluation shall be used by ATC as a tool for evaluating a Construction Contractor's overall Program performance and potential contract capacity.

e. Construction Contractor Payment. Upon successful Final Inspection of the Project and approval by ATC team, ATC shall pay Construction Contractors one payment for the full amount of the Construction Contract for that Project. Such payment shall be considered full and final payment for all services rendered by subcontractor on that Project and shall constitute a representation by ATC to City, based on ATC's observations at the site, as required herein, that to the best of ATC's knowledge, information and belief, the Construction Contractor completed the Project in accordance with the plans and specifications approved by DRIT and is entitled to payment.

   ATC shall reject Construction Contractor's request for payment upon completion of a Project, to the extent reasonably necessary to protect City, if, in ATC's opinion, the construction work is not conforming to the construction documents approved by DRIT. If ATC is unable to approve payment in the full amount of the application for payment for a Project, ATC shall notify City. ATC may withhold payment because of subsequently discovered evidence from loss for which the Construction Contractor is responsible, including loss resulting from acts and omissions described below:

   i. Defective work not remedied.
   ii. Third party Claims filed or reasonable evidence indicating probable filing of such Claims, for which Construction Contractor is responsible hereunder, unless security acceptable to City is provided by Construction

Contractor.

iii. Failure of Construction Contractor to make payments properly to the subcontractor and/or material providers; or

iv. Reasonable evidence the construction work cannot be completed for the unpaid balance of the Project construction contract sum and Construction Contractor has failed to provide City adequate assurance of its continued performance within a reasonable time after demand.

v. Damage to City or another Construction Contractor.

vi. Persistent failure by Construction Contractor to carry out the Construction work, in accordance with the contract documents.

When the above applicable reasons for withholding payment are removed, payment shall be made to Construction Contractor for amounts previously withheld. City shall not be deemed in default by reason of withholding payment as provided.

7. Program Office/Showroom and Warehouse. ATC shall staff and maintain, for the duration of this Agreement, a combination office/showroom/conference room (hereinafter referred to as "Office") to accommodate meetings with homeowners and to display acoustical products (windows, doors, etc.) for homeowner and Construction Contractor consideration. ATC will maintain, update and expand, as necessary, the showroom space for the display of all current ATP-certified and approved products available to Program participants. In the event ATC loses its office/showroom or warehouse lease, through no fault of ATC, ATC shall propose to City a new office/showroom or warehouse location. City must approve the new office/showroom or warehouse location in writing, which approval shall not be unreasonably withheld. If City approves the new premises, reasonable labor and material costs incurred by ATC in building such new office/showroom/conference room or warehouse will be reimbursable under this Agreement.

   ATC shall staff and maintain, for the duration of this Agreement, an indoor warehouse (hereinafter referred to as "Warehouse") to store the needed inventory of materials (windows, doors, etc.).
   ATC operations described hereunder shall be performed from the Office and Warehouse according to a schedule to be approved by City.

8. Warehouse and Product Inventory Management. ATC shall ensure that only Program certified products which meet all Program requirements are offered to Program participants. ATC shall keep abreast of new product on the market which conform to Program requirements and add qualifying new products to the Program offerings. ATC will pre-approve and certify all ATP products based upon technical review of specifications, shop drawings, architectural details, acoustical laboratory testing data, manufacturer's warranty and customer support and service information. Products must meet quality assurance standards and provide compatibility with the architectural design characteristics of San Antonio homes. ATC shall maintain, and periodically confirm, an accurate inventory of product on hand.

   ATC will ensure that measurements for all specialty products at each Project are accurate and seek competitive bids from all pre-approved manufacturers. For each Project ATC

shall develop a list of long lead items and ensure that such items are ordered, delivered, and installed in a timely fashion, so as not to delay the Project. Product bids will be reviewed and awarded, by issuance of purchase orders, to the vendor providing the lowest, responsive and responsible bid. ATC will accept delivery of all products at Warehouse and will inspect, sort, store and distribute same to Construction Contractors.

9. Program Coordination and Meetings. ATC shall promptly inform City of significant events, concerns, and/or issues which impact the Program and/or Projects. As requested by City, ATC shall communicate with community, stakeholders, and media.

   ATC shall maintain coordination and liaison with appropriate affected organizations such as the FAA, local governments, agencies, utilities and regulatory authorities to eliminate or mitigate negative schedule impacts, as well as to eliminate conflicts among Sub-consultants, and Construction Contractors. ATC also shall establish and implement procedures for coordination among the City, Construction Contractors, and the DRIT.

   ATC shall review comments and reports submitted by the DRIT. ATC will not assume any responsibilities for the accuracy of the technical information contained in said DRIT reports; however, ATC shall be responsible for promptly notifying the City, in writing, of potential areas of concern observed by ATC.

   ATC shall assist the City and its consultants with outside utility coordination that is related to Project planning, scheduling, design and construction activities of the Program.

   As directed by the City, ATC shall provide support related to City Council or relevant committee meetings. ATC shall maintain "on call" status to be available to timely respond to and/or attend meetings with the City staff, City Council, and other Program participants to respond to Program related queries requiring input of a technical nature, including but not limited to Program information, schedule, budget and cost status.

   ATC shall conduct periodic meetings, as requested by the City, to review the Program and the progress being made by ATC (Program Progress Meetings).

   ATC shall conduct monthly Construction Contractors' meetings to communicate program updates, changes and reminders, as well as provide on-going training.

   ATC shall conduct a Construction Contractor interview night one evening each month. The Construction Contractor interview night will provide Homeowners the opportunity to meet ATC's qualified Construction Contractors. During the event, ATC shall ensure that approved Contractor Notebooks and qualifications are available for review by Homeowners. Homeowners will receive brochures which provide specific information about each of the Construction Contractors.

10. Program Records, Reports and Filing. ATC shall record the proceedings of each Program Progress Meeting and each Construction Contractor meeting. ATC shall submit such meeting records, including a sign-in sheet, summary of the action items, the designated responsible party, to the City within two (2) business days of the meeting date. Distribution of these records shall be to a list of recipients designated by the City.

At each Program Progress meeting, ATC shall review: a) Project progress; b) current design and construction issues; c) Program financial status; and d) significant activities, accomplishments, manpower, on-site problems (supported by photographs, as appropriate). ATC shall record the progress of the Project and submit written progress reports to the City including information on each ATC construction contractor's work, the percentage of completion, and the number and amounts of change orders, and ATC shall keep a log available to the City reflecting all such information

ATC shall maintain files of all documents, letters, reports, plans, permits, etc. pertinent to the Program. As requested by City, ATC will provide City with copies of Program and Project documents in the form requested including both paper and electronic file media.

ATC shall secure and maintain copies of the required certificates of insurance and/or insurance policies from the Sub-consultants and Construction Contractors evidencing that the required insurance coverage is in force. ATC shall ensure continuity of coverage and obtain replacement certificates of insurance and/or insurance policies to be maintained in the Program records.

ATC shall develop and implement a Program construction records system to include records of all construction contracts; shop drawings; samples; purchases; materials; equipment; applicable handbooks; governmental, commercial and technical standards and specifications; maintenance and operating manuals and instructions; and any other documents and revisions thereto which arise out of each Project construction contract.

11. Safety. ATC's Construction Contractors will be fully responsible for Project job site safety. To assist with the Construction Contactor safety effort, ATC shall designate a safety representative who will visit Project job sites during construction periods. ATC's safety representative will be responsible for noting any safety concerns and reporting deficiencies to the Construction Contractors' management for correction and compliance. The City will be copied on any correspondence related to safety. City shall have no power or responsibility to formulate ATC and Construction Contractors' safety plan(s) or enforce or modify such safety plan(s).

12. Security. ATC shall perform background checks on all ATC personnel, Sub-consultants, Construction Contractors and Construction Contractors' sub-contractor personnel prior to such personnel being allowed on any Homeowner premises. ATC shall ensure all ATC, Sub-consultants, Construction Contractors, and sub-contractor of any tier, and abatement personnel wear photo identification security badges, issued by ATC in accordance with the Program Policy Manual, at any time that such personnel is present on the Project site. ATC will coordinate, monitor and implement actions in an effort to assure property security provisions related to construction are maintained. ATC shall conduct activities to avoid or mitigate disruption of Homeowner activities.

13. Best Practices. ATC shall investigate and remain current on: a) FAA regulations, policies and procedures for noise abatement; b) the design construction standards, criteria, and guidelines of other noise abatement programs; and c) industry best practices and

innovations and shall recommend Program enhancements to City and implement such recommendations as are approved by City

14. ATC Transition. At the conclusion of this Agreement, ATC shall cooperate with any new ATC, selected by City to assume management of the Program. ATC shall meet with the new ATC, as needed, to discuss the current and planned Bid Cycle, design and construction schedules, tasks for each Work plan, equipment orientation and inventory, dates for officially handing over operations to the new ATC and other related tasks. ATC cooperation with regards to transitioning to any successor ATC shall include ATC's assistance with the assignment of Warehouse and Office leases to the successor ATC.

15. Use of Approved Documents. ATC will develop forms, brochures, contracts, presentations, specifications and other written documents in furtherance of the Program. Such written documents shall be presented to the City for approval prior to implementation. Any changes/modifications to existing documents require prior City approval.

16. Sub-consultant Selection, Oversight and Payment. ATC shall procure Sub-consultant services in accordance with federal, state, local procurement and solicitation processes. ATC shall monitor Sub-consultants quality control. Upon City's reasonable request, ATC shall provide additional information about the Sub-consultants.

    ATC is responsible for meeting the Master Program Schedule and individual Project schedules.

    ATC shall review and verify Sub-consultant invoices and recommend payment by the City.

    ATC shall review any Sub-consultant's request for additional fees and advise City on the appropriateness thereof.

17. Legal Services. ATC shall: a) prepare and secure Avigation Easements and related legal documents from Homeowners and lenders, b) secure property title commitments prior to Acoustical Treatment design package development, c) record Avigation Easements in Bexar County deed records, d) review legal and insurance issues with City staff, as needed, and e) obtain lien releases from the Construction Contractors and from the Construction Contractors' sub-contractors of all tiers for each Project.

18. Construction Dispute Management. If disputes and/or claims arise during Project construction between Homeowner and Construction Contractor, Construction Contractor and suppliers, Construction Contractor and sub-tier subcontractors, ATC shall recommend and implement specific action to avoid or resolve potential or actual disputes and/or Claims. In the event any claim is made or any action is brought in any way relating to the design or construction of the Project, whether initiated before or after completion of construction, ATC shall indemnify and hold harmless the City and render all assistance, which the claim may reasonably require, including preparation of written reports with supporting documentation and making witnesses available as needed.

ATC will be the recipient of all notices of claims for costs or time from Subconsultants and subcontractors. ATC will perform a preliminary evaluation of the contents of a claim, obtain factual information concerning a claim, and make recommendations to the City and other appropriate parties.

ATC will prepare evaluation and attempt to negotiate and resolve all claims and/or disputes associated with the Program.

19. ATC shall coordinate with and use its best efforts in aiding the City in preparing and obtaining all certifications required by the FAA for FAA Grant Funding associated with the Program.

20. In the event the Noise Exposure Maps (NEMs) are revised after the effective date of this Agreement or the federal regulations governing Program eligibility change after such date, ATC shall review the revised NEMs and/or FAA Program Guidance Letter (PGL) 12-09 Determination of Program Eligibility (or such other PGL as shall amend or supersede PGL 12-09) and determine property Program eligibility based on such revised NEMs and/or PGL. Determination of Program eligibility may include, but is not limited to:

    - Windshield Field Survey -survey of potentially eligible properties located within an updated NEM. The ATC will document the survey and develop property classifications based on the results as per PGL guidelines.
    - Acoustical Testing Plan - develop an acoustical testing plan, following the FAA's 1992 published guidance, to establish the existing interior noise levels to determine whether or not the building qualifies for sound insulation.
    - Conduct PGL Eligibility Noise Testing –measure the interior noise levels of single and multi-family properties.
    - Prepare Final Report of Property Eligibility Determination – report will be provided to City and FAA, in hard and electronic copy (both PDF and Microsoft Word form), with an eligibility determination of all remaining untreated properties located within the updated 65 DNL noise contour. The report shall contain detail information to support the eligibility determination.

Design Services

ATC shall provide design services during the term of this Agreement which shall include, but not be limited to, the following tasks:

1. Design Coordination and Permitting. ATC will coordinate ATC design Sub-consultants' activities and will provide leadership with respect to the implementation of design management procedures by all parties. ATC shall coordinate activities of design Sub-consultants in the development and production of Acoustical Treatment Design Packages. ATC shall confer with the City and Homeowners during the design phase to insure compliance with Program guideline and special homeowner requirements.

   ATC shall obtain approval by appropriate City departments, and other agencies, as needed, of design packages and secure all necessary permits. ATC will attempt to

expedite agency reviews and approvals. ATC will assist in securing and transmitting appropriate documents to the various approval agencies outside of the control of City, at the appropriate times. ATC shall verify all building permits are closed at the completion of the Project.

2. House Inspection Visit. Before the design process officially begins, ATC will conduct a House Inspection Visit at each Property to identify pre-existing deficiencies that may negatively impact the Project. ATC will ensure that a mechanical/electrical/plumbing consultant participates in this inspection visit. Typical pre-existing deficiencies may include, but are not limited to: a) structural issues; b) moisture and mold issues; c) building and safety code issues; d) ventilation issues; e) environmental issues; and f) health and safety issues. ATC will not use Program funds to correct any pre-existing deficiencies. Homeowners will be required to assume all associated responsibility and liability for their pre-existing deficiencies before becoming eligible to participate in the Program.

   ATC will be solely responsible for the identification and classification of all observed pre-existing deficiencies. All pre-existing deficiencies will be recorded on the Pre-Existing Deficiency Report. Upon the discovery of a pre-existing deficiency, ATC will classify the degree of the deficiency as either a Minor Pre-Existing Deficiency or a Severe Pre-Existing Deficiency.

   Minor Pre-Existing Deficiencies do not require suspension of Homeowner participation. Before Work can progress on a Property found to have a Minor Pre-existing Deficiencies, such Homeowner must sign a Pre-Existing Deficiency Report and a Pre-Existing Deficiency Release, documenting the deficiencies and transferring all associated liability to the Homeowner.

   Upon discovery of a Severe Pre-Existing Deficiency, ATC will temporarily suspend the Homeowner from the Program until Homeowner remedies such deficiency. A Homeowner's participation in the ATP can resume once ATC has inspected and approved the pre-existing deficiency corrections.

3. Design Visit. Once the House Inspection Visit process has been successfully completed, ATC will schedule the Design Visit with the Homeowner and the design Sub-consultants. The purpose of the Design Visit will be to gather information necessary to developing the most effective Acoustical Treatment Design Package for each Property. The Design Visit will include: a) a Computer Aided Drafting Design (CADD) layout and measurements; b) evaluation of the existing window and door conditions; c) evaluation of existing wall and attic insulation; d) evaluation of existing vents, fans and ventilation; e) evaluation of existing mechanical, electrical and A/C systems, if required, and f) a test for lead based paint identification, if necessary. If necessary, an asbestos-containing materials survey shall be performed by ATC and, if required, an approved abatement plan shall be prepared.

   The Design Visit will be conducted by ATC staff and design Sub-consultants, to include an architect, CAD technician, design technician, environmental consultant, ventilation consultant and a Homeowner agent. ATC shall also include a Mechanical / electrical /

plumbing consultant or a structural consultant on the team, if needed.

4. Acoustical Treatment Design Package Development. Based upon the information gathered during the Design Visit, ATC will prepare an Acoustical Treatment Design Package for the custom acoustical treatment of each Property. ATC will continuously monitor the design phase schedule, advise City when potential or actual constraints to the schedule exist, and make recommendations for corrective action.

   ATC shall review the Acoustical Treatment Design Package and convene meetings with the Homeowner and the design Sub-consultants to serve as a forum for the exchange of information and resolution of Project design issues.

   ATC shall submit each completed Acoustical Treatment Design Package to the DRIT for review and comment prior to commencement of the bid process. If necessary, ATC will issue an Addendum to Acoustical Treatment Design Package, incorporating the recommended changes from the DRIT.

5. Homeowner Design Review Meeting. After Homeowners have attended a Construction Contractor interview night meeting, ATC will arrange a separate Homeowner Design Review Meeting with each homeowner. The purpose of the meeting is to:

   a. Present and review with the Homeowner the Acoustical Treatment Design Package for their Property. During this discussion the Project's scope, limits and intrusiveness of the renovations will be disclosed. The Homeowner will have the opportunity to review product styles and colors at the Program Showroom. If necessary, Homeowners will have a final opportunity to adjust their assigned Bid Cycle, depending on any special scheduling needs and/or circumstances.

   b. Determine if the Homeowner will elect to participate further in the Program and, if so, to obtain the Homeowner's signature on a Homeowner Work Agreement, including the final Acoustical Treatment Design Package, and an Avigation Easement. Upon obtaining the Homeowner signature, ATC shall provide copies of the documents to the Homeowner. ATC shall accommodate Homeowners that require additional time for document review. In no event shall ATC proceed with development of Bid Package prior to ATC's receipt of the signed Avigation Easement and Homeowner Work Agreement.

   c. Have the Homeowner select three (3) qualified Construction Contractors from the list of qualified Construction Contractors. Neither ATC nor City will influence Homeowners in the contractor selection process in any way.

6. Bid Package Development. Acoustical Treatment Design Packages will be developed and finalized by ATC for each Property in conformance with the Program policies and procedures. ATC will prepare and notify the three Construction Contractors selected by the Homeowner for each Property that the Scopes of Work are ready to be picked up.

   ATC shall deliver Bid Packages to the Property for Construction Contractor pickup at the Pre-bid Open House. Each Bid Package will contain the following bid documents (and

instructions for completing each): a) Bidder's Checklist; b) Bid Form and Bidder's Certificate; c) DBE Good Faith Effort Plan for Federally Funded Projects; d) DBE Letter of Intent for Federally Funded Projects; and e) DBE Subcontractor Compliance Plan.

7. Pre-Bid Open House and Bidder Inquiries. For each Property a Pre-Bid Open House will be scheduled by ATC at a date and time selected by the Homeowner from the pre-designated dates for the Bid Cycle. ATC will contact the Construction Contractors selected by the Homeowners to notify them of the Pre-Bid Open House appointment. The Pre-Bid Open House will provide the opportunity for the selected Construction Contractors and their subcontractors (and suppliers, if required) to view the home before preparing their final bids. ATC will track the schedule of all open houses.

   In the event a Construction Contractor has a question about a particular Acoustical Treatment Design Package, ATC will review such question for time, cost, or constructability impact, with its design Sub-consultant. If ATC determines that a change to the Acoustical Treatment Design Package is necessary, ATC will submit such change to the City and DRIT for review. Following City and DRIT review, if no changes are required, ATC will issue an addenda to the design package.

8. Design Cost Estimating. ATC shall prepare an Architect's Estimate of Construction Costs for each Project and such estimate shall be included for reference in the Bid Tabulation form to be used by ATC at the Bid Opening.

9. Bid Opening, Bid Review & Contract Award. ATC shall conduct a Bid Opening for all Properties included within a Bid Cycle. ATC will record each Construction Contractor's bid on a Bid Opening Summary. Following the Bid Opening, the results will be tabulated on the Bid Tabulation form and distributed to all bidders and the City.

   ATC will evaluate the bids for completeness, full responsiveness and price. ATC will communicate with each low bidder whose bid is twenty percent (20%) or more below the Architect's Estimate of Construction Costs to determine if all labor and incidental materials were included. ATC shall allow Construction Contractors who advise ATC of a bid error to withdraw their bid without penalty.

   If a Construction Contractor is the low, responsive, responsible bidder on multiple Projects, ATC may require the Construction Contractor to provide a construction staging plan for all such Projects. ATC shall consider the construction staging plan and the Construction Contractor's past performance, capacity, and quality of work in its formulating its recommendation for contracts to be awarded for the Bid Cycle.

   ATC shall collect from all bidders Disadvantaged Business Enterprise (DBE) Letters of Intent signed by subcontractors who will be working on each Project. ATC shall forward to City a Bid Award Recommendation as well as the bid documents as submitted by the Construction Contractors being recommended for award, the originals of the DBE documentation, and any other documentation in support of the recommendation. Following City's authorization of the award, ATC will prepare and submit a "Bid Tabulation As Awarded" to all Construction Contractors. ATC will notify all successful bidders of their contract awards.

ATC will prepare a construction contract for each Project to be executed by the Construction Contractor. After execution by the Construction Contractor, ATC will sign the construction contract and provide a copy to the Construction Contractor. Construction Contractor may order incidental products or materials only after both parties have executed the construction contract.

10. Homeowner Notification of Award. ATC will notify the Homeowner of the Construction Contractor being awarded the construction contract for their Project.

Construction Management Services

ATC shall provide Construction services during the term of this Agreement which shall include, but not be limited to, the following tasks:

1. Performance and Payment Bonds. ATC will prepare the necessary work-on-hand documentation for submittal to the bonding company and order the Payment and Performance Bonds for the Bid Cycle. Upon issuance of the Payment and Performance Bonds, ATC will transmit the originals to the City.

   ATC shall provide City with construction performance and payment bonds made payable to the City of San Antonio, executed by a corporate surety acceptable to City who is licensed pursuant to the Texas Insurance Code in the potential cumulative amount of each Bid Cycle's estimated construction and product costs only (excluding design, Program and Project administration, construction observation and testing fees) as estimated by ATC. Said bonds must be in a form acceptable to City. Said bonds shall further provide that the surety shall indemnify the City for all damages or losses resulting from ATC's construction default. Said bonds shall further guarantee ATC's performance of all terms and obligations under the construction contract awarded. Said bonds must have attached thereto a Power of Attorney as evidence of the authority of the person executing the bond to bind the surety. The bonds must be furnished in compliance with the statutory requirements of the Texas Government Code, Chapter 2253. The bonds must be executed and delivered to City prior to commencement of construction work under this Agreement.

2. Pre-Construction Activities. Construction Contractors shall apply for and obtain building permits from all governmental authorities having jurisdiction over a particular Project and such approval and consents from others as may be necessary for the completion of a Project.

   Approximately three (3) weeks prior to the Pre-Construction Visit, ATC will send reminders to all Construction Contractors awarded work in the Bid Cycle regarding the necessity to obtain building permits and begin developing construction schedules. Construction Contractors are required to provide ATC with a copy of the required permit(s) one (1) week prior to the Pre-Construction Visit.

   All Projects within a particular Bid Cycle must be completed by ATC within a six week period. Within the aforementioned six week period, each individual Project within a Bid Cycle shall be completed within thirty calendar days (30) of commencing construction on

such Project.

The Construction Contractor is required to submit a construction schedule to ATC three business days prior to the Pre-Construction Visit. In developing this schedule, the Construction Contractor will have the flexibility to determine the Project's thirty (30) calendar-day construction period within the established six (6) week construction period for each monthly Bid Cycle. ATC will review the construction schedule to determine feasibility of proposed work flow.

In the event a Property requires asbestos abatement, ATC will separately contract for the activity with one of ATC's abatement contractors.

3. Pre-Construction Visits. At the Pre-Construction Visit, ATC and the Construction Contractor will meet with the Homeowner at Property to review all aspects of the Project including the final construction schedule. The Pre-Construction Visit will give the Homeowner the opportunity to ask any final questions or make any final paint or stain color selections prior to the start of construction. The Pre-Construction Visit must be scheduled a minimum of three (3) days prior to the start of construction in order to give the homeowner sufficient time to remove window coverings and move furniture.

   If a home has tested positive for asbestos, ATC will coordinate abatement activities with Construction Contractor. If a home has tested positive for lead based paint, this condition will be identified in the scope of work documents.

   A lockbox supplied by the Construction Contractor will be placed on each Property from the Pre-Construction Visit through the Final Inspection Visit. The Homeowner will be required to provide a home key for the lockbox.

4. Construction, Asbestos Abatement Process and Lead Based Paint. ATC will notify Construction Contractors that products are ready for pickup at ATC's warehouse and construction may begin, consistent with the final construction schedule presented to all parties during the Pre-Construction Visit. ATC shall provide construction management to facilitate timely completion of the Project within the not-to-exceed construction cost limit for the Project. ATC and its Construction Contractors are responsible to complete the renovations in accordance with the final Acoustical Treatment Design Package and any approved change orders. ATC shall also monitor ATC Construction Contractor's performance.

   If asbestos was identified during the asbestos survey, asbestos abatement shall be performed by ATC's abatement contractors in compliance with all prevailing regulations. ATC's abatement contractors shall be responsible for the removal, encapsulation, transportation, manifesting, and legal disposal of any asbestos or asbestos-containing materials as may be required in connection with the Project.

   Throughout the term of environmental abatement, ATC's environmental Sub-consultant will monitor progress on a daily basis and prepare a daily inspection report for each site visit. ATC's environmental sub-consultant will verify that the abatement is done in accordance with the Abatement Plan.

If a home tests positive for lead based paint, the Construction Contractor performing the Project Work shall be certified to conduct lead-based paint renovation, repair and painting in accordance with the latest Environmental Protection Agency regulations.

Throughout the construction process, ATC's staff inspectors will provide daily observation and inspection, assurance that Construction Contractor provided materials are in accordance with specifications, completion of daily inspection reports, trouble-shoot questions in the field, investigate claims and initiate documentation for change orders.

If inspections reveal deviations from Scope of Work and Construction Contractor's construction schedule, ATC will work with the Construction Contractors to develop recovery plans reflecting the corrective action and efforts to be undertaken by such Construction Contractor to recapture lost time, improve quality of work and/or achieve timely completion of work.

If Construction Contractor submits a change order request, ATC will evaluate such change order request to determine if pricing is fair, equitable and within generally accepted trade practices. Upon approval by ATC, change orders will be reviewed by City's independent Design Review, Inspection and Testing Team ("DRIT"); then forwarded to the City for concurrence and endorsement for payment.

5. Emergencies. In the event that an emergency situation is identified or arises during any phase of a Project which poses an immediate danger to the health and/or safety to any person or property, ATC shall take such steps as are reasonably necessary, including, but not limited to ordering a work stoppage.

6. Punch List Inspection. Upon substantial completion of the construction work, ATC shall conduct a comprehensive punch list inspection to determine if the work has been completed in accordance with the Construction Manual and Project's Scope of Work. ATC shall provide the punch list inspection to the Construction Contractor. The Construction Contractor must complete all punch list items prior to requesting a final inspection.

7. Coordination of Technical Inspection and Testing. ATC will coordinate and review the technical inspection, testing and reports provided by ATC ventilation and acoustical Sub-consultants and City's independent testing consultants. ATC shall confirm that all technical inspections and testing comply with all City requirements and any FAA grant agreements. ATC's ventilation and acoustical Sub-consultants and the City's independent testing consultants will prepare reports and submit to ATC.

8. Project Closeout. Upon verification that all construction punch list items are complete, ATC will conduct a final inspection to verify all work has been completed (100% completion of Scope of Work). ATC shall coordinate with City's independent DRIT to participate in the final construction inspection.

   ATC shall require Construction Contractor to submit to ATC, which shall review and deliver to Homeowner all manufacturer's warranties, equipment maintenance and/or

operating manuals and similar data on materials and equipment purchased and incorporated in the Property by Construction Contractor.

For each Project ATC shall obtain from the Construction Contractor and all subcontractors and suppliers, and provide to City affidavits, receipts, releases and waivers of liens or bonds indemnifying City.

ATC will provide Homeowners with a complete warranty package to include manufacturer warranties and maintenance instructions for all products installed, as well as the ATP Construction Contractor's one-year workmanship warranty. ATC will provide a Homeowner Exit Survey to Homeowner in order to obtain feedback and suggestions concerning the Program.

For each Project, ATC shall perform a Project review to identify issues, concerns, achievements which present opportunities for refining and enhancing the Program or ATC team performance.

9. Warranty Repairs. ATC will assist Homeowners in the coordination of warranty repairs with Construction Contractors during the one (1) year post-construction workmanship warranty period. ATC will assist Homeowners in the coordination of product warranties.

Attachment A
to Exhibit 1

Key Personnel and Subconsultants

ATC:

Principal In Charge
Program Manager
Construction Manager
Procurement Manager
Warehouse Manager
Construction Supervisor
Inspector
Financial Analyst
Property Owner Agent

Subconsultants:

Architect

Design Services Principal
Design Crew Chief
Electrical & Mechanical Engineer

Acoustical Testing Firm

Public Relations/DBE Outreach Firm

Environmental Firm

Title Company

EXHIBIT 2

FEE SCHEDULE

Approved Labor Rates

City and Consultant have negotiated Approved Labor Rates for all persons to provide services pursuant to this Agreement. Consultant shall invoice City only the individual Approved Labor Rate amounts for work performed. For the term of the Agreement, no raw labor rate shall exceed $95.00 per hour without prior written authorization. Additions or changes in classification of individuals to the approved raw labor rate list requires written notification to and approval by City and must include name, title and actual labor rate, prior to the individual being assigned.

THC, Inc.

Title	Name	Raw Rate
Administration Assistant	Reggie Milligan	$19.02
Construction Inspector	Robert Wright	$24.48
Construction Manager	Ron Chamness	$44.62
Construction Superintendent	Ed Rogers	$42.50
Construction Superintendent	Mark Powell	$32.65
Director of Sound Insulations Programs	Steve Vecchi	$75.59
Financial Analyst	Marjorie Cartwright	$28.84
Homeowner Agent	Brenda Katt	$26.12
Homeowner Agent	Kathy Nickel	$26.12
Procurement/Inventory Manager	Dale Griffin	$35.37
Program Manager	Cheryl Chamness	$48.43
Ventilation Technician	Tyler Brown	$26.52
Warehouse Manager	Arthur Pina	$22.99
Warehouse Worker	Rudy Gutierrez	$18.03

Clean Environments, Inc.

Title	Name	Raw Rate
Project Manager	Ben Almarez	$20.00
Project Manager	Carlos Gutierrez	$18.00
Project Manager	Dennis Gonzalez	$19.00
Project Manager	Meagan Nelson	$16.50
Project Manager	Sean Cook	$15.00
Senior Project Manager	Craig Nelson	$35.10
Senior Project Manager	Ray Keeble	$32.90

DHR Architects

Title	Name	Raw Rate
Assistant Crew Chief	Britannia Gonzales	$18.00
CAD Operator	Randy Gusman	$30.02
Crew Chief	Tony Martel	$25.00
Crew Member	Arturo Najera	$23.23
Crew Member	Caroline Lundquist	$22.41
Office Manager	Margarita Farias	$22.14
Principal	Gabriel Durand-Hollis	$51.29

Landrum & Brown

Title	Name	Raw Rate
Managing Director	Alan Hass	$74.22
Project Administrator	Diane Abner	$21.15
Senior Consultant	Eric Seavey	$43.02

DM Dukes & Associates

Title	Name	Billable Rate
Senior Consultant	Dawnna Dukes	$150.00
Senior Consultant	Ruth McClendon	$125.00

Escalation of Labor Rates

Labor rates may be adjusted for escalation on an annual basis beginning in calendar year 2016 in the following manner. Based on the overall percentage of increase reflected in the Consumer Price Index (CPI) released each January by the Bureau of Labor Statistics, the Labor rates may be increased up to, but no more than 3%. Consultant and subconsultants may adjust salaries only once each calendar year beginning in calendar year 2016. Notwithstanding the foregoing, no raw labor rate shall exceed $95.00 per hour for the term of the Agreement. No adjustments may be made for decreases in the CPI.

FEE

Consultant may invoice fee (profit) on approved Labor and Overhead in the amount of 10%.

Consultant may invoice an administrative fee of 5% on sub-consultant labor.

Construction Services

For Construction costs, including materials, equipment, and labor required to complete each Project pursuant to the terms hereof, Consultant shall be compensated by the City for the

following amounts:

a. A certified value for construction completed, and

b. An administrative fee of 10% of the value of the construction.

Approved Overhead Rates

Consultant may invoice the approved overhead rates indicated below. No adjustments to overhead rates shall be allowed without prior written approval by City in the form of an Administrative Amendment executed by Consultant and Aviation Director which amendment shall not require City Council approval. Unless and until City has received and approved the overhead rate for a subconsultant whose overhead rate is listed below as "TBD", that subconsultant may not perform any services pursuant to this Agreement.

Consultant's Approved Overhead Rates :

	Consulting Firm	OH Rate
1.	Clean Environments, Inc.	142.00%
2.	DHR Architects	93.33%
3.	DM Dukes & Associates	N/A
4.	Landrum & Brown	165.25%
5.	THC, Inc.	164.80%

Additional Fees and Charges

In addition to the Labor rates set out above, Consultant shall invoice City only the following unit prices for the items set out below:

Marathon Title

Description	**Unit Prices**
Escrow Fee	$350.00
Owner's Title Policy Premium	$238.00
Recording Fees first page	$26.00
Recording Fees each additional page	$4.00
E-Filing fee per document recorded	$3.00
Tax Certificates	$32.86

EXHIBIT 3

DBE COMPLIANCE AND ENFORCEMENT

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

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

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

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

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

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

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

EXHIBIT 4

FEDERALLY REQUIRED CONTRACT LANGUAGE

Consultant shall include all of the Federally Required Contract Language provisions set out in this **Exhibit 4,** in every contract and subcontract pertaining to this contract, including procurements of materials and leases of equipment issued pursuant thereto, unless exempt by the regulations or directives issued pursuant thereto. Consultant shall be responsible for compliance with these contract provisions by any subcontractor, lower-tier subcontractor or service provider

ACCESS TO RECORDS AND REPORTS
2 CFR § 200.326, 2 CFR § 200.333

Consultant must maintain an acceptable cost accounting system. Consultant agrees to provide the Sponsor, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. Consultant agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

BUY AMERICAN PREFERENCE
49 USC § 50101

Consultant agrees to comply with 49 USC § 50101, which provides that Federal funds may not be obligated unless all steel and manufactured goods used in AIP-funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

GENERAL CIVIL RIGHTS PROVISIONS
49 USC § 47123

Consultant agrees that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds Consultant from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

This provision also obligates Consultant or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program, except where Federal assistance is to provide, or is in the form of personal property; real property or interest therein; structures or improvements thereon.

In these cases the provision obligates the parties or any transferee for the longer of the following periods:

(a) the period during which the property is used by City or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which City or any transferee retains ownership or possession of the property.

CIVIL RIGHTS – TITLE VI ASSURANCES

Appendix A of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration

1. **Compliance with Nondiscrimination Requirements.** During the performance of this contract, Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

    a. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Statutes and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

    b. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

    c. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

    d. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation

Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

e. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
   i. Withholding payments to the contractor under the contract until the contractor complies; and/or
   ii. Cancelling, terminating, or suspending a contract, in whole or in part.

f. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

2. **Title VI List of Pertinent Nondiscrimination Authorities.** During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

CLEAN AIR AND WATER POLLUTION CONTROL

49 CFR § 18.36(i)(12)) Note, when the DOT adopts 2 CFR 200, this reference will change to 2 CFR § 200 Appendix II(G)

Consultant and subcontractors agree:

1. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;

2. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and

information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;

3. That, as a condition for the award of this contract, the Consultant or subcontractors will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;

4. To include or cause to be included in any construction contract or subcontract which exceeds $100,000 the aforementioned criteria and requirements.

CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS.

2 CFR § 200 Appendix II (E)

1. Overtime Requirements. Neither Consultant nor any subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph (1) above, Consultant, Sub-consultant and subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Consultant, Sub-consultant and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 above, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 above.

3. Withholding for Unpaid Wages and Liquidated Damages. The Federal Aviation Administration or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor

for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 above.

4. Subcontractors. The Consultant any subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section.

DEBARMENT AND SUSPENSION (NON-PROCUREMENT).

2 CFR part 180 (Subpart C), 2 CFR part 1200, DOT Order 4200.5 DOT Suspension & Debarment Procedures & Ineligibility

Consultant by acceptance of this contract certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction. Consultant shall verify that each lower tier participant under this contract is not presently debarred or otherwise disqualified from participating in this transaction. Consultant further agrees by acceptance of this contract, that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where ATC or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.

DISADVANTAGED BUSINESS ENTERPRISE

49 CFR part 26

Contract Assurance (§ 26.13) - The Consultant or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Prompt Payment (§26.29)- Consultant agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the Consultant receives from City. Consultant agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

29 USC § 201, et seq.

All contracts and subcontracts that result from this contract shall incorporate the following provisions by reference, with the same force and effect as if given in full text. Consultant has full responsibility to monitor compliance to the referenced statute or regulation. Consultant must

address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Federal Fair Labor Standards Act (29 USC 201)	U.S. Department of Labor – Wage and Hour Division

LOBBYING AND INFLUENCING FEDERAL EMPLOYEES.

49 CFR part 20, Appendix A

Consultant certifies entering into this contract, to the best of his or her knowledge and belief, that:

1) No Federal appropriated funds have been paid or will be paid, by or on behalf of Consultant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

20 CFR part 1910

All contracts and subcontracts that result from this contract shall incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

RIGHT TO INVENTIONS.

2 CFR § 200 Appendix II(F)

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

TERMINATION OF CONTRACT

2 CFR § 200 Appendix II(B)

1. City may, by written notice, terminate this contract in whole or in part at any time, either for the City's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services must be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.

2. If the termination is for the convenience of City, an equitable adjustment in the contract price will be made, but no amount will be allowed for anticipated profit on unperformed services.

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

4. If, after notice of termination for failure to fulfill contract obligations, it is determined that Consultant had not so failed, the termination will be deemed to have been effected for the convenience of City. In such event, adjustment in the contract price will be made as provided in paragraph 2 of this clause.

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

TRADE RESTRICTION

49 CFR part 30

1. The Consultant and subcontractor, by execution of a contract, certifies that it:
   a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);

   b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;

   c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

2. Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to Consultant or subcontractor who is unable to certify to the above. If the Consultant knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through City cancellation of the contract at no cost to the Government.

3. Further, Consultant agrees that it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. Consultant may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

4. Consultant shall provide immediate written notice to City if Consultant learns that its certification or that of subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

5. This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that Consultant or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through City cancellation of the contract or subcontract for default at no cost to the Government.

6. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

7. This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

EXHIBIT 5

Consultant
And
Contractor
Reimbursable Expense Policy

City of San Antonio

As of 6/2/08

Reimbursable Expense Policy
Table of Contents

1. **General Information**
   - 1.1 Introduction
   - 1.2 Scope
   - 1.3 Policy
   - 1.4 Definitions
   - 1.5 Reimbursements
   - 1.6 Interrupted Itinerary

2. **Transportation Expenses**
   - 2.1 Guideline
   - 2.2 Air Travel
   - 2.3 Travel by Private Automobile
   - 2.4 Travel by Private Aircraft
   - 2.5 Rental Cars
   - 2.6 Ground Transportation

3. **Living Expenses**
   - 3.1 Lodging
   - 3.2 Non-Commercial Lodging
   - 3.3 Meals Expense
   - 3.4 Incidental Expenses
   - 3.5 Extended Travel Daily and Lodging Allowances

4. **Relocation Assistance**
   - 4.1 Requirements
   - 4.2 Limitations
   - 4.3 Allowable Expenses in General
   - 4.4 Travel Expenses by Car
   - 4.5 Household Goods and Personal Effect Expense
   - 4.6 Storage Expenses
   - 4.7 Travel Expenses
   - 4.8 Non-reimbursable Relocations Expenses
   - 4.9 Relocation Assistance Recovery

5. **Miscellaneous Expenses**
   - 5.1 General
   - 5.2 Telephone Calls
   - 5.3 Local Business Meetings

6. **Travel Expense Settlement**
   - 6.1 Reimbursement
   - 6.2 Right to Audit

1. GENERAL

1.1 Introduction

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

1.2 Scope

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

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

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

1.3 Policy

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

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

1.4 Definitions

The following definitions apply to this Policy:

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

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

Official Travel Time – For the purposes of computing per diem allowances, official travel starts at the day and time the Consultant employee leaves their home, office, or other authorized point and ends on the day and time the Consultant employee returns home, to the office, or other authorized point. This definition is for computing per diem allowances only and may not be used for billing chargeable Consultant employee hours.

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

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

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

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

1.5 Reimbursements

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

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

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

Entertainment expenses, including alcohol, are not reimbursable.

1.6 Interrupted Itinerary

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

2. Transportation Expenses

2.1 Guideline

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

2.2 Air Travel

Lowest Available Airfare

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

personal preferences for air carrier.

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

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

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

2.3 Travel by Private Automobile

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

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

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

Reimbursement for Travel by Private Automobile in Lieu of Air Travel
When a private automobile is used instead of available air travel for the personal convenience of the Consultant, reimbursement of transportation costs by private automobile shall not exceed the documented amount of airfare Consultant would have paid had the Consultant traveled by air.

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

2.4 Travel by Private Aircraft

When a private aircraft is used instead of available commercial air travel for the personal

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

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

2.5 Rental Cars

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

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

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

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

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

2.6 Ground Transportation

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

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

Airport Shuttle Service

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

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

3. Living Expenses

3.1 Lodging

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

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

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

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

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

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

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

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

Beginning of "Official Travel Time" Date of Departure		**Ending of "Official Travel Time" Date of Departure**	
Prior to 11:00 am	100% per	Prior to 11:00 am	33% per diem

	diem		
11:01 am to 5:00 pm	66% per diem	11:01 am to 5:00 pm	66% per diem
After 5:00 pm	33% per diem	After 5:00 pm	100% per diem

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

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

3.4 Incidental Expenses

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

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

3.5 Daily Allowance and Lodging Allowance for Extended Travel

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

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

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

4. Relocation Assistance

4.1 Requirements

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

4.2 Limitations

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

Relocation Assistance Limitations

Personnel Type	*The lower of:*	
Key Position	Actual Allowable Expenses	$10,000 max
Professional Positions	Actual Allowable Expenses	$5,000 max

4.3 Allowable Expenses In General

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

4.4 Travel Expenses by Car

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

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

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

4.5 Household Goods and Personal Effect Expenses

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

4.6 Storage Expenses

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

4.7 Travel Expenses

Relocation assistance will be allowed for reasonable costs of transportation and lodging for the Consultant employee and members of their household while traveling from their former home to

their new home. This will include reasonable lodging expenses that do not exceed one day in the area of the former home.

4.8 Non-reimbursable Relocation Expenses

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

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

4.9 Relocation Assistance Recovery

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

5. Miscellaneous Expenses

5.1 General

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

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

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

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

5.2 Telephone Calls

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

Personal phone calls are not reimbursable.

5.3 Local Business Meetings

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

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

6. Travel Expense Settlement

6.1 Reimbursement

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

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

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

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

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

6.2 Right to Audit

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