

AN ORDINANCE **2010-08-05-0667**

AUTHORIZING A PROFESSIONAL SERVICE AGREEMENT WITH BARICH, INC. FOR DESIGN OF PHASE 1 OF THE COMMUNICATIONS INFRASTRUCTURE MODERNIZATION PROJECT AT SAN ANTONIO INTERNATIONAL AIRPORT.

* * * * *

WHEREAS, the City is in the process of modernizing the communications infrastructure at San Antonio International Airport in order to meet current and future technology demands; and

WHEREAS, as part of this process in March 2010, the Aviation Department issued a Request for Qualifications to procure design services for the first phase of the Communications Infrastructure Modernization Program, and

WHEREAS, an evaluation committee composed of members from the Aviation and Information Technology Services Departments and a subject matter expert, selected Barich, Inc. as the most qualified respondent to provide the needed services, and

WHEREAS, Aviation staff has negotiated a professional services agreement with Barich, Inc. for services for Phase 1 of the project and associated costs of \$203,998.12 through 30% design of Phase for \$203,998.12, and

WHEREAS, completion of the design project will be secured through future amendment(s) to this professional services agreement with Barich, Inc., subject to City Council approval and funding; **NOW THEREFORE**,

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

SECTION 1. Barich, Inc. is hereby selected to provide design services for Phase 1 of the Communications Infrastructure Modernization Program at San Antonio International Airport as the most qualified respondent to the Request for Qualifications.

SECTION 2. The City Manager, or her designee, is hereby authorized to execute a Professional Service Agreement with Barich, Inc. for design services as described above. A copy of the Agreement is set out in **Attachment I**.

SECTION 3. The amount of \$203,998.12 is appropriated in SAP Fund 51013000, Airport Capital Improvement Fund, SAP WBS Element AV-00006-01-02-29, SAP GL account 6102100 – Interfund Transfer out entitled Transfer to 33-00048-90-01. The amount of \$203,998.12 is authorized to be transferred to SAP Fund 51099000.

SECTION 4. The budget in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00048, Terminal 1 and Campus IT Modernization, shall be revised by increasing SAP WBS Element 33-00048-90-01 entitled Transfer from AV-00006-01-02-29, SAP GL Account 6101100 – Interfund Transfer In, by the amount \$203,998.12.

SECTION 5. The amount of \$203,998.12 is appropriated in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00048, Terminal 1 and Campus IT Modernization, SAP WBS Element 33-00048-01-02-01, entitled IT Modernization, SAP GL Account 5201040.

SECTION 6. Payment in the amount not to exceed \$203,998.12 in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00048, Terminal 1 and Campus IT Modernization, is authorized to be encumbered and made payable to Barich, Inc. for design services.

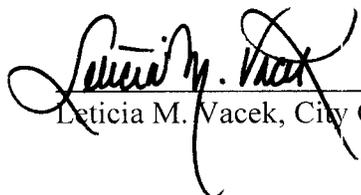
SECTION 7. The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer, City of San Antonio. The Chief Financial Officer may, subject to concurrence by the City Manager, or the City Manager’s designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 8. This Ordinance shall take effect immediately upon passage by eight (8) affirmative votes; otherwise it shall be effective ten (10) days after its passage.

PASSED AND APPROVED this 5th day of August, 2010.

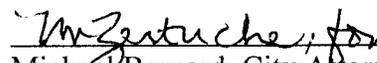

M A Y O R
Julián Castro

ATTEST:

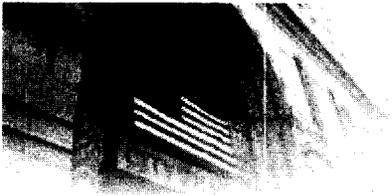


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Michael Bernard, City Attorney



Request for
**COUNCIL
ACTION**

City of San Antonio



Agenda Voting Results - 23

Name:	6, 8, 9A, 9B, 10, 15, 16, 17, 18, 19, 20A, 20B, 20C, 20D, 21, 22, 23, 24, 25						
Date:	08/05/2010						
Time:	10:03:53 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a professional services agreement with Barich, Inc. in the amount of \$203,998.12 for the full design of Phase 1 of the Communications Infrastructure Modernization Program project at the San Antonio International Airport, available from Capital Improvement Funds. [Pat DiGiovanni, Deputy City Manager; Frank Miller, Director, Aviation]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				x
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x			x	
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

Item No. 23
08/05/2010 Agenda
Ordinance Attachment I

**PROFESSIONAL SERVICES AGREEMENT
FOR
AIRPORT I.T. DESIGN SERVICES**

This Agreement is made and entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal Corporation acting by and through its City Manager pursuant to Ordinance No. _____, and **Barich, Inc.** by and through its designated officer(s) (hereinafter referred to as "Consultant"), both of which may be referred to herein collectively as the "Parties."

IN CONSIDERATION of the mutual covenants, terms, conditions, privileges and obligations herein contained, City and Consultant do hereby agree as follows:

I. DEFINITIONS

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

1.1 "Director" means the Director of City's Aviation Department, or the designated project manager identified in the Notice to Proceed.

1.2 "Airport" shall mean the San Antonio International Airport.

1.3 "Project" means all the tasks which Consultant's professional services, as set forth in the Scope of Services, are to be provided pursuant to this Agreement.

1.4 "Consultant" shall mean Barich, Inc. the firm under contract with the City to perform the services in connection with the Project.

II. PERIOD OF SERVICE

2.1 This Agreement shall take effect upon passage of an Ordinance by the City of San Antonio City Council and continue in full force and effect for the period required for completion of the duties as set forth in the Scope of Services but not later than January 31, 2011. Performance shall commence upon issuance of a Notice to Proceed by the Director or his designee, and shall terminate upon completion of Consultant's duties as set forth in the Scope of Services, which shall be completed by January 31, 2011 and upon written acceptance by City of Consultant's work product or services rendered. Adherence to the schedule in Attachment 1 is mandatory unless extension or earlier termination shall occur pursuant to any of the provisions hereof.

2.2 If funding for the entire Project is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods and/or upon the depletion of funds, and any subsequent contract period is subject to and contingent upon such appropriation.

2.3 The City and Consultant agree that additional services and associated payment may be added to this Agreement by an amendment signed by both parties and approved by the passage of an Ordinance.

III. SCOPE OF SERVICES

3.1 Consultant agrees to provide the services described in Attachment 1 to this contract within the timelines in Attachment 2 and this Article III. in exchange for the compensation described in Article IV. Compensation.

3.2 All work performed by Consultant hereunder shall be performed to the satisfaction of Director and in accordance with applicable law or regulation. The determination made by Director whether work is satisfactory shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to Director. City, however, shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should if City elects not to terminate.

3.3 In the event that Consultant intends to use any subcontractors in the performance of this Project, a list of all such subcontractors must be submitted to City and approved in writing by the Director's designee prior to subcontractor becoming involved in or performing any work pursuant to this Agreement. The list of subcontractors contained in Consultant's Statement of Qualifications, dated April 26, 2010 is hereby approved.

3.4 Consultant shall not commence work until Consultant has been thoroughly briefed by the Director's designee on the scope of Project, ("Scope Meeting") and has been notified in writing by the Director to proceed.

3.5 Consultant shall be represented by its the Project Manager and other individuals within professional disciplines, as may be appropriate, at meetings of any official nature concerning the Project, including but not limited to Scope Meetings, Review Meetings and other meetings as may be required for the Project. If construction plans or architectural drawings are developed as part of the scope of services, all submittals shall carry the signature and seal of an appropriately licensed professional, or, in the case of progress submittals or incomplete submittals, an appropriate disclaimer with the responsible professional engineer's or architect name and license number and, adjacent thereto, the date of the submittal.

3.7 Consultant shall complete all Project work in compliance with this Agreement, in a timely fashion consistent with the design schedule and agrees to provide sufficient necessary, qualified personnel to the Project, in order not to delay or disrupt the progress of the Project.

IV. COORDINATION WITH THE CITY

4.1 The Director or his designee shall act on behalf of City with respect to the work performed under this Agreement, and shall have complete authority to transmit instructions, receive information, and interpret and define City's policies and decisions with respect to materials, equipment elements and systems pertinent to Consultant's services.

4.2 City shall provide written notice to the Consultant of any errors or omissions discovered in the Consultant's services, or performance, or of any development that affects the scope or timing of Consultant's services.

4.3 Consultant shall complete all applications and furnish all required data, as set forth in the Scope of Services, compiled by Consultant for City's use in obtaining any permits or approvals from governmental authorities having jurisdiction over the Project as may be necessary for

completion of the Project. Consultant shall not be obligated to develop additional data, prepare extensive reports or appear at hearings in order to obtain said permits or approvals, unless compensated therefore as provided in Article V, COMPENSATION.

V. COMPENSATION

5.1 In consideration of the services to be rendered by Consultant, City shall pay Consultant on a time and materials basis, provided that total compensation shall not to exceed that set forth in this Article V, COMPENSATION. Nothing contained in this Agreement shall require City to pay for any unsatisfactory work, as determined by Director, or for work that is not in compliance with the terms of this Agreement. City shall not be required to make any payments to Consultant at any time Consultant is in default under this Agreement.

5.2 Maximum Compensation. The total amount of compensation for Consultant’s work as defined in the Scope of Services shall not exceed the sum of \$203,998.12. Consultant shall invoice the City in accordance with the rates and charges set out in Exhibit 2, Consultant Compensation Schedule and which are summarized below:

	LABOR	EXPENSES	TOTAL
Project Kick-off	\$16,473.20	\$2,557.16	\$19,030.36
Needs Assessment & Findings	\$67,286.10	\$7,387.82	\$74,673.92
Design Analysis	\$45,026.80	\$1,644.58	\$46,671.38
30% Schematic Design	\$56,603.50	\$7,018.97	\$63,622.47
TOTAL	185,389.60	\$18,608.52	\$203,998.12

For purposes of Exhibit 2, the Parties agree that flexibility is of the utmost importance in order to achieve the Project’s goal within the overall Project budget. To that end, upon agreement of the parties, reallocations of labor and expenses may be made so long as such do not affect the ultimate services expected from Consultant as a result of this contract.

5.3 No additional compensation. No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified above. Total payments to Consultant cannot exceed that amount set forth in section 5.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

5.4 Invoicing. Consultant shall invoice the City in accordance with the provisions set out in Exhibit 2, Consultant Compensation Schedule, for actual work performed or expenses incurred in performing services accordance with Article III, Scope of Services. Consultant may submit invoices no more than once monthly for work performed and completed and for expenses incurred which have not been included on previous invoices. Such invoices must show: a) a detailed summary of the services performed, hours worked, employee performing the work, associated billing rate, and travel expenses incurred during the period covered by the invoice, b) the amount due for the services and expenses, and c) any other evidence required by the Director or his designated representative. Within 5 days of the notice to proceed, Consultant shall submit for City’s approval, Consultant’s proposed format for the invoice and the documentation of hours worked and expenses incurred.

5.5 Consultant Expenses. Consultant shall adhere to the Aviation Department Consultant and Contractor Reimbursable Expense Policy, included herein for all intents and purposes as Attachment 3, governing expenditures.

5.6 Right to Audit. The Consultant will provide supporting evidence necessary to substantiate charges related to the contract and allow the City to access Consultant's "records" associated with this Agreement. Consultant's "records" shall be made available within two weeks of the written request for open inspection, audit, and/or reproduction during normal business working hours. Such audits may be performed by a City's representative or an outside representative engaged by City. The City or its designee may conduct such audits or inspections throughout the term of this Agreement and for a period of three years after final payment or longer if required by law. The City's representatives may (without limitation) conduct verifications such as counting employees at the Project site, verifying information and amounts through interviews and written confirmations with Consultant's employees, field and agency labor, subcontractors, and vendors.

5.6.1 Consultant's "records" as referred to in this contract shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in the City's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by this Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; invoices and related payment documentation; general ledger, and any other Consultant records which may have a bearing on matters of interest to the City in connection with the Consultant's dealings with the City to the extent necessary to adequately permit evaluation and verification of any or all of the following:

- (a) Compliance with contract requirements for deliverables
- (b) Compliance with contract provisions regarding the pricing of change orders
- (c) Accuracy of Consultant representations regarding the pricing of invoices
- (d) Accuracy of Consultant representations related to claims submitted by the Consultant or any payees.

5.6.2 Consultant shall require all payees (examples of payees include subcontractors, material suppliers, etc.) to comply with the provisions of this article by ensuring that the City's right to audit requirements set forth herein are contained in a written contract between Consultant and payee. Consultant will ensure that the City has the same right to audit all payees that it has to audit Consultant under the terms of this Agreement.

5.6.3 City's authorized representative or designee shall have reasonable access to the Consultant's facilities, AND shall be allowed to interview all current or former

employees to discuss matters pertinent to the performance of this Agreement, in order to conduct audits in compliance with this article.

- 5.6.4 If an audit inspection or examination in accordance with this article discloses overpricing or overcharges (of any nature) by the Consultant to the City in excess of three percent (3%) of the total contract billings, in addition to making adjustments for the overcharges, the reasonable actual cost of the City's audit shall be reimbursed to the City by the Consultant. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Consultant's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Consultant.

VI. OWNERSHIP AND RETENTION OF DOCUMENTS, AND ACCESS TO DATA COLLECTED AND ANALYSIS

6.1 Upon completion or termination of the Project, or upon request by the City, all documents and information, in whatever form, given to, prepared or assembled by the Consultant in connection with its performance of its duties under this Agreement shall become the sole property of the City and shall be delivered at no cost to the City without restriction on future use. Furthermore, such documents shall not be the subject of any copyright or proprietary claim by Consultant or its subcontractors. Documents and information covered by this paragraph shall include, but not be limited to, reports, test results, field notes and other data. The City shall have free and immediate access to all such information at all times during the term of this Agreement with the right to make and retain copies documents, notes and data, whether or not the Project has been completed. Prior to surrender of the documents and information, Consultant may make copies of any and all documents for its files, at its sole cost and expense.

6.2 At any time during the Project, the City shall have the right to unrestrained direct access and contact with personnel, subcontractors, and any businesses or collaborators used by Consultant for work performed by Consultant under this Agreement; and the City shall have the unrestricted right to obtain original or duplicate copies of reports and data directly from the personnel, subcontractors, businesses, and collaborators used by Consultant. Consultant acknowledges that all documents and records described above, whether final or "works in progress" are public documents, subject to open records laws and regulations.

6.3 The Consultant agrees to maintain all books, records and reports required under this contract for a period of not less than four (4) years after final payment is made and all pending matters are closed. In addition, the Consultant shall maintain an acceptable cost accounting system during the term of this Agreement. The Consultant agrees to provide the City and any of its duly authorized representatives, access to any books, documents, papers and records of the Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions.

VII. TERMINATION OF AGREEMENT

7.1 Termination Without Cause.

7.1.1 This Agreement may be terminated by City without cause, prior to Director giving Consultant written Notice to Proceed, should Director, in his sole discretion, determine that it is not in City's best interest to proceed with this Agreement. Such notice shall be provided in

accordance with the notice provisions contained in this Agreement, and shall be effective immediately upon delivery to the Consultant.

7.1.2 This Agreement may be terminated by the City at any time after issuance of the Director's Notice to Proceed, either for the City's convenience or because of Consultant's failure to fulfill the contract obligations. Upon receipt of such notice, services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Agreement, whether completed or in progress, delivered to the City.

7.1.3 If the termination is for the convenience of the City, and following inspection and acceptance of Consultant's services properly performed prior to the effective date of termination, an equitable adjustment in the contract price shall be made. Consultant shall not, however, be entitled to lost or anticipated profit on unperformed services, should City choose to exercise its option to terminate, nor shall Consultant be entitled to compensation for any unnecessary or unapproved work, performed during time between the issuance of the City's notice of termination and the actual termination date.

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

7.1.5 If, after notice of termination for failure to fulfill contract obligations, it is determined that the Consultant had not so failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, an equitable adjustment in the contract price shall be made as provided in paragraph 7.1.3 of this clause.

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

7.2 Defaults With Opportunity for Cure. Should Consultant fail, as determined by the Director, to satisfactorily perform the duties set out in Article III. SCOPE OF SERVICES; or comply with any covenant herein required, such failure shall be considered an Event of Default. In such event, the City shall deliver written notice of said default, in accordance with the notice provisions contained in this Agreement, specifying the specific Events of Default and the action necessary to cure such defaults. Consultant shall have ten (10) calendar days after receipt of the written notice to cure such default. If Consultant fails to cure the default within such cure period, or take steps reasonably calculated to cure such default, City shall have the right, without further notice, to terminate this Contract in whole or in part as City deems appropriate, and to contract with another Consultant to complete the work required by this Agreement. City shall also have the right to offset the cost of said new agreement with a new Consultant against Consultant's future or unpaid invoice(s), subject to any statutory or legal duty, if any, on the part of City to mitigate its losses.

7.3 Termination For Cause. Upon the occurrence of one (1) or more of the following events, and following written notice to Consultant given in accordance with the notice provisions contained in this Agreement, City may immediately terminate this Contract, in whole or in part, "for cause":

7.3.1 Consultant makes, directly or indirectly through its employees or representatives, any material misrepresentation or provides any materially misleading information to City in connection with this Agreement or its performance hereunder; or

7.3.2 Consultant violates or materially fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this Agreement, except those events of default for which an opportunity to cure is provided herein; or

7.3.3 Consultant fails to cure, or initiate steps reasonably calculated to cure, a default listed in Section 9.3 below, within the time period required for cure; or

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

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

7.3.6 Consultant ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Contract shall continue) and such petition is not dismissed within forty-five (45) days of filing; or if a receiver, trustee or liquidator is appointed for it, or its joint venture entity, or any substantial part of Manager's assets or properties.

7.4 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.5 Orderly Transfer Following Termination. Regardless of how this Agreement is terminated, Consultant shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City. Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant, or any of its subcontractors, pursuant to this Agreement. All completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced, or provided to Consultant, in connection with the services rendered by Consultant under this Agreement, regardless of storage medium, shall be transferred to City. Such record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents.

7.6 Claims for Outstanding Fees. Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. **Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a Waiver by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.**

7.7 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

VIII. SUSPENSION OF WORK UNDER AGREEMENT

8.1 Right of City to Suspend. City may suspend this Agreement for any reason, with or without cause upon the issuance of written Notice of Suspension in accordance with the Notice provisions contained in this Agreement. Such suspension shall take effect upon the date specified in such notice; provided, however, such date shall not be earlier than the tenth (10th) day following receipt by Consultant of said notice. The Notice of Suspension will set out the reason(s) for the suspension and the anticipated duration of the suspension, but will in no way guarantee the total number of days of suspension.

8.2 Consultant's Right to Terminate In Event of Suspension of Agreement. In the event such suspension exceeds one hundred and twenty (120) calendar days, Consultant shall have the right to terminate this Agreement. Consultant may exercise this right to terminate by issuing a written Notice of Termination to the City, delivered in accordance with the Notice provisions contained in this Agreement after the expiration of one hundred and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by City and such termination shall be subject to all the requirements set out in Paragraphs 7.5 and 7.6 above, related to the Orderly Transfer and Fee Payment.

8.3 Procedures Upon Receipt of Notice of Suspension.

8.3.1 Upon receipt of a notice of suspension and prior to the effective date of the suspension, Consultant shall, unless otherwise directed, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement.

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

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

8.3.4 During the period of Suspension, Consultant shall have the option to at any time submit the above referenced statement to the City for payment of any unpaid portion of the prescribed fee for services which have actually been performed to the benefit of the City under this Agreement, adjusted for any previous payments of the fee in question.

8.3.5 In the event Consultant exercises its right to terminate this Agreement at any time after the effective Suspension date, Consultant shall submit, within forty-five (45) calendar days after receipt by City of Consultant's notice of termination (if he has not previously done so) the above referenced statement showing in detail the services performed under this Agreement prior to the effective date of suspension. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a Waiver by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

8.3.6 Upon the above conditions being met, the City's review of the submissions and finding the claimed compensation to be appropriate to the terms of this agreement, the City shall pay Consultant that portion of the agreed prescribed fee for those as yet uncompensated

services actually performed under this Agreement to the benefit of the City, adjusted for any previous payments of the fee in question.

IX. INSURANCE REQUIREMENTS

9.1 Prior to the commencement of any work under this Agreement, Respondent shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Aviation Department, which shall be clearly labeled "Airport IT Design Services" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature, including the signer's phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Aviation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

9.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.

9.3 A Respondent's financial integrity is of interest to the City; therefore, subject to Respondent's right to maintain reasonable deductibles in such amounts as are approved by the City, Respondent shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Respondent's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

Type	Amount
1. Workers Compensation	Statutory
2. Employer's Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Damage to Property rented by your	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. 100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence. If AOA operation is required, \$5,000,000 per occurrence is necessary.
5. Professional Liability (Claims-made basis) To be maintained and in effect for	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as

no less than two years subsequent to the completion of the professional service.	damages by reason of any act, malpractice, error, or omission in professional services.
6. Builder's Risk (if applicable)	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.

9.4 Consultant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Consultant herein, and provide a certificate of insurance and endorsement that names the Consultant and the CITY as additional insureds. Respondent shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

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

City of San Antonio
Aviation Department
ATTN: Information Technology
9800 Airport Blvd.
San Antonio, Texas 78216

9.6 Respondent agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, auto liability and general liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

9.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Respondent shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Respondent's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

9.8 In addition to any other remedies the City may have upon Respondent's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Respondent to stop work hereunder, and/or withhold any payment(s) which become due to Respondent hereunder until Respondent demonstrates compliance with the requirements hereof.

9.9 Nothing herein contained shall be construed as limiting in any way the extent to which Respondent may be held responsible for payments of damages to persons or property resulting from Respondent's or its subcontractors' performance of the work covered under this Agreement.

9.10 It is agreed that Respondent's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

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

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

X. INDEMNIFICATION

10.1 Consultant whose work product is the subject of this contract agrees to INDEMNIFY AND HOLD CITY, ITS OFFICERS AND EMPLOYEES, HARMLESS against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, intellectual property infringement, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may **ARISE OUT OF OR BE OCCASIONED OR CAUSED BY CONSULTANT'S NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF CONSULTANT AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES** while in the exercise of performance of the rights or duties under this Agreement.

10.2 The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

10.3 Consultant shall promptly advise the City, in writing, of any claim or demand against the City or Consultant known to Consultant related to or arising out of Consultant activities under this contract.

10.4 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or other wise, to any other person or entity.

XI. CONSULTANT'S LIABILITY AND STANDARD OF CARE

11.1 Services provided by Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Acceptance of the final plans by City shall not constitute nor be deemed a release of the responsibility and liability of Consultant, its employees, associates, agents or subcontractors for the accuracy and competency of their testing, reports, assessments or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by City for any defect or error in testing, reports, or assessments and work performed by Consultant, its employees, subcontractors, and agents.

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

12.1 Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for Consultant to solicit or secure this Agreement, and that it has not, for the purpose of soliciting or securing this Agreement, paid, compensated, or agreed to pay or compensate, any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift, for any other consideration contingent upon or resulting from the award or making of this Agreement. For breach of the foregoing warranty, the City shall have the right to terminate the Agreement under the provisions of this Agreement. However, breach of the warranty required in this provision constitutes fraud by operation of law; therefore, any Consultant found in breach of such warranty, by a final judgment of a Court of Competent Jurisdiction, shall take no compensation under this Agreement for any services rendered and such forfeiture shall not bar the City from pursuit and collection of any and all other damages, at law and in equity, to which it may be justly entitled. This Agreement is entered into under competency requirements of the Texas Professional Services Procurement Act governing municipal employment of engineering and other professionals. Accordingly, Consultant further pledges and warrants its best and most competent professional efforts to secure to the City the benefits of the Agreement.

XIII. ASSIGNMENT OF RIGHTS OR DUTIES

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

13.2 Except as otherwise required herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the prior written consent of City. Engineering services required by law to be performed by a licensed engineer, or services which, by law, require the supervision and approval of a licensed engineer, may only be subcontracted upon the prior written approval of the San Antonio City Council, by approval and passage of an

ordinance therefore. Any other services to be performed under this Agreement may be subcontracted upon the written approval of Director. As a condition of consent, if same is given, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor consultant, assignee, transferee or subcontractor. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by City in accordance with this Article.

13.3 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this Agreement, without said written approval, shall be void, and shall confer no rights upon any third person. Should Consultant assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this Agreement, City may, at its option, terminate this Agreement as provided herein, and all rights, titles and interest of Consultant shall thereupon cease and terminate, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

13.4 Consultant agrees to notify Director of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to City under this Agreement, any such change of ownership interest or control of its business entity may be grounds for termination of this Agreement in accordance with Article VIII, Termination.

XIV. INDEPENDENT CONTRACTOR

14.1 Consultant covenants and agrees that (s)he is an independent contractor and not an officer, agent, servant, or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of *respondeat superior* shall not apply as between City and Consultant, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Consultant.

14.2 No Third Party Beneficiaries - For purposes of this Agreement, including its intended operation and effect, the Parties specifically agree and contract that: (1) this Agreement only affects matters/disputes between the Parties to this Agreement, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with City or Consultant or both, or that such third parties may benefit incidentally by this Agreement; and (2) the terms of this Agreement are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either City or Consultant.

XV. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

For purposes of this section, Contractor shall mean the same as Consultant.

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

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

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

Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE’s participation does not count toward the SE utilization goal.

SBEDA Plan – The Good Faith Effort Plan (“GFEP”), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with CONTRACTOR’s bid for this project Agreement, attached hereto and incorporated herein as “Attachment 5”.

15.2 For this Agreement, the Parties agree that:

- (a) The terms of the CITY’s SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the “SBEDA Program”) are incorporated into this Agreement by reference; and
- (b) The failure of CONTRACTOR or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Agreement.
- (c) Failure of CONTRACTOR or any applicable SE to provide any documentation or written submissions required by the CITY Managing Department or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Agreement.

- (d) During the Term of this Agreement, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in CONTRACTOR's SBEDA Plan ("Attachment 5") shall constitute a material breach of the SBEDA Program and this Agreement.
- (e) CONTRACTOR shall pay all suppliers and subcontractors identified in its SBEDA Plan ("Attachment 5") in a timely manner for satisfactory work, pursuant to and as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be submitted by CONTRACTOR to the CITY Managing Department. Failure to pay SEs in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this Agreement.

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

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

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

- (a) Terminate this Agreement for default;
- (b) Suspend this Agreement for default;
- (c) Withhold all payments due to the CONTRACTOR under this Agreement until such violation has been fully cured or the Parties have reached a mutually agreeable resolution; and/or

(d) Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the CITY pursuant to the Agreement, or from any other amounts due to the CONTRACTOR under the Agreement.

(e) **Suspension, Revocation or Modification of SE Certification:** The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.

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

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

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

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

- (a) a SBEDA Utilization Goal for the extended period; and
- (b) a modified version of the Good Faith Efforts ("Modified Good Faith Efforts Plan") set forth in the SBEDA Program Ordinance, as amended, if CONTRACTOR does not meet the SBEDA Utilization Goal; and
- (c) the required minimum Good Faith Efforts outreach attempts that CONTRACTOR shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA

Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the Agreement extension document. The CONTRACTOR entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:

- (i) subject CONTRACTOR to any of the remedies listed above; and/or
- (ii) result in a new bid or proposal request of the Agreement that was considered for extension.

XVI. NOTICES

16.1 Unless otherwise expressly provided elsewhere in this Agreement, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier.

If intended for CITY, to:

City of San Antonio
ATTN: Information Services Manager
9800 Airport Blvd
San Antonio, Texas 78216

If intended for Consultant, to:

Barich Inc.
Attn: Justin Phy
1233 Crabb River Road, Suite B
Richmond, TX 77469

XVII. CONFLICTS OF INTEREST

17.1 Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

17.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of City. Consultant further warrants and certifies that it has tendered to City's a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

XVIII. SOLICITATION

18.1 Consultant warrants and represents that he 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, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. This representation constitutes a substantial part of the consideration for the making of this Agreement.

XIX. LICENSES/CERTIFICATIONS

19.1 Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XX. AIRPORT SECURITY

20.1 To the extent Consultant will be responsible for work which necessitates entrance to the Air Operations Area or other secure area of the Airport, this Agreement is expressly subject to the airport security requirements of Title 49 of the United States Code, Chapter 449, as amended ("Airport Security Act"), the provisions of which govern airport security and are incorporated by reference, including without limitation the rules and regulations promulgated under it. Consultant is subject to, and further must conduct with respect to its Subcontractors and the respective employees of each, such employment investigations, including criminal history record checks, as the Aviation Director, the TSA or the FAA may deem necessary. Further, in the event of any threat to civil aviation, Consultant must promptly report any information in accordance with those regulations promulgated by the FAA, the TSA and the City. Consultant must, notwithstanding anything contained in this Agreement to the contrary, at no additional cost to the City, perform under this Agreement in compliance with those guidelines developed by the City, the TSA and the FAA with the objective of maximum security enhancement.

20.2 Consultant must comply with, and require compliance by its Subcontractors, with all present and future laws, rules, regulations, or ordinances promulgated by the City, the TSA or the FAA, or other governmental agencies to protect the security and integrity of the Airport, and to protect against access by unauthorized persons. Subject to the approval of the TSA, the FAA and the Aviation Director, Consultant must adopt procedures to control and limit access to the Airport Premises utilized by Consultant and its Subcontractors in accordance with all present and future City, TSA and FAA laws, rules, regulations, and ordinances. At all times during the Term, Consultant must have in place and in operation a security program for the Airport Premises utilized by Consultant that complies with all applicable laws and regulations. All employees of Consultant that require regular access to sterile or secure areas of the Airports must be badged in accordance with City and TSA rules and regulations.

20.3 Gates and doors located in and around the Airport Premises utilized by Consultant that permit entry into sterile or secured areas at the Airports, if any, must be kept locked by Consultant at all times when not in use, or under Consultant's constant security surveillance. Gate or door malfunctions must be reported to the Aviation Director or the Aviation Director's designee without delay and must be kept under constant surveillance by Consultant until the malfunction is remedied.

20.4 In connection with the implementation of its security program, Consultant may receive, gain access to or otherwise obtain certain knowledge and information related to the City's overall Airport security program. Consultant acknowledges that all such knowledge and information is of a highly confidential nature. Consultant covenants that no person will be permitted to gain access to such knowledge and information, unless the person has been approved by the City or the Aviation Director in advance in writing. Consultant further must indemnify, hold harmless and defend the City and other users of the Airport from and against any and all claims, reasonable costs, reasonable expenses, damages and liabilities, including all reasonable attorney's fees and costs, resulting directly or indirectly from the breach of Licensee's covenants and agreements as set forth in this section.

XXI. SENSITIVE SECURITY INFORMATION

21.1 In order for Consultant to provide the services subject of this Agreement it may be necessary for City to share certain Sensitive Security Information, as such is defined under various state statutes and federal regulations. Consultant agrees to guard any information received from City pursuant to this Agreement with utmost care and share such information only on a need-to know basis with its personnel and subcontractors especially when reviewing schematics, buildings plans, and other documents depicting access points to the airfield or critical infrastructure and security systems.

21.2 All schematic designs and accompanying documents and reports produced by Consultant under this contract shall include a protective header with the words "SENSITIVE SECURITY INFORMATION" and a footer with the words "WARNING This record may contain Sensitive Security Information that is controlled under 49 CFR parts 15 and 1520 and/or under other law or regulation. Unauthorized release may result in civil penalty or other action.

21.3 Upon written request by City, Consultant shall return to City all Sensitive Security Information as expeditiously as possible made available by City to Consultant.

XXII. CONTRACT CONSTRUCTION

22.1 All parties have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.

XII. FAMILIARITY WITH LAW AND CONTRACT TERMS

23.1 Consultant represents that, prior to signing this Agreement; Consultant has become thoroughly acquainted with all matters relating to the performance of this Agreement, all applicable laws, and all of the terms and conditions of this Agreement.

XXIII. APPLICABLE LAW

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

XXV. VENUE

25.1 The obligations of the parties to this Agreement shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection

therewith, exclusive venue shall lie in Bexar County, Texas.

XXVI. SEVERABILITY

26.1 In the event any one or more paragraphs or portions of this Agreement are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of this Agreement, but such shall be confined to the specific section, sentences, clauses or portions of this Agreement held invalid or unenforceable.

XXVII. FORCE MAJEURE

27.1 In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

XXVIII. SUCCESSORS

28.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this Agreement, their assigns.

XXIX. NON-WAIVER OF PERFORMANCE

29.1 A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of CITY, such changes must be approved by the San Antonio City Council.

29.2 No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXX. PARAGRAPH HEADINGS

30.1 The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXXI. LEGAL AUTHORITY

31.1 The signer of this Agreement for CITY and Consultant each represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of City and Consultant respectively, and to bind City and Consultant to all of the terms, conditions, provisions and obligations herein contained.

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

32.1 By execution of this Agreement, the undersigned authorized representative of Consultant certifies, and the City relies thereon, that neither Consultant., nor its Principals are presently debarred, suspended, proposed for debarment, or declared ineligible, or voluntarily excluded for the award of contracts by any Federal governmental agency or department;

“Principals”, for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

Consultant shall provide immediate written notice to City, in accordance the notice provisions of this Agreement, if, at any time during the term of this contract, including any renewals hereof, Consultant learns that this certification was erroneous when made or has become erroneous by reason of changed circumstances.

Consultant's certification is a material representation of fact upon which the City has relied in entering into this Agreement. Should City determine, at any time during this Agreement, including any renewals hereof, that this certification is false, or should it become false due to changed circumstances, the City may terminate this Agreement in accordance the terms of this Agreement.

-----*Remainder of this page intentionally left blank*-----

XXXIII. ENTIRE AGREEMENT

33.1 This Agreement, together with its Exhibits and Attachments, embodies the complete Agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written consent of the parties and approved by ordinance passed by the San Antonio City Council.

33.2 It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

EXECUTED ON this the ____ day of _____, 2010.

CITY OF SAN ANTONIO, TEXAS

BARICH, INC.

By: _____
Sheryl L. Sculley, City Manager

By: _____

Its: _____

Federal Tax ID # _____

APPROVED AS TO FORM:

By: _____
City Attorney

- Attachment 1 Scope of Services
- Attachment 2 Consultant Compensation Schedule
- Attachment 3 Project Schedule
- Attachment 4 Consultant and Contractor Reimbursement Policy
- Attachment 5 SBEDA Plan

ATTACHMENT 1

SCOPE OF SERVICES

I. BACKGROUND

The City of San Antonio, Aviation Department ("City") seeks qualified Respondents interested in providing information technology ("IT") design services for the San Antonio International Airport's ("SAT") IT modernization project. To be qualified, Respondent's must have a minimum of three years experience designing low voltage systems for airports or other large institutional campus environments such as universities or medical centers. In addition, the Respondent will be responsible for providing the multi-discipline team necessary to provide the required services solution.

The City is in the process of modernizing to meet its current and future information technology infrastructure for San Antonio International Airport. As part of this process, an IT Modernization and Infrastructure Assessment ("Assessment") was conducted to:

- review existing conditions and
- develop a conceptual design for information technology improvements to the SAT Campus' Outside Plant ("OSP") and Terminal 1 Inside Plant ("ISP") Communications Infrastructure.

As a result of the Assessment, preliminary phasing plans for the Communications Infrastructure Program ("Program") have been developed. The Program phases include:

Phase 1 – Terminal One structured cabling system and enhancements to the West Vault (existing outside plant distribution node) and ARFF (fire station) distribution nodes including 4 sub-phases:

- A. final planning for all three Program phases
- B. initial 30% design for Phase 1
- C. 30% to 100% design documentation for Phase 1
- D. Procurement Support and Construction Administration Services for Phase 1

Phase 2 – Data Center and outside plant infrastructure that includes connectivity from the data center and primary/secondary distribution nodes to the designated North and South(or East and West) distribution nodes (refer to dwgs for node locations)

Phase 3 – Completion of the outside plant campus ring with all associated distribution nodes

The initial scope of services for this Agreement is for Program Phases 1-a and 1-b as outlined in the Section II, below. To preserve the continuity necessary to the successful completion of Phase 1, it is anticipated that this Agreement may be subsequently amended, subject to funding availability, to include Program Phases 1-c and 1-d.

II. SCOPE OF SERVICES

Consultant shall provide the following services:

Phase 1-A. Review and Finalize Phasing Plans for all Program Phases

The preliminary phasing plans, as described in Section I, Background above, will be reviewed and further defined to develop an overall implementation plan that is coordinated with other City construction plans and budgetary requirements. It should be noted that there are potential projects that may impact the initial phasing plans. For example, the implementation of a campus-wide wireless mesh network has been discussed. This implementation will require connectivity throughout the entire campus and may warrant that portions of Phase 2 and Phase 3 be expedited.

Phase 1-B. 30% Design Services for Phase 1 Only

As stated above, this Scope of Services includes 30% design services for Phase 1.b. In general, the design related work will include the development of design and construction documentation including specifications, cost estimates, and drawings. *(Note: The Scopes of Services for this Phase 1-b will be subject to modification, through amendment to the contract, based on the outcome of work completed in Phase 1-a.)*

1-B-1. Campus OSP

The Campus OSP component includes the following overall design work including: 1) Distribution Node Development – West Vault and ARFF Enhancements; and 2) OSP Backbone Cabling from the Primary and Secondary Distribution Facilities to the identified distribution nodes to support West Vault and ARFF (to be coordinated with other project)

- a. **Campus Distribution Node Design and Development** - The augmentation of the West Vault and the construction of a new distribution node within the ARFF building that meet the Assessment Design Criteria are included in this task. These are further defined below:
 1. The existing West Vault will be designated as a new Distribution Node as part of the overall OSP Connectivity. The current construction of the West Vault will be reviewed with Airport Representatives (which shall include Information Technology Services Department (“ITSD”), Airport IT, and Planning and Development Department), individual Project Designers (mechanical, electrical, structural, etc.) and others as required verifying the necessary enhancements. Enhancements may include, but are not limited to, architectural (structural), mechanical, electrical, and telecommunications (racking, cabinets, grounding, etc.).
 2. The existing ARFF Intermediate Distribution Frame (“IDF”) will be reviewed with Airport Representatives, Project Designers, MEP Designers and others as required to verify the necessary enhancements or build-out to meet ITSD standards. Enhancements may include, but are not limited to, architectural (structural), mechanical, electrical, and telecommunications (racking, cabinets, grounding, etc.).
 3. The scope elements associated with this task are summarized below:
 - a. Design a new distribution node within the ARFF that meets all design requirements specified in Assessment Design Criteria. These requirements include but are not limited to:
 1. Architectural and structural
 2. Electrical
 3. Mechanical

4. Telecommunications (racking, cabinets, grounding, etc.)
- b. Design a new distribution node to the West Vault to be compliant with the design requirements specified in the Assessment Design Criteria. These requirements include but are not limited to:
 1. Architectural and structural
 2. Electrical
 3. Mechanical
 4. Telecommunications (racking, cabinets, grounding, etc.)

b. Campus Backbone Cabling Design and Development

1. Terminal B has been designated as the Primary Distribution Facility and Terminal 1 has been designated as the Secondary Distribution Facility. Coordinate the requirements for each respective facility with Airport Representatives including ITSD, Airport IT, and Planning and Development.
2. Each identified node will receive a primary and secondary backbone fiber feed for redundancy to begin the overall campus connectivity.
3. Backbone Cabling requirements, including quantities, will be coordinated with Airport Representatives, Project Designers and others as required to verify Communications and Data Systems requirements.
4. Cabling quantities identified in existing documentation are preliminary counts and should be verified at the time of design with the Airport Representatives.
5. Relocation of existing fiber into new cabinets and/or termination shelves will be designed to utilize existing connectivity components.
6. Conduct design workshops for IT related systems with Airport Representatives and other project stakeholders to verify backbone cabling requirements of each respective system.
7. The scope elements associated with this task are summarized below:
 - a. Quantify and design new fiber optic cabling runs from the primary and secondary distribution nodes (Terminal 1 and Terminal B BDFs) to the West Vault and ARFF distribution nodes.
 - b. Design all required reroutes of existing cabling into the new distribution nodes.

c. Campus Routing Cabling Design and Development

1. Verify and provide additional design as required for the routing pathway from the primary and secondary distribution points to the West Vault and the ARFF.
2. The scope elements associated with this task are summarized below:
 - a. Design routing to support all cabling identified in Tasks 1 and 2 above.

1-B-2. Terminal 1

The Terminal 1 ISP design work includes the design of a Structured Cabling System, including communications rooms, pathways, cabling, and telecommunications grounding. These elements are further described below:

a. Terminal 1 Communications Room (BDF and IDF) Design and Development

1. For Terminal 1, a new Building Distribution Frame (“BDF”) location and ten (10) IDFs were identified to provide connectivity for the facility. Five (5) of the ten IDFs are new locations that require further review and development. Coordinate with Airport Representatives to identify and allocate the appropriate space to support the construction of the new and augmented communications rooms.

2. Review existing BDF/IDF information and coordinate with Airport Representatives, Project Designers, and others as required to verify Communications and Data Systems requirements within each room.
3. Coordinate with Airport Representatives, Project Designers, MEP designers, and others as required to design room requirements to ensure that all design requirements are satisfied. These requirements are defined in the conceptual design documentation and include, but are not limited to:
 - a. Architectural and Structural
 - b. Heating and Cooling
 - c. Electrical
 - d. Security
 - e. Communications Routing
4. Coordinate Local Area Network (“LAN”) requirements with Airport Representatives.
5. Conduct design workshops for IT related systems with Airport Representatives, Program Management Representatives, the Architect, and other system designers to verify the communications room requirements.
6. The scope elements associated with this task are summarized below:
 - a. Identify the final location of the new BDF and perform a complete design including:
 1. Architectural and structural
 2. Electrical
 3. Mechanical
 4. Telecommunications (racking, cabinets, grounding, etc.)
 5. Conduit routing
 - b. Identify final locations of five (5) new IDFs and perform a complete design including:
 1. Architectural and structural
 2. Electrical
 3. Mechanical
 4. Telecommunications (racking, cabinets, grounding, etc.)
 5. Conduit routing
 - c. Design all required augmentations to the five (5) existing communications rooms including:
 1. Architectural and structural
 2. Electrical
 3. Mechanical
 4. Telecommunications (racking, cabinets, grounding, etc.)
 5. Conduit routing
 - d. Coordinate with Airport Representatives to determine LAN equipment to be located within all communications rooms and ensure that the designs will accommodate all LAN equipment. This will include power, mounting and grounding requirements.
- b. Terminal 1 Backbone Cabling Design and Developments**
 1. A new BDF has been identified to support the Terminal 1 communications infrastructure. Backbone cabling will originate from the BDF to each of the IDFs with redundant connections.
 2. Each IDF will be connected with Hop Cabling to provide an additional level of connectivity.

3. Cabling quantities identified in existing documentation are preliminary counts and should be verified at the time of design with the Airport Representatives.
4. Conduct design workshops for IT related systems with Airport Representatives, Program Management Representatives, the Architect, and other system designers to verify backbone cabling requirements of each respective system.
5. The scope elements associated with this task are summarized below:
 - a. Design all cabling quantities required to support the City's current and future needs.
 - b. Design cabling from the BDF to all IDFs within Terminal 1. Design will include all routing and terminations within each room.
 - c. Coordinate with Airport Representatives and existing cable management program to satisfy all labeling and identification requirements.

c. Terminal 1 Routing Infrastructure Design

1. Review existing facilities and coordinate with Airport Representatives to identify and allocate the appropriate space for conduit routing to support the communications infrastructure requirements within Terminal 1.
2. Review existing facility and coordinate with Airport Representatives to identify and allocate the appropriate space for the horizontal distribution tray to support the communications infrastructure requirements within Terminal 1.
3. The scope elements associated with this task are summarized below:
 - a. Design all conduit routing within Terminal 1 to support the BDF, IDF, cabling, and telecommunications grounding requirements. Coordinate routing with all other trades (Mechanical, Electrical, and Plumbing) including new and existing installations to ensure that all right of ways are maintained and the conduit is routed in accordance with industry standards.
 - b. Design all cable tray routing within Terminal 1 to support horizontal cabling. Coordinate routing with all other trades (Mechanical, Electrical, and Plumbing) including new and existing installations to ensure that all right of ways are maintained and the conduit is routed in accordance with industry standards.

1-B-3. Secondary SONET Connectivity

SAT is part of a larger citywide network and a designated offsite city data center is currently housing (or will house) backup servers for certain airport systems. As these systems are critical to the operation of SAT, additional connectivity to the City's SONET ring needs to be addressed as part of the planning process. In certain instances both the primary and secondary servers will need to be located on the Airport campus due to operational requirements. In this case, the servers will be physically separated and located in Terminal B and Terminal 1. As such, redundant connectivity between the Terminals should be provided to maintain system resiliency. This will be accomplished once the Terminal B and Baggage Handling System Building project work is completed with primary and secondary Terminal B to Terminal 1 pathways and fiber.

SAT currently has a single connection to the SONET ring within Terminal 1. To provide additional redundancy it is desired to provide a secondary connection to this ring at the ARFF facility (Fire Station 23). Although SONET is inherently a resilient networking topology, this will provide further redundancy for the airport connection through diverse routes into the SAT campus. As one of the City's data centers is currently designated for housing secondary servers,

providing this redundancy is strongly recommended. This connection and all associated work should be prioritized and integrated into the overall phasing approach recommended in the conceptual design documentation. This is included in the Phase 1-b work.

In addition to the Phase 1-A and 1-B technical requirements above, the Consultant shall be provide administrative support to the project including, but not limited to: providing an initial Project Plan, periodic meetings with Airport Representatives and other stakeholders, providing five (5) copies of final deliverables, and weekly progress reports on Project Plan status.

Attachment 2

CONSULTANT COMPENSATION SCHEDULE

Consultant shall perform all services in under this Agreement per the attached schedule.

**Attachment 3
Project Schedule**

Attachment 4

Attachment 5. SBEDA PLAN