

AN ORDINANCE 2011-06-09-0485

AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. IN THE NOT TO EXCEED AMOUNT OF \$228,358.00 FOR PARKING REVENUE CONTROL SYSTEM CONSULTING SERVICES AT SAN ANTONIO INTERNATIONAL AIRPORT.

* * * * *

WHEREAS, the Aviation Department will be replacing the existing Parking Revenue Control System (PRCS) at San Antonio International Airport; and

WHEREAS, the City issued a Request for proposals in April 2011 and received four proposals; and

WHEREAS, an evaluation committee recommended Kimley-Horn and Associates, Inc. to develop the specifications for the new PRCS and subsequent negotiations resulted in an agreed to contract value in the not to exceed amount of \$228,358.00; and

WHEREAS, it is now necessary to authorize the execution of a Professional Services Agreement with Kimley-Horn and Associates, 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 the Professional Services Agreement attached hereto as "Attachment 1" with Kimley-Horn and Associates, Inc. in the not to exceed amount of \$228,358.00 for Parking Revenue Control System consulting services at San Antonio International Airport.

SECTION 2. The amount of \$78,358.00 is appropriated in SAP Fund 51013000, Capital Improvement Funds, SAP WBS AV-00006-01-02-38, SAP GL account 6102100 -- Interfund Transfer out entitled Transfer to 33-00196-90-02. The amount of \$78,358.00 is authorized to be transferred to SAP Fund 51099000.

SECTION 3. The budget in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00196, Parking Revenue Control System, shall be revised by increasing SAP WBS element 33-00196-90-02 entitled Transfer from AV-00006-01-02-38, SAP GL account 6101100 -- Interfund Transfer In. by the amount \$78,358.00.

SECTION 4. The amount of \$78,358.00 is appropriated in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00196, Parking Revenue Control System, SAP WBS Element 33-00196-01-01, entitled Project Initiation, SAP GL Account 5202020.

SECTION 5. Payment in the amount not to exceed \$228,358.00 in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00196, Parking Revenue Control System, is

authorized to be encumbered and made payable to Kimley-Horn & Associates, Inc. for consulting services.

SECTION 6. 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.

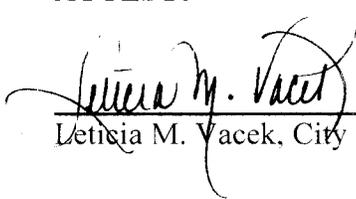
SECTION 7. This Ordinance shall become effective immediately after passage upon the receipt of eight affirmative votes, or, in the absence of eight affirmative votes, ten days after passage.

PASSED and APPROVED this 9th day of June, 2011.



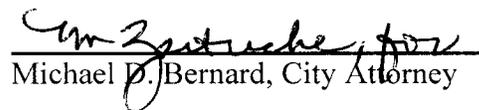
M A Y O R
Julián Castro

ATTEST:

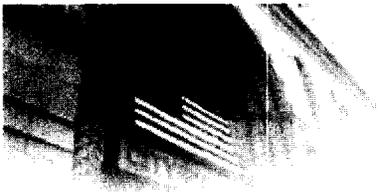


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

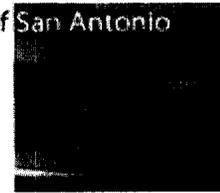


Michael D. Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 16

Name:	6, 7, 9, 10, 11, 12A, 12B, 12C, 13, 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H, 15I, 15J, 15K, 15L, 15M, 15N, 15O, 16, 17, 19A, 19B, 21, 24						
Date:	06/09/2011						
Time:	09:31:23 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a professional service agreement with Kimley-Horn & Associates, Inc. in an amount up to \$228,358.00 for consulting services for the Parking Revenue Control System at the San Antonio International Airport funded through Airport Improvement and Contingency 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			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				x
Carlton Soules	District 10		x				

ATTACHMENT 1

**PROFESSIONAL SERVICES AGREEMENT
FOR
PARKING CONSULTING SERVICES
AT
SAN ANTONIO INTERNATIONAL AIRPORT**

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, and Kimley-Horn and Associates, Inc. (hereinafter referred to as "Consultant") by and through its designated officer(s) pursuant to its by-laws or a resolution of its Board of Directors, 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 "Airport" means the San Antonio International Airport
- 1.2 "Director" means the director of the City's Aviation Department
- 1.3 "Project" means the provision of parking consulting services to include, but are not limited to, reviewing existing Parking Revenue Control System (PRCS) and technical assistance with an upcoming solicitation to purchase a new PRCS.

II. PERIOD OF SERVICE

2.1 This Agreement shall take effect upon execution by both parties, whichever date is later, and continue in full force and effect for the period required for completion of the duties as set forth in the Scope of Services. Performance shall commence upon execution of this contract by both parties, and shall terminate upon substantial completion of Consultant's duties as set forth in the Scope of Services and upon written acceptance by City of Consultant's work product or services rendered, unless extension or earlier termination shall occur pursuant to any of the provisions hereof.

III. SCOPE OF SERVICES

3.1 Consultant, in consideration for the compensation herein provided, as outlined in Article V. Compensation, shall render the required professional services in connection with the Project, as more specifically outlined in Exhibit 1, Scope of Services.

3.2 Consultant shall complete all Project work within the Scope of Services in compliance with this Agreement, and agrees to staff the Project with sufficient necessary, qualified personnel to the Project, in order not to delay or disrupt the progress of the Project and to complete this Project in accordance with the Project Schedule attached hereto as Exhibit 2. Time is of the essence and the adherence to the aforementioned Project Schedule is critical to this Project.

3.3 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.

3.4 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 subconsultants of Consultant.

3.5 Acceptance of any deliverables by City shall not constitute nor be deemed a release of the responsibility and liability of Consultant, its employees, associates, agents or subconsultants for the accuracy and competency of their deliverables or associated services; nor shall such acceptance be deemed an assumption of responsibility or liability by City for any defect in the deliverables prepared by said Consultant, its employees, subconsultants, and agents.

IV. COORDINATION WITH THE CITY

4.1 Consultant shall hold periodic conferences with Director or his designee, so that the Project, as developed, shall have the full benefit of City's experience, and knowledge of existing needs and facilities, and be consistent with the City's current policies and standards.

4.2 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.

4.3 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.

V. COMPENSATION

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

5.2 The total compensation for all work to be performed by Consultant as fully defined in the Scope of Services, to include all travel and other expenses, shall not exceed TWO HUNDRED TWENTY-EIGHT THOUSAND, THREE HUNDRED FIFTY-EIGHT AND 00/100 DOLLARS (\$228,358.00). Consultant acknowledges that such not to exceed fee shall be sufficient compensation for all services, travel and other expense to be performed pursuant to or associated with the Scope of Services.

5.3 Consultant shall bill all services in accordance with the hourly rates set out in Exhibit 3, Fee Estimate. Consultant may submit invoices no more than once monthly. Such invoices must be for work actually performed and actual travel and other expenses incurred and not previously invoiced and must show: a) the hours being billed delineated by task performed, employee name and position, b) a summary of the services performed during the period covered by the invoice, c) travel and other expenses with supporting documentation attached; and d) the total amount due for services, travel and expenses. Allowable travel and other expenses shall be invoiced at the actual cost incurred without markup and must be in compliance with the Aviation Department Consultant and Contractor Reimbursable Expense Policy to be eligible for reimbursement. City reserves the right to request such additional information as the City deems necessary to support the invoiced charges. City shall pay all undisputed amounts due under this Agreement within 30 days of receipt of a properly addressed invoice. Payment is deemed to be made on the date of mailing of the check or electronic fund transfer.

5.4 The services to be rendered per the Scope of Services consist of multiple tasks and subtasks. The Director, or his designee, shall have the ability to reallocate funds between those tasks and subtasks administratively, without approval of the City Council, so long as such reallocation does not significantly change the Scope of Services or increase the total not to exceed contract amount

5.5 Consultant shall adhere to the Aviation Department Consultant and Contractor Reimbursable Expense Policy, attached hereto as Exhibit 4, governing expenditures.

VI. OWNERSHIP AND RETENTION OF DOCUMENTS

6.1 Any and all documents, papers, records, writings, media or information in whatever form and character created by Consultant pursuant to the provisions of this Agreement and pertinent to the services rendered hereunder, (hereinafter "Documents") shall be the exclusive property of City; and such Documents shall not be the subject of any copyright or proprietary claim by Consultant. Consultant understands and acknowledges that as the exclusive owner of any and all Documents, City has the right to use all Documents as City desires, without restriction and that City will be providing reports developed pursuant to this Agreement to the FAA.

6.2 All of the Consultant's documentary work product reports and correspondence to City under this Agreement shall be the property of the City and, upon completion of this Agreement; such documentary work product shall be promptly delivered to City in a reasonably organized form, without restriction on its future use by City. The above notwithstanding, the Consultant shall retain all rights in any standard drawing details, designs, specifications, databases, computer software and any other proprietary information it may provide pursuant to this Agreement, whether or not such proprietary information was modified during the course of providing the services hereunder. The Consultant may retain for its files any copies of documents it chooses to retain and may use Consultant's work product as it deems fit. Any materially significant work product lost or destroyed by the Consultant shall be replaced or reproduced at the Consultant's non-reimbursable, sole cost.

6.3 Consultant agrees and covenants to protect any and all proprietary rights of the City in any materials provided to the Consultant. Such protection of proprietary rights by the Consultant shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to the City. Additionally, any materials provided to the Consultant by the City shall not be released to any third party without the written consent of the City and shall be returned intact to the City upon termination or completion of this Agreement or if instructed to do so by the Director

6.4 Consultant hereby assigns all statutory and common law copyrights to any copyrightable work that in part or in whole was produced from this Agreement to the 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 the Consultant. All reports, maps, project logos, drawings or other copyrightable work produced under this Agreement shall become the property of the City (excluding any prior owned instrument of services, unless otherwise specified herein). **THE CONSULTANT SHALL, AT ITS EXPENSE, INDEMNIFY CITY AND DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST THE CITY AND PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION, AGAINST THE 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.**

6.5 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. 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.

6.6 The Consultant agrees to maintain all books, records and reports required under this Agreement 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, the Federal Aviation Administration and the Comptroller General of the United States, or any of their duly authorized representatives, access to any books, documents, papers and records of the Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions.

6.7 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of Consultant, including but not limited to any computer software (object code and source code), tools, systems, equipment or other information used by Consultant or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies, or processes used by the 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.

6.8 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

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 Agreement.

7.1.7 This Agreement may be terminated by the Consultant, at any time after issuance of the Director's Notice to Proceed, upon ninety (90) calendar days written notice provided in accordance with the Notice provisions contained in this Agreement.

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 Agreement in whole or in part as City deems appropriate, and to contract with another Consultant to complete the work required by this Agreement. City shall also have the right to offset the cost of said new agreement with a new Consultant against Consultant's future or unpaid invoice(s), subject to any statutory or legal duty, if any, on the part of City to mitigate its losses.

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 Agreement, 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 Agreement shall continue) and such petition is not dismissed within forty-five (45) days of filing; or if a receiver, trustee or liquidator is appointed for it, or its joint venture entity, or any substantial part of Consultant's assets or properties; or

7.3.6 Consultant fails to comply in any respect with the insurance requirements set forth in this Agreement.

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. Such suspension shall take effect upon the date set forth in the notice, or if no date is set forth, immediately upon Consultant's receipt of said notice.

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

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

8.3.7 Upon the above conditions being met, the City's review of the submissions and finding the claimed compensation to be appropriate to the terms of this agreement, the City shall pay Consultant that portion of the agreed prescribed fee for those as yet uncompensated services actually performed under this Agreement to the benefit of the City, adjusted for any previous payments of the fee in question.

8.3.8 City, as a public entity, has a duty to document the expenditure of public funds. Consultant acknowledges this duty on the part of City. To this end, Consultant understands that failure of Consultant to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by Consultant of any portion of the fee for which Consultant did not supply such necessary statements and/or documents.

IX. INSURANCE REQUIREMENTS

9.1 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 the City's Aviation Department, which shall be clearly labeled "Parking Consultant" 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 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 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 whereby City may incur increased risk.

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

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f.. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. \$100,000
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 by reason of any act, malpractice, error, or omission in professional services.

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. Consultant 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). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

Aviation Department
Attn: Parking Division
9800 Airport Boulevard
San Antonio, Texas 78216

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

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

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

9.8 In addition to any other remedies the City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which

become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

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

9.10 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.

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

X. INDEMNIFICATION

10.1 Consultant covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages (to include exemplary, consequential and punitive damages), losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to Consultant's negligent 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 the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

10.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Consultant shall advise the City in writing within 24 hours of any claim or demand against the City or Consultant known to Consultant related to or arising out of Consultant's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at Consultant's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Consultant of any of its obligations under this paragraph.

10.3 Defense Counsel - City shall have the right to approve defense counsel 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 seven (7) business 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 shall also 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.

10.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of Consultant, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or any subcontractor under worker’s compensation or other employee benefit acts.

10.5 Acceptance of the final report by the City shall not constitute nor be deemed a release of the responsibility and liability of the Consultant, its employees, associates, agents or subcontractors for the accuracy and competency of their reports or other documents and Work; nor shall such acceptance be deemed an assumption of responsibility or liability by the City for any defect in the report or other documents and Work prepared by said Consultant.

XI. CONSULTANT’S LIABILITY AND STANDARD OF CARE

11.1 Consultant warrants that the 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. For breach of this warranty, the City shall have the right to terminate this Agreement under the provisions of this Agreement.

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 professional 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 Proposal. No further approval shall be needed for Consultant to use such subcontractors as are identified in Consultant’s Proposal.

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

13.3 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 it 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. No term or provision of this Agreement or act of the Consultant in the performance of this Agreement shall be construed as making the Consultant the agent, servant or employee of the City, or as making the Consultant or any of its agents or employees eligible for any fringe benefits, such as retirement, insurance and worker's compensation, which the City provides to or for its employees.

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 PROGRAM

15.1 The City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on the City’s International and Economic Development (IEDD) website page and is also available in hard copy form upon request to the City. The SBEDA Ordinance Compliance Provisions contained in this section of the agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the City pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this agreement. Unless defined in a contrary manner herein, terms used in this section of the agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

15.2 Definitions

15.2.1 Affirmative Procurement Initiatives (API) – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise (“S/M/WBE”) Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

15.2.2 Certification or “Certified” – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

15.2.3 Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by Consultant to perform such “pass-through” or “conduit” functions that are not commercially useful shall

be viewed by the City as fraudulent if Consultant attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the Consultant shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the Consultant and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

15.2.4 Evaluation Preference – an API that may be applied by the Goal Setting Committee (“GSC”) to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime Consultants or Respondents.

15.2.5 Good Faith Efforts – documentation of the Consultant’s or Respondent’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor’s posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of Consultant’s Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

15.2.6 HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

15.2.7 Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

15.2.8 Individual – an adult person that is of legal majority age.

Industry Categories – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”

15.2.9 Minority/Women Business Enterprise (M/WBE) – firm that is certified as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

15.2.10 M/WBE Directory – a listing of minority- and women-owned businesses that have been certified for participation in the City’s M/WBE Program APIs.

15.2.11 Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the City. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

15.2.12 Minority Group Members – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

15.2.13 Originating Department – the City department or authorized representative of the City which issues solicitations or for which a solicitation is issued.

15.2.14 Payment – dollars actually paid to Consultants and/or Subcontractors and vendors for City contracted goods and/or services.

15.2.15 Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

15.2.16 Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City. For purposes of this agreement, this term refers to the Consultant.

15.2.17 Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for

participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

15.2.18 Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this agreement, Consultant is the Respondent.

15.2.19 Responsible – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

15.2.20 San Antonio Metropolitan Statistical Area (SAMSA) – also known as the Relevant Marketplace, the geographic market area from which the City’s MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

15.2.21 SBE Directory - a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

15.2.22 Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

15.2.23 Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

15.2.24 Small Business Office (SBO) – the office within the International and Economic Development Department (IEDD) of the City that is primarily responsible for general oversight and administration of the S/M/WBE Program.

15.2.25 Small Business Office Manager – the Assistant Director of the IEDD of the City that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

15.2.26 Small Minority Women Business Enterprise Program (S/M/WBE Program) – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

15.2.27 Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor or Consultant in furtherance of the Prime Contractor’s performance under a contract or purchase order with the City. A copy of each binding agreement between the Consultant and its

subcontractors shall be submitted to the City prior to execution of this contract agreement and any contract modification agreement.

15.2.28 Suspension – the temporary stoppage of the SBE or M/WBE firm’s beneficial participation in the City’s S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of Consultant’s and/or S/M/WBE firm’s performance and payment under City contracts due to the City’s imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

15.2.29 Subcontractor/Supplier Utilization Plan – a binding part of this contract agreement which states the Consultant’s commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of Consultant’s Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the IEDD Director or designee.

15.2.30 Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term “WBE” as used in this agreement is not inclusive of MBEs.

15.3 SBEDA Program Compliance – General Provisions. As Consultant acknowledges that the terms of the City’s SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the City’s SBEDA Policy & Procedure Manual are in furtherance of the City’s efforts at economic inclusion and, moreover, that such terms are part of Consultant’s scope of work as referenced in the City’s formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines, and procedures are hereby incorporated by reference into this Agreement, and are considered by the parties to this Agreement to be material terms. Consultant voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the City. Without limitation, Consultant further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

15.3.1 Consultant shall cooperate fully with the Small Business Office and other City departments in their data collection and monitoring efforts regarding Consultant’s utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;

15.3.2 Consultant shall cooperate fully with any City or SBO investigation (and shall also respond truthfully and promptly to any City or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Consultant or its Subcontractors or suppliers;

15.3.3 Consultant shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;

15.3.4 Consultant shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Consultant's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Consultant to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Consultant of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

15.3.5 Consultant shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the City, as well as any transfer or change in its ownership or business structure.

15.3.6 Consultant shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.

15.4 SBEDA Program Compliance – Affirmative Procurement Initiatives.

15.4.1 The City has applied the following contract-specific Affirmative Procurement Initiative to this contract. Consultant hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification, and absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

15.4.2 SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 5. (d), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, Consultant affirms that if it is presently certified as an SBE, Consultant agrees not to subcontract more than 49% of the contract value to a non-SBE firm.

15.5 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this agreement, the Consultant represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Consultant shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. The company 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 the company from participating in City contracts, or other sanctions. This clause is not

enforceable by or for the benefit of, and creates no obligation to, any third party. Consultant's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Consultant shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

15.6 Prompt Payment. Upon execution of this contract by Consultant, Consultant shall be required to submit to City accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the Consultant's reported subcontract participation is accurate. Consultant shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from City. In the event of Consultant's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to Consultant, and no new City contracts shall be issued to the Consultant until the City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

15.7 Violations, Sanctions and Penalties.

15.7.1 In addition to the above terms, Consultant acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

15.7.1.1 Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

15.7.1.2 Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;

15.7.1.3 Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;

15.7.1.4 Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and

15.7.1.5 Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

15.7.2 Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions, and remedies available under law, including but not limited to:

15.7.2.1 Suspension of contract;

15.7.2.2 Withholding of funds;

15.7.2.3 Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;

15.7.2.4 Refusal to accept a response or proposal; and

15.7.2.5 Disqualification of Consultant or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

XVI. EQUAL EMPLOYMENT OPPORTUNITY

CONSULTANT shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, **CONSULTANT** agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's office.

XVII. AMENDMENTS

Any alterations, additions, or deletions to the terms of this Agreement shall be effected by amendment, in writing, executed by City and Consultant. The Director shall have the authority to execute amendments that require up to \$25,000.00 in increased cost on behalf of the City without further action by the San Antonio City Council, subject to appropriation of funds for the increase in cost. Any other change will require approval of the City Council by passage of an ordinance therefore.

XVIII. NOTICES

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
Aviation Department
Assistant Aviation Director – Finance/Administration
9800 Airport Boulevard
San Antonio, Texas 78216

If intended for Consultant, to:

Kimley-Horn and Associates, Inc.
Attn:

XIX. CONFLICTS OF INTEREST

19.1 No officer or employee of the City shall have a financial interest, directly or indirectly, in any contract with the City, or shall be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or service, except on behalf of the City as an officer or employee. This prohibition extends to the City Public Service Board, the SAWS, and other City boards and commissions, which are more than purely advisory. The prohibition also applies to subcontracts on City projects.

19.2 Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in 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.

19.3 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.

XX. RIGHT OF REVIEW AND AUDIT

22.1 The Consultant grants the City, or its designees, the right to audit, examine or inspect, at the City's election, all of the Consultant's records relating to the performance of the Work under the Agreement during the term of the Agreement and retention period herein. The audit, examination or inspection may be performed by a City designee, which may include its internal auditors or an outside representative engaged by the City. The 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 the City's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

22.2 The City agrees that it will exercise the right to audit, examine or inspect only during regular business hours. The Consultant agrees to allow the City's designee access to all of the 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.

XXI. AIRPORT SECURITY

21.1 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.

21.2 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.

21.3 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.

21.4 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.

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.

XXIII. 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, regulations and FAA Advisory Circulars and guidelines, and all of the terms and conditions of this Agreement and will comply therewith.

XXIV. 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, and this Agreement shall be enforced as if such invalid, illegal, or unenforceable provision was not included in this Agreement.

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).

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

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

XXXIII. ENTIRE AGREEMENT

33.1 This Agreement, together with its authorizing ordinance, 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 _____, 2011.

CITY OF SAN ANTONIO, TEXAS

KIMLEY-HORN AND ASSOCIATES, INC.

Sheryl L. Sculley
City Manager

By: 
Signature

Associate
Title

Federal Tax ID#: 56-0885615

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT 1
SCOPE OF SERVICES

1. Introduction

The PRCS upgrade project will include the following tasks that are further detailed within Paragraph 2, Scope of Work.

- **Develop Design Criteria**
 - Review the existing Federal APD PRCS
 - Review prior audit findings
 - Establish the Design Criteria for the new PRCS that address said findings

- **System Design**
 - Prepare a Functional Specification Document of the features and functionalities of the new system
 - Prepare a detailed Opinion of Probably Cost (OPC)

- **Contract Award Services**
 - Assist the City in developing solicitation documents
 - Identify potential Respondents to the solicitation
 - Attend a Pre-submittal conference
 - Respond to questions from Respondents
 - Assist in the preparation of amendments to the solicitation documents
 - Assist with review of submitted responses and Respondent selection
 - Assist with contract negotiation between City and selected Respondent

- **Construction Phase Services**
 - Oversee installation of the new PRCS
 - Verify compliance of the PRCS with the required functionalities via acceptance testing

2. Scope of Work

2.1 Develop Design Criteria

Kimley-Horn shall develop design criteria, specifically focusing on replacing the existing Federal APD PRCS to meet the current airport goals and provide flexibility for adding additional functionality.

Review the Existing Federal APD PRCS

Kimley-Horn shall work with the City's stakeholder team to analyze the existing system and, along with Kimley-Horn's knowledge of currently available technology, jointly develop design criteria for the new PRCS in an effort to improve on the performance and in-service availability currently provided by the existing PRCS.

Kimley-Horn shall observe and review the general condition of the existing Federal APD PRCS. This observation and review shall be conducted as part of the project kickoff meetings.

Establish Design Criteria

Kimley-Horn shall conduct meetings and discussions with members of the City’s stakeholder team, specifically representatives from Audit, Finance, Landside Operations/Parking Program, Maintenance and Information Technology to determine and document what minimum design criteria are required for the replacement PRCS. The discussions shall include topics such as:

- Technologies, features and functions of the existing system that are desired to be retained with the replacement system
- New technology, features and functions that shall be included with the replacement system such as open system architecture, data security standards, flexibility and adaptability in reporting, ease of auditing, pricing strategies, real-time desk top system adaptability of parking products and operations and system diagnostics for system maintainers
- Management goals and objectives for new system

Recommendation

At the conclusion of all data collection and analysis Kimley-Horn will summarize the findings in a project Basis of Design memorandum and make recommendations to the City of the technologies that should be implemented with the replacement system in order to achieve the required design criteria. Design criteria will address the findings from the prior audit.

On-Site Project Meetings – Develop Design Criteria

One site visit is scheduled during this project task. The site visit will occur approximately one week after receipt of written Notice to Proceed from the City, and will consist of multiple project meetings over multiple days. The project meeting to be scheduled during this project phase includes:

Project Kickoff Meeting /Data Collection – 2 Kimley-Horn Representatives, 4 Days On-Site

Meeting Minute Preparation – Develop Design Criteria

Kimley-Horn will prepare meeting minutes for the meetings listed above. Meeting minutes will be prepared in Kimley-Horn’s established format in Microsoft Word. Meeting minute preparation will entail transferring Kimley-Horn’s meeting notes and general meeting comments into the above described electronic format and submitting the electronic file to the City for distribution by the City. Should modifications to the meeting minutes be desired by the City prior to distribution, the City will have the responsibility of making the revisions and distributing the final meeting minutes.

Project Management/Project Coordination – Develop Design Criteria

Kimley-Horn will participate in day to day project management and project coordination tasks such as authoring and responding to e-mails, conducting telephone conversations, transmitting various types of data, and other tasks typically classified as project management and project coordination. Kimley-Horn’s participation shall include up to 3 hours per week based on the schedule below.

Schedule – Develop Design Criteria

Kimley-Horn will perform the tasks described above in general accordance to the following schedule:

- Conduct Project Kickoff Meeting/Data Collection Site Visit – 5 work days after receipt of written Notice to Proceed (NTP) from the City for this task
- Submit the Design Criteria Memorandum – 10 work days after completion of Project Kickoff Meeting/Data Collection Site Visit

2.2 Design

Functional Specifications

Kimley-Horn will prepare Functional Specifications for the procurement of a new PRCS that includes those functionalities that are in accordance with the design criteria. The Functional Specifications will be created using the Construction Specifications Institute's (CSI) Masterformat 2004. The Functional Specifications will be Division 11 12 11 of this format. The Functional Specifications will include the following sections:

- Summary of the work included and excluded
- References to related specification sections and industry standards
- Definition of terms used throughout the specification
- Submittal requirements and procedures
- Quality assurance requirements
- Equipment delivery and storage requirements
- Description of the project/site conditions
- Project sequencing and schedule coordination requirements
- Warranty requirements
- Maintenance requirements
- Consumables procedures and requirements
- Software requirements
- Communication requirements
- Equipment and Subsystem requirements
- Patron processing procedures for each type of transaction and exception transaction
- Equipment and subsystems performance standards
- Source (factory) quality control/testing
- Site examination and verification requirements
- Installation requirements
- Field quality control/testing
- Instruction and training requirements
- Equipment protection requirements
- List of equipment locations and quantities

The Functional Specifications will describe what the City will provide and what is expected from the

Contractor. The Functional Specifications will be written such that the Contractor will be held accountable to provide a system that performs the features and functionalities required by the City at the required performance levels, while excluding any reference as to how the work will technically be accomplished.

Deliverables - Design

The Functional Specifications will be submitted for review by the City at 65%, and 95% completion milestones. After incorporation of the comments received from the 95% Submittal, Kimley-Horn will submit the Final Functional Specifications.

Deliverable: The 65% Functional Specifications will include:

- Table of Contents
- Summary of the work included and excluded
- References to related specification sections and industry standards
- Definition of terms used throughout the specification
- Submittal requirements and procedures
- Quality assurance requirements
- Equipment delivery and storage requirements
- Description of the project/site conditions
- Project sequencing and schedule coordination requirements
- Warranty requirements
- Maintenance requirements
- Consumables procedures and requirements
- Software requirements
- Communication requirements
- Equipment and Subsystem requirements
- Patron processing procedures for each type of transaction and exception transaction
- Equipment and subsystems performance standards
- Opinion of Probable Cost (OPC)

Deliverable: The 95% Functional Specifications will include:

- Incorporation of all Comments Received from the 65% Design
- Source (factory) quality control/testing
- Site examination and verification requirements
- Installation requirements
- Field quality control/testing
- Instruction and training requirements
- Equipment protection requirements
- List of equipment locations and quantities
- Updated OPC

Deliverable: The Final Functional Specifications will include:

- Incorporation of all Comments Received from the 95% Design
- Final OPC

Five copies of all Functional Specifications documents will be submitted at each review submittal milestone. The documents will be printed on spiral-bound 8½” x 11” paper with protective covers. The Final Report will include 10 printed copies as described above and one CD-ROM disc containing electronic files of the Final Functional Specifications in Adobe Acrobat (.PDF) file format.

On-Site Project Meetings - Design

Two project meetings are scheduled during this project phase:

- 65% Submittal Review Meeting/Data Collection – 1 Kimley-Horn Representative, 3 Days On-Site
- 95% Submittal Review Meeting – 1 Kimley-Horn Representative, 2 Days On-Site

Meeting Minute Preparation - Design

Kimley-Horn will prepare meeting minutes for the meetings listed above. Meeting minutes will be prepared in Kimley-Horn’s established format in Microsoft Word. Meeting minute preparation will entail transferring Kimley-Horn’s handwritten meeting notes and general meeting comments into the above described electronic format and submitting the electronic file to the City for distribution by the City. Should modifications to the meeting minutes be desired by the City prior to distribution, the City will have the responsibility of making the revisions and distributing the final meeting minutes.

Project Management/Project Coordination - Design

Kimley-Horn will participate in day to day project management and project coordination tasks such as authoring and responding to e-mails, conducting telephone conversations, transmitting various types of data, and preparing general responses to correspondence received from the City, among other tasks typically classified as project management and project coordination. Kimley-Horn’s participation shall include up to 3 hours per week based on the schedule below.

Schedule - Design

Kimley-Horn will perform the tasks described above in general accordance to the following schedule:

- Submit the 65% Functional Specifications – 30 work days after NTP
- Conduct 65% Submittal Review Meeting/Data Collection Site Visit – 35 work days after NTP
- Submit the 95% Functional Specifications – 55 work days after NTP
- Conduct 95% Submittal Review Meeting/Data Collection Site Visit – 60 work days after NTP
- Submit the Final Functional Specifications – 65 work days after NTP

2.3 Contract Award Services

Kimley-Horn will assist the City during the Contractor solicitation phase of the project. Kimley-Horn will:

- Work with City staff to develop the PRCS solicitation's requirements to include, evaluation criteria, scoring, pricing, and questions related to the Respondents' experience and specific PRCS plans for the Airport.
- Assist the City with identifying potential Respondents to the upcoming PRCS solicitation.
- Participate in a pre-submittal conference to be held in conjunction with the solicitation process and assist the City in preparing written answers to the questions posed during the solicitation process.
- Assist the City with amendments to the solicitation documents, as reasonably required.
- Assist the City with reviewing submitted responses to the solicitation, including:
 - Provide a written summary containing perceived strengths, weaknesses and overall analysis of each submitted response;
 - Assist with development of reference survey questions;
 - Participate in Finalist Interviews; and
 - Participate as a technical advisory member to the evaluation committee.

On-Site Project Meetings – Contract Award

Three project meetings are scheduled during this project phase:

- Pre-Submittal Conference – 1 Kimley-Horn Representative, 1 Day On-Site
- Finalist Interviews – 1 Kimley-Horn Representative, 1 Day On-Site

Project Management/Project Coordination – Contract Award

Kimley-Horn will participate in day to day project management and project coordination tasks such as authoring and responding to e-mails, conducting telephone conversations, transmitting various types of data, and preparing general responses to correspondence received from the City, among other tasks typically classified as project management and project coordination. Kimley-Horn's participation shall include up to 3 hours per week based on an assumed schedule of 25 weeks for this task.

2.4 Construction Phase Services

Kimley-Horn's participation during the Construction Phase Services will be as follows:

PRCS Construction Administration

Kimley-Horn will attend a Pre-Construction Kickoff Meeting between the City and the Contractor prior to beginning the PRCS installation. The purpose of the meeting will be to review the construction schedule and phasing plan, identify critical project milestones, and coordinate the general procedures for the installation and acceptance testing process to ensure clear understanding by all project participants.

Kimley-Horn will review and provide written comment regarding the Shop Drawings and Submittals and other data that the Contractor is required to submit, but only for conformance with the information given

in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole (as indicated in the Contract Documents). Such review and written commentary will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.

PRCS Acceptance Testing

Kimley-Horn will participate in the review of Contractor-prepared test procedures and the execution of those procedures during the four testing phases:

- Factory Acceptance Test
- Lane Acceptance Tests
- Site Acceptance Test
- Operational Demonstration Test

The objectives of these tests are to provide the City a greater degree of confidence that the completed PRCS will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole (as indicated in the Contract Documents) has been implemented and preserved by the Contractor.

Kimley-Horn will review the test plans and procedures developed by the Contractor. While it will be the Contractor's responsibility to write the test plans and procedures, Kimley-Horn may suggest additions and modifications to the test plans and procedures that, in their professional judgment, are necessary to properly test any aspect of the PRCS (as indicated in the Contract Documents). While it will be the Contractor's responsibility to perform the tests as the equipment is brought online, Kimley-Horn will participate in more rigorous testing of the system and its components that, in their professional judgment, is required to demonstrate that the equipment and software supplied are in conformance with the Contract Documents.

Factory Acceptance Test

Kimley-Horn shall attend the Factory Acceptance Test at the PRCS Manufacturer's factory. The Factory Acceptance Test is a test of the system completely configured with at least one of every device that will be provided with the final system installation. The Factory Acceptance Test procedures shall be drafted by the Contractor and submitted to the City and Kimley-Horn prior to the Factory Acceptance Test. System success or failure shall be noted in the appropriate spaces included in the Factory Acceptance Test Document. The Factory Acceptance Test will ensure that, in a factory setting, the PRCS system performs in general accordance with the Functional Specifications in an effort to minimize troubleshooting and debugging on-site after the PRCS is installed. Kimley-Horn's effort will include two (2) representatives attending the Factory Acceptance Test at the manufacturer's factory for up to five (5) days.

Lane Acceptance Tests

Kimley-Horn shall participate in Lane Acceptance Tests of each lane of equipment after installation and initial testing by the Contractor. Before any entry lane, pay-on-foot station, or exit lane can be commissioned for public use, the Lane Acceptance Test must be successfully completed. Kimley-Horn shall perform Lane Acceptance Tests for all entry lanes, pay-on-foot stations and exit lanes in accordance

with the approved test procedures. Kimley-Horn will perform Lane Acceptance Testing upon notification from the Contractor that they have successfully performed all procedures in the approved test procedures. Kimley-Horn will note the results of the tests and recommend to the City acceptance of successfully completed lanes.

Site Acceptance Test

Promptly after notice from the Contractor that the entire PRCS is ready for its intended use, Kimley-Horn will conduct a site visit, in company with the City and the Contractor, to determine if the PRCS System is ready to begin the 7-Day Site Acceptance Test. During the Site Acceptance Test the PRCS will run in normal operational mode for 7 consecutive days in accordance with parameters that will be defined in the Functional Specifications.

Kimley-Horn will observe the start and execution of the test and, upon successful completion, recommend the acceptance of the test results to the City. Should deviations be experienced during the test, the deviations will be added to a punch list that must be resolved prior to the Contractor receiving approval to begin the 30-Day Operational Demonstration Test.

30-Day Operational Demonstration Test

Promptly after notice from the Contractor that the punch list from the Site Acceptance Test has been completely resolved, Kimley-Horn will conduct a site visit, in company with the City and the Contractor, to determine if the PRCS System is ready to begin the 30-Day Operational Demonstration Test. During the Operational Demonstration Test the PRCS will run in normal operational mode for 30 consecutive days in accordance with parameters that will be defined in the Functional Specifications.

Kimley-Horn will observe the start and execution of the test and, upon successful completion, recommend the acceptance of the test results to the City. Should deviations be experienced during the test, the deviations will be added to a punch list that must be resolved prior to the Contractor receiving final notice of acceptability of the PRCS.

Final Notice of Acceptability of the PRCS System

Kimley-Horn shall conduct a final site visit to determine if the completed PRCS System is in accordance with the Contract Documents and that the final punch list has been resolved so that Kimley-Horn may recommend, in writing, final payment to the Contractor. Accompanying the recommendation for final payment, Kimley-Horn will also provide a notice that the PRCS System is in accordance with the Contract Documents to the best of Kimley-Horn's knowledge, information, and belief and based on the extent of the services provided by Kimley-Horn under this Agreement and based upon information provided to Kimley-Horn upon which it is entitled to rely.

On-Site Project Meetings -- Construction Phase Services

Eight project meetings are scheduled during this project phase:

- Pre-Construction Kickoff Meeting – 2 Kimley-Horn Representatives, 2 Days On-Site
- Factory Acceptance Test Trip - 2 Kimley-Horn Representatives, 5 Days On-Site
- Lane Acceptance Test Trip # 1 – 2 Kimley-Horn Representatives, 3 Days On Site

- Lane Acceptance Test Trip # 2 – 2 Kimley-Horn Representatives, 3 Days On Site
- Lane Acceptance Test Trip # 3 – 2 Kimley-Horn Representatives, 3 Days On Site
- Lane Acceptance Test Trip # 4 – 2 Kimley-Horn Representatives, 3 Days On Site
- Site Acceptance Test Kickoff Trip – 1 Kimley-Horn Representative, 2 Days On Site
- 30-Day Operational Demonstration Test Kickoff Trip – 1 Kimley-Horn Representative, 2 Days On Site
- Punch List Verification Trip -- 1 Kimley-Horn Representative, 2 Days On-Site

Project Management/Project Coordination – Construction Phase Services

Kimley-Horn will participate in day to day project management and project coordination tasks such as authoring and responding to e-mails, conducting telephone conversations, transmitting various types of data, and preparing general responses to correspondence received from the City among, other tasks typically classified as project management and project coordination. Kimley-Horn's participation shall include up to 3 hours per week based on an assumed schedule of 31 weeks for this task.

Limitation of Responsibilities – Construction Phase Services

Kimley-Horn neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

Kimley-Horn shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the PRCS System. Kimley-Horn shall not have the authority or responsibility to direct or to stop the work of any Contractor.

EXHIBIT 3
FEE ESTIMATE

TASK	Kimley-Horn Employee					Total
	Principle In Charge	QCQA Manager	Project Manager	Task Manager PRCS Design	Technology Specialist	
Task Description	L. Warren - P8	C Reedstrom - P7	H. Schulke - P7	J Maglothin - P5	N Hurley - P4	
Hourly Rate	\$205.00	\$190.00	\$190.00	\$131.00	\$115.00	
1 Develop Design Criteria						
Review Existing Federal ADP PRCS	0	0	10	10	0	
Review Prior Audit Design Kick-off Meeting/Data Collection	0	0	5	5	0	
Develop Design Criteria Project Management/Administration	0	0	36	36	0	
	0	0	2	5	0	
	1	2	10	0	0	
Task Hours Subtotal	1	2	63	56	0	122
Task Labor Fee Subtotal	\$205.00	\$380.00	\$11,970.00	\$7,336.00	\$0.00	\$19,891.00
2 System Design						
Develop 65% Performance Specifications	0	10	10	80	80	
65% Design Review Meeting	0	0	27	0	0	
Develop 95% Performance Specifications	0	5	10	80	80	
95% Design Review Meeting	0	0	18	0	0	
Develop Final Performance Specifications	0	5	10	20	20	
Project Management/Administration	2	0	20	0	0	
Task Hours Subtotal	2	20	95	180	180	477
Task Labor Fee Subtotal	\$410.00	\$3,800.00	\$18,050.00	\$23,580.00	\$20,700.00	\$66,540.00
3 Contract Award Services						
Develop Solicitation Documents	0	2	5	20	0	27
Resp. to Respondent Questions/Prepare Amendments	0	2	10	20	0	32
Pre-Submittal Conference Review & Summarize Responses	0	0	9	0	0	9
Finalist Interviews & Evaluation	0	1	40	45	0	86
	0	0	9	0	0	9

Contract Negotiation	0	0	10	20	0	30
Project Management/Administration	2	0	25	0	0	27
Task Hours Subtotal	2	5	108	105	0	220
Task Labor Fee Subtotal	\$410.00	\$950.00	\$20,520.00	\$13,755.00	\$0.00	\$35,635.00
4 Construction Phase Services						
Pre-Construction Kickoff Meeting	0	0	18	18	0	36
Construction Coordination/Review Submittals	0	0	15	40	40	95
Factory Acceptance Test	0	0	40	40	0	80
Lane Acceptance Test Trip # 1	0	0	1	40	27	68
Lane Acceptance Test Trip # 2	0	0	1	40	27	68
Lane Acceptance Test Trip # 3	0	0	1	40	27	68
Lane Acceptance Test Trip # 4	0	0	1	40	27	68
Site Acceptance Test	0	0	5	30	0	35
Operational Demonstration Test	0	0	5	30	0	35
Punch List Verification	0	0	5	30	0	35
Project Management/Administration	5	10	20	25	0	60
Task Hours Subtotal	5	10	112	373	148	648
Task Labor Fee Subtotal	\$1,025.00	\$1,900.00	\$21,280.00	\$48,863.00	\$17,020.00	\$90,088.00
Total Hours by Person	10	37	378	714	328	1,467
Labor Fee by Person	\$2,050.00	\$7,030.00	\$71,820.00	\$93,534.00	\$37,720.00	
Total Labor Fee						\$212,154.00

Reimbursable Expenses Estimate

TASK			
Expense Description	Unit Cost	Units	Extended Cost
1 Develop Design Criteria			
Airfare	\$200.00	2	\$400.00
Lodging	\$125.00	6	\$750.00
Rental Car	\$75.00	4	\$300.00
Meals	\$44.00	8	\$352.00
Miscellaneous (Reproduction, Telephone, Courier, etc.)	\$100.00	1	\$100.00
Task 1 Total			\$1,902.00
2 System Design			
Airfare	\$200.00	2	\$400.00
Lodging	\$125.00	3	\$375.00
Rental Car	\$75.00	5	\$375.00
Meals	\$44.00	5	\$220.00
Miscellaneous (Reproduction, Telephone, Courier, etc.)	\$500.00	1	\$500.00
Task 2 Total			\$1,870.00
3 Contract Award Services			
Airfare	\$200.00	2	\$400.00
Lodging	\$0.00	0	\$0.00
Rental Car	\$75.00	0	\$0.00
Meals	\$44.00	2	\$88.00
Miscellaneous (Reproduction, Telephone, Courier, etc.)	\$100.00	1	\$100.00
Task 3 Total			\$588.00
4 Construction Phase Services			
Airfare	\$200.00	18	\$3,600.00
Lodging	\$125.00	32	\$4,000.00
Rental Car	\$75.00	20	\$1,500.00
Meals	\$44.00	51	\$2,244.00
Miscellaneous (Reproduction, Telephone, Courier, etc.)	\$500.00	1	\$500.00
Task 4 Total			\$11,844.00
Total Expenses			\$16,204.00

Summary

TASK	Total
Expense Description	
1 Develop Design Criteria	
Labor Fee Total	\$19,891.00
Reimbursable Expenses Total	\$1,902.00
Task 1 Total	\$21,793.00
2 Develop Design Criteria	
Labor Fee Total	\$66,540.00
Reimbursable Expenses Total	\$1,870.00
Task 2 Total	\$68,410.00
3 Develop Design Criteria	
Labor Fee Total	\$35,635.00
Reimbursable Expenses Total	\$588.00
Task 3 Total	\$36,223.00
4 Develop Design Criteria	
Labor Fee Total	\$90,088.00
Reimbursable Expenses Total	\$11,844.00
Task 4 Total	\$101,932.00
Total	\$228,358.00

**Consultant
And
Contractor
Reimbursable Expense Policy**



**SAN ANTONIO
AIRPORT SYSTEM**

City of San Antonio

As of 6/2/08

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Consultant & Contractor Reimbursable Expense Policy

1. GENERAL

1.1 Introduction

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

1.2 Scope

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

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

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

1.3 Policy

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

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

1.4 Definitions

The following definitions apply to this Policy:

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

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

Official Travel Time – For the purposes of computing per diem allowances, official travel starts at the day and time the Contractor employee leaves their home, office, or other

authorized point and ends on the day and time the Contractor employee returns home, to the office, or other authorized point. This definition is for computing per diem allowances only and may not be used for billing chargeable Contractor employee hours.

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

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

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

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

1.5 Reimbursements

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

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

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

Entertainment expenses, including alcohol, are not reimbursable.

1.6 Interrupted Itinerary

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

2. Transportation Expenses

2.1 Guideline

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

2.2 Air Travel

Lowest Available Airfare

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

Use of Business or First Class

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

Extended Travel to Save Costs

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

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

2.3 Travel by Private Automobile

Reimbursement for Travel by Private Automobile

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

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

same day or days shall be expected to share a privately owned automobile whenever possible.

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

Reimbursement for Travel by Private Automobile in Lieu of Air Travel

When a private automobile is used instead of available air travel for the personal convenience of the Contractor, reimbursement of transportation costs by private automobile shall not exceed the documented amount of airfare Contractor would have paid had the Contractor traveled by air.

Reimbursement for Travel To or From a Common Carrier Terminal

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

2.4 Travel by Private Aircraft

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

Example:

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

2.5 Rental Cars

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

Reimbursement

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

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

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

Insurance

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

2.6 Ground Transportation

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

Taxis

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

Airport Shuttle Service

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

Local Buses and Subways

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

3. Living Expenses

3.1 Lodging

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

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

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

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

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

3.2 Non-Commercial Lodging

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

3.3 Meals Expense

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

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

Beginning of "Official Travel Time" Date of Departure		Ending of "Official Travel Time" Date of Departure	
Prior to 11:00 am	100% per diem	Prior to 11:00 am	33% per diem
11:01 am to 5:00 pm	66% per diem	11:01 am to 5:00 pm	66% per diem
After 5:00 pm	33% per diem	After 5:00 pm	100% per diem

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

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

3.4 Incidental Expenses

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

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

3.5 Daily Allowance and Lodging Allowance for Extended Travel

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

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

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

4. Relocation Assistance

4.1 Requirements

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

4.2 Limitations

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

Relocation Assistance Limitations		
<i>Personnel Type</i>	<i>The lower of:</i>	
Key Position	Actual Allowable Expenses	\$10,000 max
Professional Positions	Actual Allowable Expenses	\$5,000 max

4.3 Allowable Expenses In General

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

4.4 Travel Expenses by Car

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

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

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

4.5 Household Goods and Personal Effect Expenses

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

4.6 Storage Expenses

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

4.7 Travel Expenses

Relocation assistance will be allowed for reasonable costs of transportation and lodging for the Contractor employee and members of their household while traveling from their former home to their new home. This will include reasonable lodging expenses that do not exceed one day in the area of the former home.

4.8 Non-reimbursable Relocation Expenses

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

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

4.9 Relocation Assistance Recovery

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

5. Miscellaneous Expenses

5.1 General

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

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

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

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

5.2 Telephone Calls

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

Personal phone calls are not reimbursable.

5.3 Local Business Meetings

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

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

6. Travel Expense Settlement

6.1 Reimbursement

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

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

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

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

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

6.2 Right to Audit

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