KRH
4/9/15
Item No. 26

AN ORDINANCE 2015-04-09-0293

AUTHORIZING EXECUTION OF TWO PROFESSIONAL SERVICES AGREEMENTS FOR ON-CALL IT AND SECURITY PLANNING AND PROGRAM MANAGEMENT SERVICES WITH BARICH, INC. IN AN AMOUNT NOT TO EXCEED $750,000.00 AND XIP CONSULTING, INC. IN AN AMOUNT NOT TO EXCEED $250,000.00 FOR THE SAN ANTONIO AIRPORT SYSTEM.

* * * * * *

WHEREAS, these Professional Services Agreements were recommended by the recently completed Information Technology (IT) Master Plan and will provide the San Antonio Airport System with timely access to comprehensive airport IT and security planning, conceptual design, and project/construction management consulting services on an as-needed basis with firms possessing specialized national and international aviation IT and security expertise; and

WHEREAS, the City received five responses to a Request for Qualifications (RFQ) for IT and Security Planning and Program Management services in June 2014 and, based on criteria established in the RFQ an evaluation committee with representatives from the Aviation Department and Information Technology Services Department evaluated the proposals, and recommends awarding on-call services agreements to Barich, Inc. and XIP Consulting, Inc.; and

WHEREAS, it is necessary to authorize the execution of two Professional Services Agreement each with a three year term with two one-year extension periods with Barich, Inc. in an amount not to exceed $750,000.00 and XIP Consulting, Inc. in an amount not to exceed $250,000.00; **NOW THEREFORE,**

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

SECTION 1. Professional Services Agreements with Barich, Inc. in an amount not to exceed $750,000.00 and with XIP Consulting, Inc. in an amount not to exceed $250,000.00 each for on-call IT and security planning and program management services for the San Antonio Airport System are approved. The City Manager, or her designee, is authorized to execute these Agreements, copies of which are set out in **Exhibit 1**.

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

SECTION 3. Payment not to exceed $750,000.00 within the three year agreement and the two one-year extension periods, is authorized to be encumbered with a purchase order and made payable to Barich, Inc., for on-call IT and Security Planning and Program Management services for the San Antonio Airport System.

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SECTION 4. Payment not to exceed $250,000.00 within the three year agreement and the two one-year extension periods, is authorized to be encumbered with a purchase order and made payable to XIP Consulting, Inc., for on-call IT and Security Planning and Program Management services for the San Antonio Airport System.

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

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

PASSED and APPROVED this 9th day of April, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Agenda Item:	**26**
Date:	04/09/2015
Time:	10:50:29 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing two professional services agreements for On-Call IT and Security Planning and Program Management services for the San Antonio Airport System with Barich, Inc. in an amount not to exceed $750,000.00 and with XIP Consulting, Inc. in an amount not to exceed $250,000.00. [Ed Belmares, Assistant City Manager; Frank Miller, Director, Aviation]
Result:	Passed

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

Exhibit 1

PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL INFORMATION TECHNOLOGY and SECURITY PLANNING AND PROGRAM MANAGEMENT SERVICES
FOR THE
SAN ANTONIO AIRPORT SYSTEM

This Professional Services Agreement for On-Call IT and Security Planning And Program Management Services for the San Antonio Airport System (hereinafter referred to as "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 Barich, 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" or "SAT" means the San Antonio International Airport.

1.2 "Director" means the director of the City's Aviation Department

1.3 "IT" means information technology.

1.4 "Project" means the provision of IT and security planning and program management services on an on-call basis as more fully set out in Article V. Scope of Services and set out in individual Finalized Task Orders.

II. PERIOD OF SERVICE

2.1 This Agreement shall commence upon execution by both parties, and continue in full force and effect for a period of three (3) years, unless earlier termination shall occur pursuant to any of the provisions hereof. At City's option, this Agreement may be extended under the same terms and conditions for two (2) one-year periods. Renewals shall be in writing and signed by Director, without further action by the San Antonio City Council, subject to and contingent upon appropriation of funding therefore.

2.2 In the event that a Finalized Task Order is executed by both parties prior to the expiration of the Agreement and performance of the services extends past the expiration date of Agreement, City has the option to terminate the Finalized Task Order or allow continued performance past the expiration date. If the City delivers to Consultant a notice to stop work, Consultant shall stop any work immediately upon receiving notice to stop work and shall invoice City for all services performed up to the date of said notice to stop work. If the City does not terminate a Finalized Task Order which performance would extend past the expiration date of the Agreement, Consultant shall perform all services set out in the applicable Finalized Task Order and all terms of the Agreement shall continue to apply to such services until all services have been completed and accepted by City.

III. COMPENSATION

3.1 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 **seven hundred twenty-five thousand and 00/100 U.S. dollars ($725,000.00).** Nothing contained in this Agreement shall require City to pay for any unsatisfactory work, as determined solely by Director, or for work that is not in compliance with the terms of this Agreement. City shall not be required to make any payments to Consultant at any time Consultant is in default under this Agreement.

3.2 Consultant shall submit a Proposal for each Project that City requests to be performed under this Agreement. City either will approve or disapprove each Proposal. City's approval shall be evidenced by the Finalized Task Order executed by both parties. Finalized Task Orders shall be numbered sequentially starting with number one (1) and must reference this Agreement. Each Finalized Task Order will become a part of this Agreement.

3.3 Consultant understands, accepts and agrees that City makes no minimum guarantees with regard to the amount of services, if any, Consultant may be extended under this Agreement.

3.4 Consultant shall adhere to the Aviation Department Consultant and Contractor Reimbursable Expense Policy, attached hereto as Exhibit 3, governing expenditures.

3.5 All expenses must be included in a Finalized Task Order to be compensable. City will not reimburse Consultant for any fees and/or expenses not included in a Finalized Task Order.

3.6 Consultant shall bill all services in accordance with the hourly rates set out in Exhibit 2, Fee Schedule and the appropriate Finalized Task Order. Consultant may submit invoices no more than once monthly. Such invoices must be for services 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 labor category, 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 not exceed the amount provided for in the appropriate Finalized Task Order and 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.

3.7 Consultant shall, within ten (10) days following receipt of compensation from City, pay all bills for services performed and furnished by others, in connection with the Project and the performance of the work, and shall, if requested, provide City with evidence of such payment. Consultant's failure to make payments within such time shall constitute a material breach of this Agreement, unless Consultant is able to demonstrate to City bona fide disputes associated with the unpaid sub-consultant and its services. Consultant shall include a provision in each of its sub-agreements imposing the same payment obligations on the sub-consultants as are applicable to Consultant hereunder, and if City so requests, shall provide copies of such payments by Consultant to City. If Consultant has failed to make payment promptly to the sub-consultant for the Services for which City has made payment to Consultant, City shall be entitled to withhold payment to Consultant to the extent necessary to protect City.

3.8 City may withhold compensation to such extent as may be necessary, in City's opinion, to protect City from damage or loss for which Consultant is responsible, because of:

3.8.1 delays in the performance of Consultant's work;

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

3.8.3 failure of Consultant to make payments properly to sub-consultants or vendors for services performed, materials or equipment;

3.8.5 damage to City;

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

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

3.9.1 Acceptance of final compensation by Consultant shall constitute a waiver of claims except those previously made in writing and identified by Consultant as unsettled at the time of final application for compensation.

3.9.2 Consultant agrees to maintain adequate books, payrolls and records satisfactory to City in connection with any and all Services performed hereunder. Consultant agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than four (4) years after completion of Services. At all reasonable times, City and its duly authorized representatives shall have access to all personnel of Consultant and all such books, payrolls and records, and shall have the right to audit same.

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

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

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

3.10.3 City's authorized representative or designee shall have reasonable access to the Consultant's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement, in order to conduct audits in compliance with this article.

IV. METHOD OF PAYMENT

4.1 Consultant shall submit invoices upon final completion of all services to be provided under a particular Finalized Task Order. Payments to Consultant shall be in the amount shown on the invoices consistent with the hourly rates set out in Exhibit 2, Fee Schedule, and the Finalized Task Order and its supporting documentation submitted and shall be subject to City's approval. All services shall be performed to City's satisfaction, which satisfaction shall be judged by the Director in his/her sole discretion, and City shall not be liable for any payment under this Agreement for services which are unsatisfactory and/or which have not been previously approved by the Director. The final payment due hereunder will not be paid until all reports, data and documents have been submitted, received, accepted and approved by City.

4.2 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.

V. SCOPE OF SERVICES

5.1 Consultant shall provide IT and security planning and program management services as more fully set out in Exhibit 1, Scope of Services, on an on-call basis in accordance with individual Finalized Task Orders.

5.2 This Agreement is an On-Call Agreement, Task Order, or indefinite delivery agreement for on-call IT and security planning and program management services and other such services, as set out in Exhibit 1, that are required for Consultant to provide or are associated with such on-call consulting. Specific requirements as to location, conditions, procedures and associated services pertaining to a Project, shall be negotiated and set out in individual Finalized Task Orders for each request, which Finalized Task Orders shall be incorporated into and shall become a part of this Agreement.

5.3 Consultant shall provide all labor, equipment and transportation necessary to complete all services, agreed to by Task by Consultant pursuant to this Agreement, in a timely manner throughout the term of this Agreement. Consultant shall bill all services in accordance with the Finalized Task Order and the hourly rates set out in Exhibit 2, Fee Schedule. Additionally, Consultant shall provide staff for regular, overtime, night, weekend and holiday service, as requested or required by City. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or subconsultants of Consultant.

5.4 Consultant shall not commence service on any Finalized Task Order authorized under this Agreement until being thoroughly briefed on the scope of a project and being notified in writing by City to proceed. Should the scope of a Finalized Task Order subsequently change, either Consultant or City may request a review of the anticipated services with an appropriate adjustment in compensation.

5.5 Consultant, in consideration for the compensation herein provided, shall render the professional services necessary for the advancement of the Project to completion. All services and work performed under

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

5.6 Consultant shall complete all services provided hereunder 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. Time is of the essence.

5.7 Consultant shall perform its obligations under this Agreement in accordance with the Scope of Services set out in each Finalized Task Order. Consultant shall be responsible for and ensure all services and work performed and reports and deliverables required pursuant to this Agreement shall be in compliance with all federal, state and local laws, rules, and regulations, to include any Aviation Department rules and regulations, Federal Aviation Administration Advisory Circulars and Orders, and other airport and regulatory guidance documents.

VI. PROJECT SERVICES REQUEST PROCESS

6.1 Necessary IT and security planning and program management services shall be established with each Project-specific Finalized Task Order.

6.2 When City has a Project for which it desires to procure on-call IT and security planning and program management services, City shall notify Consultant by issuing a Task Order Request, which may be in email format. Each Task Order Request shall include, at a minimum: name of Project, consulting services desired, Project schedule and any specific deadlines for performance services, and a deadline for providing City with a Proposal based on the above.

6.3 Consultant shall prepare and submit to City, within the timeline stated in a Task Order Request, a Proposal for the requested services which will include, at minimum: Scope of Services; specific staffing; an estimate of task cost. Consultant shall submit the Proposal in editable electronic format to the City. By submitting a Proposal, Consultant agrees to perform the requested service(s) within the time stated in the Task Order Request unless otherwise specifically states in the Proposal.

6.4 Consultant and City shall negotiate the Proposal. Once Consultant and City reach mutual agreement as to scope, staffing, scheduling and cost, City shall issue a Finalized Task Order to be executed by both parties evidencing the agreed to scope, staffing, schedule and costs.

6.5 The Director or his/her designee has the authority to execute a Finalized Task Order on behalf of City, so long as such finalized Task Order does not exceed the total Agreement value and funds are provided for in the Project budget as allocated by City Council.

6.6 Consultant shall not proceed with services until a Finalized Task Order has been executed, Consultant receives a written notice to proceed by City and all documents required by City in advance of commencement of work, to include proof of insurance, have been provided by Consultant to City. Any services provided or expenses incurred, prior to receiving a written notice to proceed from City or provided or incurred after the expiration of this Agreement on a particular Finalized Task Order will be at Consultant's sole risk and expense and may not be reimbursable by City.

6.7 Actual amounts billed for individual tasks shall not exceed the total amount set out in the Finalized Task Order for that task.

6.8 Each Finalized Task Order shall be incorporated herein for all purposes. Each Finalized Task Order shall be numbered sequentially, starting with number one (1) and must reference this Agreement.

6.9 Consultant shall not invoice for any work associated with the Project Task Order Request process, including development of Proposal and the associated Task Order negotiation.

VII. COORDINATION WITH THE CITY

7.1 Consultant shall hold periodic conferences with Director or his designee, so that each 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.

7.2 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.

7.3 Consultant shall interact and coordinate with the City, airport tenants, other stakeholders, external agencies, and local and regional Federal Aviation Administration ("FAA") offices as required.

7.4 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.

7.5 City promptly will give written notice to Consultant whenever City observes, discovers or otherwise becomes aware of any defect in Consultant's services, or any development that affects the scope or timing of Consultant's services.

VIII. OWNERSHIP AND RETENTION OF DOCUMENTS

8.1 Any and all documents, papers, records, maps, photographs, sounds, video recordings, electric or digital medium, writings, data, webpage content, computer programs or executables, 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.

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

8.3 Consultant hereby assigns to City all statutory and common law copyrights to any copyrightable work that, in part or in whole, was produced from this Agreement, including all equitable rights. No reports, maps, documents or other copyrightable works, produced in whole or in part by this Agreement, shall be subject of an application for copyright by Consultant. All reports, maps, project logos, computer programs or executables, drawings or other copyrightable work produced under this Agreement shall become the property of City (excluding any instrument of services, unless otherwise specified herein). Consultant shall, at its own expense, defend all suits or proceedings instituted against City and pay any award of damages or loss resulting from an injunction against City, insofar as the same are based on any claim that materials or work provided

under this Agreement constitute an infringement of any patent, trade secret, trademark, copyright or other intellectual property rights.

8.4 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 previously held 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.

8.5 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.

8.6 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, , 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.

8.7 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.

IX. TERMINATION OF AGREEMENT

9.1 Termination Without Cause.

9.1.1 This Agreement may be terminated by the City at any time, 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.

9.1.2 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.

9.1.3 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.

9.1.4 If, after notice of termination for failure to fulfill contract obligations, it is determined that the Consultant had not so failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, an equitable adjustment in the contract price shall be made as provided in paragraph 9.1.2 of this clause.

9.1.5 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.

9.1.6 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.

9.2 Defaults With Opportunity for Cure. Should Consultant fail, as determined by the Director, to satisfactorily perform the duties set out in Article V. 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.

9.3 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":

9.3.1 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

9.3.2 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

9.3.3 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

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

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

9.3.6 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.

9.4 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.

9.5 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.

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

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

9.8 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.**

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

X. SUSPENSION OF WORK UNDER AGREEMENT

10.1 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. 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.

10.2 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.

10.3 Procedures Upon Receipt of Notice of Suspension.

10.3.1 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.

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

10.3.3 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.

10.3.4 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.

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

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

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

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

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

XI. INSURANCE REQUIREMENTS

11.1 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 "On-Call and Security and Information Technology Program Management and Planning" 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.

11.2 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.

11.3 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:

TYPE	AMOUNTS
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 Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. $100,000
4. Business Automobile Liability a. Owned/leased vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per

b. Non-owned vehicles c. Hired Vehicles	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.

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

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

City of San Antonio
Attn: Aviation Department
9800 Airport Boulevard
San Antonio, Texas 78216

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

11.6.1 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;

11.6.2 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;

11.6.3 Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.

11.6.4 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.

11.7 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.

11.8 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.

11.9 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.

11.10 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.

11.11 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..

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

XII. INDEMNIFICATION

12.1 **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, 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 activities under this Agreement, including any acts or omissions of Consultant, any agent, officer, director, representative, employee, consultant or subcontractor of Consultant, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

12.2 The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY**

A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

12.4 Defense Counsel - City shall have the right to select or 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.

12.5 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.

12.6 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.

XIII. CONSULTANT'S LIABILITY AND STANDARD OF CARE

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.

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

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.

XV. ASSIGNMENT OF RIGHTS OR DUTIES

15.1 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.

15.2 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.

15.3 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.

15.4 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 IX, Termination.

XVI. INDEPENDENT CONTRACTOR

16.1 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.

16.2 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.

XVII. SMALL BUSINESS ECONOMIC DEVELOPMENT (SBEDA) ADVOCACY PROGRAM

SBEDA Program. The City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development (EDD) 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 Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein the City requires all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

15.2.3 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.

15.2.4 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.

15.2.5 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.

15.2.6 Good Faith Efforts – documentation of the Consultant'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 Consultant'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 Consultant; 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.

15.2.7 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).]

15.2.8 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.

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

15.2.10 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."

15.2.11 Minority/Women Business Enterprise (M/WBE) – firm that is certified as a Small Business Enterprise and also 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.

15.2.12 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.

15.2.13 Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also 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).

15.2.14 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:

15.2.14.1 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.

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

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

15.2.14.4 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.

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

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

15.2.17 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).

15.2.18 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.

15.2.19 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.

15.2.20 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 Consultant.

15.2.21 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.

15.2.22 Responsive – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

15.2.23 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).

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

15.2.25 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.

15.2.26 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.

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

15.2.28 Small Business Office Manager – the Assistant Director of the EDD 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.

15.2.29 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.

15.2.30 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.

15.2.31 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.

15.2.32 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 EDD Director or designee.

15.2.33 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 a Small Business Enterprise and that is 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 <u>SBEDA Program Compliance – General Provisions</u>. 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.

15.3.7 In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a Consultant's Subcontractor / Supplier Utilization Plan, the Consultant shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the Consultant and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

15.3.8 Consultant acknowledges that the City will not execute a contract or issue a Notice to Proceed for this project until the Consultant and each of its Subcontractors for this project have registered and/or maintained active status in the City's Centralized Vendor Registration System, and Consultant has represented to City which primary commodity codes each registered Subcontractor will be performing under for this contract.

15.4 SBEDA Program Compliance – Affirmative Procurement Initiatives. The City has applied the following contract-specific Affirmative Procurement Initiatives 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:

15.4.1 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, and

15.4.2 **SBE Subcontracting Program.** In accordance with SBEDA Ordinance Section III. D. 5. (a), this contract is being awarded pursuant to the SBE Subcontracting Program. Consultant agrees to subcontract at least **twelve percent (12%)** of its prime contract value to certified SBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that Consultant submitted to City with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified SBE Subcontractors to be used by Consultant on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Subcontractor, and documentation including a description of each SBE Subcontractor's scope of work and confirmation of each M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of Consultant to attain this subcontracting goal for SBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the City, and may result in debarment from performing future City contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

15.4.3 M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 6. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. Consultant agrees to subcontract at least **nine percent (9%)** of its prime contract value to certified M/WBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that Consultant submitted to City with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE Subcontractors to be used by Consultant on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of Consultant to attain this subcontracting goal for M/WBE firm participation in the performance of a Commercially Useful Function under the terms

of its contract shall be a material breach and grounds for termination of the contract with the City, and may result in debarment from performing future City contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon M/WBE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

15.4.4 Subcontracting Diversity: The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the SBE subcontracting goal of 12% and M/WBE subcontracting goal of 9% that have been established for this contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio Professional Services industry, as reflected in the City's Centralized Vendor Registration system for the month of April 2014, African-American owned firms represent approximately 2.66% of available subcontractors, Hispanic-American firms represent approximately 8.30%, Asian-American firms represent approximately 0.93%, Native American firms represent approximately 0.09%, and Women-owned firms represent approximately 4.48% of available professional services subcontractors.

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. 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:

XIX. 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 $50,000.00 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.

XX. 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
Attn: Assistant Director of Planning & Development
9800 Airport Boulevard
San Antonio, Texas 78216

If intended for Consultant, to:

Barich, Inc.
Attn: Justin Phy
1233 Crabb River Rd., Suite B
Richmond, Texas 77469

XXI. CONFLICTS OF INTEREST

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

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

XXII. PATENT FEES AND ROYALTIES

22.1 Consultant shall pay all license fees and royalties and assume all costs incident to the use of the performance of the services performed hereto or the incorporation in any invention, design, process, product or device which is the subject of patent rights or copyrights held by others.

22.2 Consultant shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if Consultant has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.

22.3 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, Consultant will immediately: 1) either: a) obtain, at Consultant's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be, or, b) alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and 2) reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

22.4 Consultant further agrees to: 1) assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Agreement, 2) assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and 3) indemnify the City against any monetary damages and/or costs awarded in such suit; provided that: 1) Consultant is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Consultant agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City, 2) the Software or the equipment is used by the City in the form, state, or condition as delivered by Consultant or as modified without the permission of Consultant, so long as such modification is not the source of the infringement claim, and 3) the liability claimed shall not have arisen out of the City's negligent act or omission, and the City promptly provide Consultant with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that Consultant assumes responsibility under this section.

XXIII. AIRPORT SECURITY

23.1 To the extent Consultant will be responsible for work which necessitates entrance to the Air Operations Area or other secure area of the SAT, 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.

23.2 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 SAT, 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 SAT 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 SAT 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 SAT must be badged in accordance with City and TSA rules and regulations.

23.3 Gates and doors located in and around SAT premises utilized by Consultant that permit entry into sterile or secured areas at SAT, 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.

23.4 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 SAT 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

XXIV. CONTRACT CONSTRUCTION

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

XXV. FAMILIARITY WITH LAW AND CONTRACT TERMS

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.

XXVI. APPLICABLE LAW

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

XXVII. VENUE

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.

XXVIII. SEVERABILITY

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.

XXIX. FORCE MAJEURE

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.

XXX. SUCCESSORS

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

XXXI. NON-WAIVER OF PERFORMANCE

31.1 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.

31.2 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.

XXXII. PARAGRAPH HEADINGS

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.

XXXIII. LEGAL AUTHORITY

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.

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

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

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

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

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

XXXV. ENTIRE AGREEMENT

35.1 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.

35.2 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 _____, 2015.

CITY OF SAN ANTONIO, TEXAS

_____
Sheryl Sculley
City Manager

BARICH, INC.

By: _____
Signature

President
Title

Federal Tax ID#: 47-0897108

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT 1

SCOPE OF SERVICES

This Agreement is an on-call agreement for IT and security planning and program management services and other services required for Consultant to provide or are associated with such on-call consulting. Specific services for individual Projects shall be negotiated and set out in individual Finalized Task which shall be incorporated into and shall become a part of this Agreement.

Services to be performed by Consultant pursuant to this Agreement, upon the execution of a Finalized Task Order, shall include the following,:

1. Planning Services – project planning, impact studies, conceptual design as applicable to include Engineer's Opinion of Probable Design and Construction Costs, and development of a design RFQ/RFP scope.

2. Designer Selection – assist with soliciting design and Contract Administration).

3. Design Review Services –provide design review services and coordination as required.

4. Installation Contractor Selection – assist with soliciting for implementation and/or construction services (as applicable).

5. Implementation (Construction) Management Services – provide coordination, support and program management oversight in conjunction with Aviation IT, Aviation Planning & Development, Information Technology Services Division, and others as required.

6. Project Management Services –

   a) provide project management services to include constructability reviews, independent design reviews, independent cost and/or fee analysis as well as feasibility and benefit cost analysis studies,
   b) provide program support services such as developing overall construction contract sequencing and packaging strategies, design and airport standards, and policies and procedures,
   c) develop, analyze, and monitor project and program schedules at various levels of detail as required,
   d) collect and present data from identified program projects,
   e) provide reports monthly, quarterly, annually, or at other intervals,
   f) prepare construction cost estimates, including concept, budgetary, and design estimates,
   g) review estimates provided by other agents, and
   h) assist City in the development of supporting project data for use in securing various types of funding.

In addition to the above listed services, Consultant and City may agree to have Consultant perform other services as set out in a Finalized Task Order executed by both parties.

EXHIBIT 2

FEE SCHEDULE

Title	3 Year Rate	Responsibility
Management Roles		
Engagement Manager	$ 190.00	• ensure that the needs of City stakeholders are met • assist City in scoping each engagement and provide Quality Assurance for the service provided by Consultant • report to the City Point of Contact
Sr. Project Manager	$ 190.00	• provide overall management of all projects under this contract • ensure that each engagement is providing the agreed upon scope in accordance with the associated schedule and budget • report to both the City Point of Contact and the Engagement Manager
Project Manager	$ 170.00	• provide dedicated management of specific projects as required by City • reports to the Sr. Project Manager
Technical Lead	$ 170.00	• direct the day-to-day activities of resources on specific engagements • report to the Sr. Project Manager
Consulting Roles		
Sr. Consultant	$ 190.00	• provide expertise to most engagement as needed • direct Consultants in the performance of specific tasks that require problem solving capabilities • responsible for ensuring the quality of products and services provided to City • report to the Sr. Project Manager
Consultant	$ 170.00	• perform much of the planning and conceptual design level work requiring problem solving capabilities • report to the Sr. Project Manager
Sr. Business Analyst	$ 150.00	• provide expertise to engagement as needed • direct Business Analysts in the performance of specific tasks that require analytical capabilities • responsible for ensuring the quality of products and services provided to City • report to the Sr. Project Manager.
Business Analyst	$ 130.00	• perform assessment level work requiring research and analytical capabilities
Support Roles		
Project Coordinator	$ 105.00	• provide mid-level Project Management responsibilities involving coordinating, tracking, and reporting activities
Project Admin	$ 47.00	• provide general administration functions of the engagement, including document formatting, note taking, meeting scheduling, etc.

Escalation of Labor Rates

The above labor rates shall not be escalated during the initial three year term of the Agreement. Labor rates may be escalated once during each of the two (2) one (1) year option period. The labor rates may be increased up to, but no more than 3% during each of the two (2) option periods.

PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL INFORMATION TECHNOLOGY and SECURITY PLANNING AND PROGRAM MANAGEMENT SERVICES
FOR THE
SAN ANTONIO AIRPORT SYSTEM

This Professional Services Agreement for On-Call IT and Security Planning And Program Management Services for the San Antonio Airport System (hereinafter referred to as "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 **XIP Consulting, L.L.C.** (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" or "SAT" means the San Antonio International Airport.

1.2 "Director" means the director of the City's Aviation Department

1.3 "IT" means information technology.

1.4 "Project" means the provision of IT and security planning and program management services on an on-call basis as more fully set out in Article V. Scope of Services and set out in individual Finalized Task Orders.

II. PERIOD OF SERVICE

2.1 This Agreement shall commence upon execution by both parties, and continue in full force and effect for a period of three years, unless earlier termination shall occur pursuant to any of the provisions hereof. At City's option, this Agreement may be extended under the same terms and conditions for two (2) one-year periods. Renewals shall be in writing and signed by Director, without further action by the San Antonio City Council, subject to and contingent upon appropriation of funding therefore.

2.2 In the event that a Finalized Task Order is executed by both parties prior to the expiration of the Agreement and performance of the services extends past the expiration date of Agreement, City has the option to terminate the Finalized Task Order or allow continued performance past the expiration date. If the City delivers to Consultant a notice to stop work, Consultant shall stop any work immediately upon receiving notice to stop work and shall invoice City for all services performed up to the date of said notice to stop work. If the City does not terminate a Finalized Task Order which performance would extend past the expiration date of the Agreement, Consultant shall perform all services set out in the applicable Finalized Task Order and all terms of the Agreement shall continue to apply to such services until all services have been completed and accepted by City.

III. COMPENSATION

3.1 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-five thousand and 00/100 U.S. dollars ($225,000.00).** Nothing contained in this Agreement shall require City to pay for any unsatisfactory work, as determined solely by Director, or for work that is not in compliance with the terms of this Agreement. City shall not be required to make any payments to Consultant at any time Consultant is in default under this Agreement.

3.2 Consultant shall submit a Proposal for each Project that City requests to be performed under this Agreement. City either will approve or disapprove each Proposal. City's approval shall be evidenced by the Finalized Task Order executed by both parties. Finalized Task Orders shall be numbered sequentially starting with number one (1) and must reference this Agreement. Each Finalized Task Order will become a part of this Agreement.

3.3 Consultant understands, accepts and agrees that City makes no minimum guarantees with regard to the amount of services, if any, Consultant may be extended under this Agreement.

3.4 Consultant shall adhere to the Aviation Department Consultant and Contractor Reimbursable Expense Policy, attached hereto as Exhibit 3, governing expenditures.

3.5 All expenses must be included in a Finalized Task Order to be compensable. City will not reimburse Consultant for any fees and/or expenses not included in a Finalized Task Order.

3.6 Consultant shall bill all services in accordance with the hourly rates set out in Exhibit 2, Fee Schedule and the appropriate Finalized Task Order. Consultant may submit invoices no more than once monthly. Such invoices must be for services 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 labor category, 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 not exceed the amount provided for in the appropriate Finalized Task Order and 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.

3.7 Consultant shall, within ten (10) days following receipt of compensation from City, pay all bills for services performed and furnished by others, in connection with the Project and the performance of the work, and shall, if requested, provide City with evidence of such payment. Consultant's failure to make payments within such time shall constitute a material breach of this Agreement, unless Consultant is able to demonstrate to City bona fide disputes associated with the unpaid sub-consultant and its services. Consultant shall include a provision in each of its sub-agreements imposing the same payment obligations on the sub-consultants as are applicable to Consultant hereunder, and if City so requests, shall provide copies of such payments by Consultant to City. If Consultant has failed to make payment promptly to the sub-consultant for the Services for which City has made payment to Consultant, City shall be entitled to withhold payment to Consultant to the extent necessary to protect City.

3.8 City may withhold compensation to such extent as may be necessary, in City's opinion, to protect City from damage or loss for which Consultant is responsible, because of:

3.8.1 delays in the performance of Consultant's work;

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

3.8.3 failure of Consultant to make payments properly to sub-consultants or vendors for services performed, materials or equipment;

3.8.5 damage to City;

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

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

3.9.1 Acceptance of final compensation by Consultant shall constitute a waiver of claims except those previously made in writing and identified by Consultant as unsettled at the time of final application for compensation.

3.9.2 Consultant agrees to maintain adequate books, payrolls and records satisfactory to City in connection with any and all Services performed hereunder. Consultant agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than four (4) years after completion of Services. At all reasonable times, City and its duly authorized representatives shall have access to all personnel of Consultant and all such books, payrolls and records, and shall have the right to audit same.

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

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

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

3.10.3 City's authorized representative or designee shall have reasonable access to the Consultant's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement, in order to conduct audits in compliance with this article.

IV. METHOD OF PAYMENT

4.1 Consultant shall submit invoices upon final completion of all services to be provided under a particular Finalized Task Order. Payments to Consultant shall be in the amount shown on the invoices consistent with the hourly rates set out in Exhibit 2, Fee Schedule, and the Finalized Task Order and its supporting documentation submitted and shall be subject to City's approval. All services shall be performed to City's satisfaction, which satisfaction shall be judged by the Director in his/her sole discretion, and City shall not be liable for any payment under this Agreement for services which are unsatisfactory and/or which have not been previously approved by the Director. The final payment due hereunder will not be paid until all reports, data and documents have been submitted, received, accepted and approved by City.

4.2 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.

V. SCOPE OF SERVICES

5.1 Consultant shall provide IT and security planning and program management services as more fully set out in Exhibit 1, Scope of Services, on an on-call basis in accordance with individual Finalized Task Orders.

5.2 This Agreement is an On-Call Agreement, Task Order, or indefinite delivery agreement for on-call IT and security planning and program management services and other such services, as set out in Exhibit 1, that are required for Consultant to provide or are associated with such on-call consulting. Specific requirements as to location, conditions, procedures and associated services pertaining to a Project, shall be negotiated and set out in individual Finalized Task Orders for each request, which Finalized Task Orders shall be incorporated into and shall become a part of this Agreement.

5.3 Consultant shall provide all labor, equipment and transportation necessary to complete all services, agreed to by Task by Consultant pursuant to this Agreement, in a timely manner throughout the term of this Agreement. Consultant shall bill all services in accordance with the Finalized Task Order and the hourly rates set out in Exhibit 2, Fee Schedule. Additionally, Consultant shall provide staff for regular, overtime, night, weekend and holiday service, as requested or required by City. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or subconsultants of Consultant.

5.4 Consultant shall not commence service on any Finalized Task Order authorized under this Agreement until being thoroughly briefed on the scope of a project and being notified in writing by City to proceed. Should the scope of a Finalized Task Order subsequently change, either Consultant or City may request a review of the anticipated services with an appropriate adjustment in compensation.

5.5 Consultant, in consideration for the compensation herein provided, shall render the professional services necessary for the advancement of the Project to completion. All services and work performed under

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

5.6 Consultant shall complete all services provided hereunder 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. Time is of the essence.

5.7 Consultant shall perform its obligations under this Agreement in accordance with the Scope of Services set out in each Finalized Task Order. Consultant shall be responsible for and ensure all services and work performed and reports and deliverables required pursuant to this Agreement shall be in compliance with all federal, state and local laws, rules, and regulations, to include any Aviation Department rules and regulations, Federal Aviation Administration Advisory Circulars and Orders, and other airport and regulatory guidance documents.

VI. PROJECT SERVICES REQUEST PROCESS

6.1 Necessary IT and security planning and program management services shall be established with each Project-specific Finalized Task Order.

6.2 When City has a Project for which it desires to procure on-call IT and security planning and program management services, City shall notify Consultant by issuing a Task Order Request, which may be in email format. Each Task Order Request shall include, at a minimum: name of Project, consulting services desired, Project schedule and any specific deadlines for performance services, and a deadline for providing City with a Proposal based on the above.

6.3 Consultant shall prepare and submit to City, within the timeline stated in a Task Order Request, a Proposal for the requested services which will include, at minimum: Scope of Services; specific staffing; an estimate of task cost. Consultant shall submit the Proposal in editable electronic format to the City. By submitting a Proposal, Consultant agrees to perform the requested service(s) within the time stated in the Task Order Request unless otherwise specifically states in the Proposal.

6.4 Consultant and City shall negotiate the Proposal. Once Consultant and City reach mutual agreement as to scope, staffing, scheduling and cost, City shall issue a Finalized Task Order to be executed by both parties evidencing the agreed to scope, staffing, schedule and costs.

6.5 The Director or his/her designee has the authority to execute a Finalized Task Order on behalf of City, so long as such finalized Task Order does not exceed the total Agreement value and funds are provided for in the Project budget as allocated by City Council.

6.6 Consultant shall not proceed with services until a Finalized Task Order has been executed, Consultant receives a written notice to proceed by City and all documents required by City in advance of commencement of work, to include proof of insurance, have been provided by Consultant to City. Any services provided or expenses incurred, prior to receiving a written notice to proceed from City or provided or incurred after the expiration of this Agreement on a particular Finalized Task Order will be at Consultant's sole risk and expense and may not be reimbursable by City.

6.7 Actual amounts billed for individual tasks shall not exceed the total amount set out in the Finalized Task Order for that task.

6.8 Each Finalized Task Order shall be incorporated herein for all purposes. Each Finalized Task Order shall be numbered sequentially, starting with number one (1) and must reference this Agreement.

6.9 Consultant shall not invoice for any work associated with the Project Task Order Request process, including development of Proposal and the associated Task Order negotiation.

VII. COORDINATION WITH THE CITY

7.1 Consultant shall hold periodic conferences with Director or his designee, so that each 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.

7.2 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.

7.3 Consultant shall interact and coordinate with the City, airport tenants, other stakeholders, external agencies, and local and regional Federal Aviation Administration ("FAA") offices as required.

7.4 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.

7.5 City promptly will give written notice to Consultant whenever City observes, discovers or otherwise becomes aware of any defect in Consultant's services, or any development that affects the scope or timing of Consultant's services.

VIII. OWNERSHIP AND RETENTION OF DOCUMENTS

8.1 Any and all documents, papers, records, maps, photographs, sounds, video recordings, electric or digital medium, writings, data, webpage content, computer programs or executables, 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.

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

8.3 Consultant hereby assigns to City all statutory and common law copyrights to any copyrightable work that, in part or in whole, was produced from this Agreement, including all equitable rights. No reports, maps, documents or other copyrightable works, produced in whole or in part by this Agreement, shall be subject of an application for copyright by Consultant. All reports, maps, project logos, computer programs or executables, drawings or other copyrightable work produced under this Agreement shall become the property of City (excluding any instrument of services, unless otherwise specified herein). Consultant shall, at its own expense, defend all suits or proceedings instituted against City and pay any award of damages or loss resulting from an injunction against City, insofar as the same are based on any claim that materials or work provided

under this Agreement constitute an infringement of any patent, trade secret, trademark, copyright or other intellectual property rights.

8.4 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 previously held 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.

8.5 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.

8.6 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, , 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.

8.7 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.

IX. TERMINATION OF AGREEMENT

9.1 Termination Without Cause.

9.1.1 This Agreement may be terminated by the City at any time, 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.

9.1.2 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.

9.1.3 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.

9.1.4 If, after notice of termination for failure to fulfill contract obligations, it is determined that the Consultant had not so failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, an equitable adjustment in the contract price shall be made as provided in paragraph 9.1.2 of this clause.

9.1.5 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.

9.1.6 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.

9.2 Defaults With Opportunity for Cure. Should Consultant fail, as determined by the Director, to satisfactorily perform the duties set out in Article V. 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.

9.3 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":

9.3.1 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

9.3.2 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

9.3.3 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

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

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

9.3.6 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.

9.4 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.

9.5 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.

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

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

9.8 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.**

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

X. SUSPENSION OF WORK UNDER AGREEMENT

10.1 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. 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.

10.2 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.

10.3 Procedures Upon Receipt of Notice of Suspension.

10.3.1 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.

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

10.3.3 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.

10.3.4 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.

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

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

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

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

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

XI. INSURANCE REQUIREMENTS

11.1 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 "On-Call and Security and Information Technology Program Management and Planning" 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.

11.2 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.

11.3 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:

TYPE	AMOUNTS
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 Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. $100,000
4. Business Automobile Liability a. Owned/leased vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per

b. Non-owned vehicles c. Hired Vehicles	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.

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

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

City of San Antonio
Attn: Aviation Department
9800 Airport Boulevard
San Antonio, Texas 78216

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

11.6.1 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;

11.6.2 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;

11.6.3 Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.

11.6.4 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.

11.7 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.

11.8 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.

11.9 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.

11.10 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.

11.11 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..

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

XII. INDEMNIFICATION

12.1 **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, 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 activities under this Agreement, including any acts or omissions of Consultant, any agent, officer, director, representative, employee, consultant or subcontractor of Consultant, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

12.2 The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY**

A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

12.4 Defense Counsel - City shall have the right to select or 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.

12.5 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.

12.6 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.

XIII. CONSULTANT'S LIABILITY AND STANDARD OF CARE

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.

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

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.

XV. ASSIGNMENT OF RIGHTS OR DUTIES

15.1 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.

15.2 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.

15.3 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.

15.4 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 IX, Termination.

XVI. INDEPENDENT CONTRACTOR

16.1 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.

16.2 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.

XVII. SMALL BUSINESS ECONOMIC DEVELOPMENT (SBEDA) ADVOCACY PROGRAM

SBEDA Program. The City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development (EDD) 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 Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein the City requires all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

15.2.3 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.

15.2.4 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 <u>not</u> 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.

15.2.5 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.

15.2.6 Good Faith Efforts – documentation of the Consultant'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 Consultant'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 Consultant; 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.

15.2.7 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).]

15.2.8 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.

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

15.2.10 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."

15.2.11 Minority/Women Business Enterprise (M/WBE) – firm that is certified as a Small Business Enterprise and also 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.

15.2.12 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.

15.2.13 Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also 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).

15.2.14 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:

15.2.14.1 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.

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

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

15.2.14.4 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.

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

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

15.2.17 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).

15.2.18 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.

15.2.19 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.

15.2.20 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 Consultant.

15.2.21 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.

15.2.22 Responsive – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

15.2.23 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).

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

15.2.25 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.

15.2.26 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.

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

15.2.28 Small Business Office Manager – the Assistant Director of the EDD 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.

15.2.29 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.

15.2.30 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.

15.2.31 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.

15.2.32 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 EDD Director or designee.

15.2.33 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 a Small Business Enterprise and that is 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 <u>SBEDA Program Compliance – General Provisions</u>. 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.

15.3.7 In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a Consultant's Subcontractor / Supplier Utilization Plan, the Consultant shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the Consultant and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

15.3.8 Consultant acknowledges that the City will not execute a contract or issue a Notice to Proceed for this project until the Consultant and each of its Subcontractors for this project have registered and/or maintained active status in the City's Centralized Vendor Registration System, and Consultant has represented to City which primary commodity codes each registered Subcontractor will be performing under for this contract.

15.4 SBEDA Program Compliance – Affirmative Procurement Initiatives. The City has applied the following contract-specific Affirmative Procurement Initiatives 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:

15.4.1 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, and

15.4.2 **SBE Subcontracting Program.** In accordance with SBEDA Ordinance Section III. D. 5. (a), this contract is being awarded pursuant to the SBE Subcontracting Program. Consultant agrees to subcontract at least **twelve percent (12%)** of its prime contract value to certified SBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that Consultant submitted to City with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified SBE Subcontractors to be used by Consultant on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Subcontractor, and documentation including a description of each SBE Subcontractor's scope of work and confirmation of each M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of Consultant to attain this subcontracting goal for SBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the City, and may result in debarment from performing future City contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

15.4.3 M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 6. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. Consultant agrees to subcontract at least **nine percent (9%)** of its prime contract value to certified M/WBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that Consultant submitted to City with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE Subcontractors to be used by Consultant on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of Consultant to attain this subcontracting goal for M/WBE firm participation in the performance of a Commercially Useful Function under the terms

of its contract shall be a material breach and grounds for termination of the contract with the City, and may result in debarment from performing future City contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon M/WBE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

15.4.4 Subcontracting Diversity: The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the SBE subcontracting goal of 12% and M/WBE subcontracting goal of 9% that have been established for this contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio Professional Services industry, as reflected in the City's Centralized Vendor Registration system for the month of April 2014, African-American owned firms represent approximately 2.66% of available subcontractors, Hispanic-American firms represent approximately 8.30%, Asian-American firms represent approximately 0.93%, Native American firms represent approximately 0.09%, and Women-owned firms represent approximately 4.48% of available professional services subcontractors.

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. 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 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;

15.7.2 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;

15.7.3 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;

15.7.4 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

15.7.5 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.

15.7.6 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:

15.7.6.1 Suspension of contract;

15.7.6.2 Withholding of funds;

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

15.7.6.4 Refusal to accept a response or proposal; and

15.7.6.5 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).

XVIII. EQUAL EMPLOYMENT OPPORTUNITY

16.1 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.

16.2 As a party to a contract with City, Consultant understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XIX. 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 $50,000.00 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.

XX. 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
Attn: Assistant Director of Planning & Development
9800 Airport Boulevard
San Antonio, Texas 78216

If intended for Consultant, to:

XIP Consulting, L.L.C.
Attn: Heath Kolman
1818 Garys Park
San Antonio, TX 78247

XXI. CONFLICTS OF INTEREST

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

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

XXII. PATENT FEES AND ROYALTIES

22.1 Consultant shall pay all license fees and royalties and assume all costs incident to the use of the performance of the services performed hereto or the incorporation in any invention, design, process, product or device which is the subject of patent rights or copyrights held by others.

22.2 Consultant shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if Consultant has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.

22.3 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, Consultant will immediately: 1) either: a) obtain, at Consultant's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be, or, b) alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and 2) reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

22.4 Consultant further agrees to: 1) assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Agreement, 2) assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and 3) indemnify the City against any monetary damages and/or costs awarded in such suit; provided that: 1) Consultant is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Consultant agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City, 2) the Software or the equipment is used by the City in the form, state, or condition as delivered by Consultant or as modified without the permission of Consultant, so long as such modification is not the source of the infringement claim, and 3) the liability claimed shall not have arisen out of the City's negligent act or omission, and the City promptly provide Consultant with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that Consultant assumes responsibility under this section.

XXIII. AIRPORT SECURITY

23.1 To the extent Consultant will be responsible for work which necessitates entrance to the Air Operations Area or other secure area of the SAT, 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.

23.2 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 SAT, 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 SAT 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 SAT 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 SAT must be badged in accordance with City and TSA rules and regulations.

23.3 Gates and doors located in and around SAT premises utilized by Consultant that permit entry into sterile or secured areas at SAT, 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.

23.4 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 SAT 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

XXIV. CONTRACT CONSTRUCTION

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

XXV. FAMILIARITY WITH LAW AND CONTRACT TERMS

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.

XXVI. APPLICABLE LAW

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

XXVII. VENUE

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.

XXVIII. SEVERABILITY

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.

XXIX. FORCE MAJEURE

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.

XXX. SUCCESSORS

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

XXXI. NON-WAIVER OF PERFORMANCE

31.1 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.

31.2 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.

XXXII. PARAGRAPH HEADINGS

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.

XXXIII. LEGAL AUTHORITY

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.

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

34.1 By execution of this Agreement, the undersigned authorized representative of Consultant certifies, and the City relies thereon, that neither Consultant., nor its Principals are presently debarred, suspended, proposed

for debarment, or declared ineligible, or voluntarily excluded for the award of contracts by any Federal governmental agency or department;

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

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

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

XXXV. ENTIRE AGREEMENT

35.1 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.

35.2 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 _____, 2015.

CITY OF SAN ANTONIO, TEXAS

_____
Sheryl Sculley
City Manager

XIP CONSULTING, L.L.C.

By: _____
Signature

MEMBER
Title

Federal Tax ID#: 26-4790203

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT 1

SCOPE OF SERVICES

This Agreement is an on-call agreement for IT and security planning and program management services and other services required for Consultant to provide or are associated with such on-call consulting. Specific services for individual Projects shall be negotiated and set out in individual Finalized Task which shall be incorporated into and shall become a part of this Agreement.

Services to be performed by Consultant pursuant to this Agreement, upon the execution of a Finalized Task Order, shall include the following,:

1. Planning Services – project planning, impact studies, conceptual design as applicable to include Engineer's Opinion of Probable Design and Construction Costs, and development of a design RFQ/RFP scope.

2. Designer Selection – assist with soliciting design and Contract Administration).

3. Design Review Services –provide design review services and coordination as required.

4. Installation Contractor Selection – assist with soliciting for implementation and/or construction services (as applicable).

5. Implementation (Construction) Management Services – provide coordination, support and program management oversight in conjunction with Aviation IT, Aviation Planning & Development, Information Technology Services Division, and others as required.

6. Project Management Services –

   a) provide project management services to include constructability reviews, independent design reviews, independent cost and/or fee analysis as well as feasibility and benefit cost analysis studies,
   b) provide program support services such as developing overall construction contract sequencing and packaging strategies, design and airport standards, and policies and procedures,
   c) develop, analyze, and monitor project and program schedules at various levels of detail as required,
   d) collect and present data from identified program projects,
   e) provide reports monthly, quarterly, annually, or at other intervals,
   f) prepare construction cost estimates, including concept, budgetary, and design estimates,
   g) review estimates provided by other agents, and
   h) assist City in the development of supporting project data for use in securing various types of funding.

In addition to the above listed services, Consultant and City may agree to have Consultant perform other services as set out in a Finalized Task Order executed by both parties.

EXHIBIT 2

FEE SCHEDULE

Title	Three Year Rate	Responsibility
Program Manager / Lead Consultant	$ 190.00	• Project management • IT, systems, security, network consulting, planning • operations consulting, planning, and design review
A&E Manager / A&E Lead Consultant	$ 190.00	• Project management • A&E consulting, planning, and design review
Sr. Project Manager / Lead Consultant	$ 185.00	• Project management • IT and aviation consulting, planning, and design/requirements review
Lead Infrastructure Consultant	$ 185.00	• IT, infrastructure, and operations consulting, planning, and design
Lead Business Consultant	$ 185.00	• IT and business consulting, planning, and requirements/design review
Lead Security Consultant	$ 185.00	• Security consulting, planning, and design
A&E Sr. Consultant	$ 185.00	• A&E consulting, planning and design review
Project Manager / Sr. Consultant	$ 180.00	• Project management • IT consulting and planning
Sr. Consultant	$ 180.00	• Security consulting, planning and design review
Consultant	$ 160.00	• Infrastructure and IT consulting, planning and design review
Consultant	$ 160.00	• Network, IT, and security consulting, planning and design review
Project Support	$ 85.00	• Project documentation and administrative support

Escalation of Labor Rates

The above labor rates shall not be escalated during the initial three year term of the Agreement. Labor rates may be escalated once during each of the two (2) one (1) year option period. The labor rates may be increased up to, but no more than 3% during each of the two (2) option periods.