ON-CALL GENERAL ENGINEERING CONSULTING SERVICES

PROFESSIONAL SERVICES AGREEMENT

FOR THE SAN ANTONIO AIRPORT SYSTEM

STATE OF TEXAS

COUNTY OF BEXAR

CITY OF SAN ANTONIO

This On-Call General Engineering Consulting Professional Services Agreement for the San Antonio Airport System, hereafter referred to as, ”Agreement”, is made and entered into in San Antonio, Bexar County, Texas, between the City of San Antonio, a Municipal Corporation in the State of Texas, hereafter referred to as "City" and

FIRM NAME

ADDRESS

hereafter referred to as "Consultant", said Agreement being executed by City pursuant to the City Charter, Ordinances, and Resolutions of the City Council, and by Consultant for on-call general engineering consulting services, hereinafter set forth.

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ARTICLE I.
DEFINITIONS

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

1.1 "Agreement" means this written document signed by City and Consultant, including any other document itemized and expressly referenced in or attached to and expressly made part of this Agreement.

1.2 "Application for Payment" means written form for a request from Consultant to be paid for completed work.

1.3 "City" or "Owner" means the City of San Antonio, Texas.

1.4 "Claim" is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of this Agreement terms, payment of money, and extension of time or other relief, with respect to the terms of this Agreement. The term "Claim" also includes other disputes and matters in question between City and Consultant arising out of or relating to this Agreement.

1.5 "Compensation" means amounts paid for services under this Agreement.

1.6 "Consultant" means Consultant and its officers, partners, employees, agents and representatives, and all sub-consultants, if any, and all other persons or entities for which Consultant legally is responsible.

1.7 "Construction Contractor" is the firm hired by City to construct the Project.

1.8 "Director" means the Director of City's Aviation Department or his designee..

1.9 "FAA" means the Federal Aviation Administration.

1.10 "Finalized Task Order" means a written agreement, executed by both and made a part of this Agreement, setting forth the agreed to scope, pricing and associated terms for an individual Project as further defined herein.

1.11 "Project" means the specific engineering services for which a Finalized Task Order is negotiated and executed by both Parties hereto.

1.12 "Proposal" means Consultant's Proposal to provide services for this Project.

1.13 "Proposed Task Order Request" means a request to Consultant to submit a Proposal for a specific Project as further defined herein.

1.14 "SAMSA" means the San Antonio Metropolitan Statistical Area or Relevant Marketplace, which collectively is comprised by Bexar County and the seven (7) surrounding counties of Atascosa, Bandera, Comal, Guadalupe, Kendall, Medina and Wilson.

1.15 “SAWS” means the San Antonio Water System, Inc.

1.16 “Services” means those services described in Article IV, Scope of Services, as set out in a Finalized Task Order.

1.17 "Total Compensation" means the Not-to-Exceed amount of this Agreement.

ARTICLE II.
COMPENSATION

2.1 The Compensation for all services included in this Agreement **SHALL NOT EXCEED_____ _____ AND NO/100 CENTS ($_____.00)**. Nothing contained in this Agreement shall require City to pay for any unsatisfactory work, as determined solely by Director, or for work that is not in compliance with the terms of this Agreement. City shall not be required to make any payments to Consultant at any time Consultant is in default under this Agreement.

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

2.2.1 Consultant understands, accepts and agrees that City has entered into multiple professional services agreements with other Consultants and has the authority to assign work tasks at its sole discretion.

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

2.3 Each Task Order amount shall be based on the scope of services for a particular Project and will be based on the or hourly rates included in Exhibit 2, Fee Schedule, attached hereto, incorporated herein and made a part of this Agreement.

2.4 Reimbursable Expenses. City maintains the right of prior approval of any reimbursable expenditure by Consultant and shall not pay any expenses that have not been agreed to and accepted in writing by City prior to the execution of this Agreement. If Consultant, Sub-Consultant or vendor of Consultant should make an expenditure which, prior to its occurrence, had not been approved in writing by City, either prior to or after the execution of this Agreement, those costs shall be the sole responsibility of Consultant and not City. When authorized by City in writing, Consultant will be entitled to reimbursement at actual cost incurred for services and related expenses for the following:

2.4.1 Travel outside SAMSA only if approved in writing by City prior to such travel. Reimbursement for travel costs will be limited to costs directly associated with Consultant’s performance of Service under this Agreement and must comply with the Aviation Department Consultant and Contractor Reimbursable Expense Policy, Exhibit 3 hereto. Travel costs are limited to the per diem rates set annually by the Federal Government’s General Services Administration. Consultant shall proved detailed receipts for all reimbursable charges. Travel expenses, if any, shall be negotiated with each Finalized Task Order issued. City does not pay for Consultant’s travel within SAMSA.

2.4.2 Mailing, courier services and copies of documents requested by City in writing in excess of the copies to be provided under Article IV of this Agreement. These costs, if any, shall not exceed the amount noted in Article IV herein without further written approval of City. Consultant shall bear these costs unless agreed to, in writing, by City, upon the issuance of a Finalized Task Order.

2.4.3 Graphics, physical models, and presentation boards requested by City in writing in excess

of the copies to be provided under Article IV of this Agreement. These costs shall not exceed the amount noted in Article IV herein without further approval of City. Consultant shall bear these costs unless agreed to, in writing, by City, upon the issuance of a Finalized Task Order. City does not allow a markup on any of the above reimbursable items and only will reimburse approved hard costs incurred.

2.4.4 City shall not allow a markup on any of the above reimbursable items and shall only reimburse actual costs incurred with City's written approval.

ARTICLE III.
METHOD OF PAYMENT

3.1 Consultant shall submit invoices no more than once monthly. Payments to Consultant shall be in the amount shown on the invoices consistent with the Finalized Task Order and its supporting documentation submitted and shall be subject to City's approval. All services shall be performed to City's satisfaction, which satisfaction shall be judged by the Director in his/her sole discretion, and City shall not be liable for any payment under this Agreement for services which are unsatisfactory and/or which have not been previously approved by the Director. The final payment due hereunder will not be paid until all reports, data and documents have been submitted, received, accepted and approved by City.

3.1.1 Payment may be made based solely on the services completed and approved by City and the associated hourly rates for such service as set out in Consultant's Fee Schedule, included on Exhibit 2 hereto, and the Finalized Task Order.

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

3.3 Consultant warrants that title to all Services covered by an Application for Payment will pass to City no later than the time of payment. Consultant further warrants that upon submittal of an Application for Payment, all Services for which Applications for Payment previously have been issued and payments received from City shall, to the best of Consultant's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrance in favor of Consultant or other persons or entities making a claim by reason of having provided labor or services relating to this Agreement. **CONSULTANT SHALL INDEMNIFY AND HOLD CITY HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY ANYONE CLAIMING BY, THROUGH OR UNDER THE ITEMS COVERED BY PAYMENTS MADE BY CITY TO CONSULTANT.**

3.4 Consultant may submit a request for partial compensation prior to Finalized Task Order's completion. A request for partial compensation must be accompanied by a progress report detailing the Services performed. Any partial payment made shall be in proportion to the Services performed as reflected in the progress report and approved by City at its sole discretion. Compensation shall also be based solely on the services completed by Consultant and approved by City, which compensation shall be billed in accordance with the Fee Schedule included in Exhibit 2 hereto.

3.5 Project Close Out and Final Compensation:

3.5.1 Final billing for each Project shall indicate: "Final Bill - no additional compensation is due to

Consultant".

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

3.5.2.1 delays in the performance of Consultant's work;

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

3.5.2.3 failure of Consultant to make payments properly to Subcontractors or vendors for labor, materials or equipment;

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

3.5.2.5 damage to City; or

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

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

3.5.3.1. In the event of any dispute(s) between the parties, regarding the amount properly compensable for any phase of work or as final compensation or regarding any amount that may be withheld by City, Consultant shall be required to make a claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided in the Agreement documents for the resolution of such dispute. In the event Consultant does not initiate and follow the claims procedures provided in the Agreement documents in a timely manner and as required by the terms thereof, any such claim shall be deemed waived by Consultant.

3.5.3.2 City shall make final compensation of all sums due Consultant not more than thirty (30) days after Consultant's execution and delivery of an accurate final Pay Application.

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

3.5.3.4 Consultant agrees to maintain adequate books, payrolls and records satisfactory to City in connection with any and all Services performed hereunder. Consultant agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than four (4) years after completion of Services. In the event that a dispute arises over any aspect of Services performed by Consultant within the four (4) years after completion of Services provided under this Agreement, Consultant shall retain all such books, payrolls and records (including data stored in computer) for a period of not less than four (4) years after final resolution of any dispute. At all reasonable times, City and its duly authorized representatives shall have access to all personnel of Consultant and all such books, payrolls and records and shall have the right to audit same.

ARTICLE IV.
SCOPE OF SERVICES

4.1 Consultant understands, accepts and agrees that City has entered or may enter into multiple On-Call general engineering consulting services Agreements with other consultants and City has the authority to assign services under this and other Agreements at its sole discretion. Consultant understands, accepts and agrees that City makes no minimum guarantees with regard to the amount of work, if any, which Consultant may be extended under this Agreement.

4.2 This Agreement is an On-Call Agreement, Task Order, or indefinite delivery agreement for on-call general engineering consulting services and other such services that are required for Consultant to provide or are associated with on-call general engineering consulting services including but not limited to the services set out in Exhibit 1, Scope of Services. Specific requirements as to location, conditions, procedures and associated services pertaining to a Project, shall be negotiated and set out in individual Finalized Task Orders for each request, which Finalized Task Orders shall be incorporated into and shall become a part of this Agreement.

4.3 Consultant shall provide all labor, equipment and transportation necessary to complete all services, agreed to by Task by Consultant pursuant to this Agreement, in a timely manner throughout the term of this Agreement. Additionally, Consultant shall provide staff for regular, overtime, night, weekend and holiday service, as requested or required by City. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or Subcontractors of Consultant.

4.4 Unless otherwise required by City, Consultant shall apply for and assist City in obtaining permits from all governmental authorities having jurisdiction over each Project and such approvals and consents from others as may be necessary for the completion of each Project. Consultant will provide City reasonable assistance in connection with such approvals and permits, such as the furnishing of data compiled by Consultant, pursuant to other provisions of this Agreement, and shall appear on behalf of City at up to three meetings with governmental entities, but Consultant shall not be obligated to develop additional data, prepare extensive reports or appear at hearings or the like, unless compensated therefore under other provisions of this Agreement.

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

4.6 Consultant, in consideration for the compensation herein provided, shall render the professional services described in this Section IV necessary for the advancement of the Project to substantial completion.

4.7 Consultant shall perform its obligations under this Agreement in accordance with the Scope of Services set out in Exhibit 1, Scope of Services and in each Finalized Task Order, in accordance with the Consultant's Fee Schedule in Exhibit 2 hereto.

4.8 All services and work performed and reports and deliverables required pursuant to this Agreement shall be in compliance with all laws, rules, and regulations to include, but not limited to FAA Advisory Circulars.

4.9 Consultant shall be represented by a registered professional engineer licensed to practice in the State of Texas at meetings of any official nature concerning each Project, including, but not limited to, scope meetings, review meetings, pre-bid meetings, preconstruction meetings, and other meetings as required by that particular Project.

4.10 The Texas Board of Architectural Examiners, Hobby Building, 333 Guadalupe, Suite. 2-350, Austin, Texas 78701, (512) 305-9000 and/or Texas Board of Professional

Engineers, 1917 IH-35 South, Austin, Texas 78741, (512) 4407723 has jurisdiction over individuals licensed under Title 22 of the Texas Administrative Code.

4.11 All completed documents submitted by Consultant for final approval or issuance of a permit shall bear the seal with signature and date adjacent thereto of a Texas registered engineer licensed to practice in Texas.

4.12 Acceptance of final plans by City shall not constitute nor be deemed a release of the responsibility and liability of Consultant, its employees, associates, agents or sub-consultants for the accuracy and competency of their designs, drawings, specifications or other documents and Services; nor shall such acceptance be deemed an assumption of responsibility or liability by City for any defect in the designs, working drawings, specifications or other documents and work prepared by said Consultant, its employees, sub-consultants and agents.

4.13 Consultant's Fee Schedule, which includes hourly rates, is incorporated by reference herein, attached hereto and labeled as Exhibit 2.

ARTICLE V.
TIME AND PERIOD OF SERVICE

5.1 The term of this Agreement shall commence upon its approval by the San Antonio City Council and the execution by both parties and shall remain in full force and effect for a period of three (3) years, herein referred to as the "Initial Term", unless otherwise terminated in accordance with the terms of this Agreement. The City shall retain an option to extend this Agreement for two additional one year periods, hereinafter referred to as "Extension Periods". The Director shall have the authority to exercise such options at his discretion without City Council action.

5.2 Time is of the essence for this Agreement. Consultant shall perform and complete its obligations for the various Projects in a prompt and continuous manner so as to not delay the development of the design services and so as to not delay the construction of the work for the Project, in accordance with the schedules approved by City and construction contractor. If, upon review of Finalized Task Orders, corrections, modifications, alterations or additions are required of Consultant, these items shall be completed by Consultant before that Finalized Task Order is approved.

5.3 Consultant shall not proceed with the next appropriate Finalized Task Order without written authorization from City. City may elect to discontinue Consultant's services at any time and for any reason or for no reason. However, if circumstance dictates, City may make adjustments to the scope of Consultant's obligations at any time to achieve the required services.

5.4 Consultant shall not be liable or responsible for any delays due to strikes, riots, acts of God, national emergency, acts of the public enemy, governmental restrictions, laws or regulations or any other causes beyond Consultant's reasonable control. Within twenty one (21) days from the occurrence of any such event, for which time for performance by Consultant shall be significantly extended under this provision, Consultant shall give written notice thereof to City stating the reason for such extension and the actual or estimated time thereof. If City determines that Consultant is responsible for the need for extended time, City shall have the right to make a Claim as provided in this Agreement and/or deny Consultant's request for an extension.

5.5 This Agreement, and all Finalized Task Orders issued prior to the expiration of this Agreement, shall remain valid for a period which reasonably may be required for the completion of all Projects, including any extra work and any required extensions thereto, unless discontinued as provided for elsewhere in this Agreement.

ARTICLE VI.
PROJECT SERVICES REQUEST PROCESS

6.1 Necessary on-call general engineering consulting services requirements shall be established with each Project-specific Finalized Task Order.

6.2 When City has a Project for which it desires to procure on-call general engineering consulting services, City shall notify Consultant by issuing a Task Order Request. Each Task Order Request shall include, at a minimum: name of Project, location of Project, copies of or access to Project documentation (such as specifications, environmental reports, drawings, etc.) needed by Consultant to prepare a Proposal, Project schedule and any specific deadlines for performance of on-call general engineering consulting services, and a deadline for providing City with a Proposal based on the above.

6.3 Consultant shall prepare and submit to City, within the timeline stated in a Task Order Request, a Proposal for the requested services which will include, at minimum: Scope of Services; specific staffing; an estimate of Task cost, based on rates and fees agreed upon in Exhibit 2. Consultant shall submit the Proposal in editable electronic format to the City. By submitting a Proposal, Consultant agrees to perform the requested service(s) within the time stated in the Task Order Request.

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

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

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

6.7 Actual amounts billed shall not exceed the total amount set out in the Finalized Task Order.

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

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

ARTICLE VII.
COORDINATION WITH THE CITY

7.1 Consultant shall hold periodic conferences with City representatives through the end of the Project. The Project shall have the full benefit of City's experience and knowledge of existing needs and facilities and be consistent with City's current policies and standards. To assist Consultant in this coordination, City shall make available, for Consultant's use in planning and designing the Project, all existing plans, maps, statistics, computations and other data in City's possession, relative to existing facilities and to this particular Project, at no cost to Consultant. However, any and all such information shall remain the property of City and shall be returned by Consultant upon

termination, completion of the Project or if instructed to do so by City.

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

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

7.4 Unless otherwise required by City, Contractor shall furnish permits and approvals obtained from all governmental authorities having jurisdiction over the Project and other such approvals and consents from others, as may be necessary, for the completion of the Project. Contractor will notify City of permits to be obtained prior to the Consultant submitting a Task Proposal. City shall provide Contractor reasonable assistance with regard to furnishing such approvals and permits, such as the furnishing of data compiled by City pursuant to other provisions of the Agreement, but City shall not be obligated to develop additional data, prepare extensive reports or appear at hearings or the like.

ARTICLE VIII.
REVISIONS TO DOCUMENTS

8.1 Consultant shall make, without expense to City, such revisions to the drawings, reports or other documents as may be required to meet the needs of City and which are within the Scope of Services. After the written approval by City of drawings, reports or other documents and specifications at the end of each phase of Services, any revisions, additions or other modifications made at City's request, which further involve services and expenses to Consultant, shall require an amendment to incorporate such services and associated compensation into this Agreement, which may be in the form of a Finalized Task Order, based on the fee schedule set forth in Exhibit 2, Fee Schedule, hereto.

8.2 The Director may require Consultant to revise the construction documents, phase drawings, drawings, reports or other documents and specifications, at no cost to City, if the lowest bona fide bid received for this Project is in excess of ten percent (10%) of the estimated cost of work, as submitted by Consultant to and accepted by City.

ARTICLE IX.
OWNERSHIP OF DOCUMENTS

9.1 All documents not related to any services performed by Consultant pursuant to this Agreement, including drawings, estimates, specifications and all other documents and data previously owned by Consultant, shall remain the property of Consultant as instruments of service. However, it is to be understood that City shall have free access to all such information and City retains the right to make and retain copies of drawings, estimates, specifications and all other documents and data of Consultant. Any reuse by City of any Consultant drawings, estimates, specifications and any other documents and data previously owned by Consultant, without specific written verification or adaptation by Consultant, will be at City's sole risk and without liability or legal exposure to Consultant.

9.2 Consultant acknowledges and agrees that City exclusively shall own any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to or as a result of a Task and this Agreement and said information shall be used as City desires. Any and all documents, including the original drawings, estimates, specifications and all other documents and data shall be delivered to City, at no additional cost to City, upon request, termination or completion of this Agreement without restriction on future use. City will be providing reports

developed pursuant to this Agreement to the FAA.

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

9.4 CONSULTANT HEREBY ASSIGNS ALL STATUTORY AND COMMON LAW COPYRIGHTS TO ANY COPYRIGHTABLE WORK TO CITY THAT, IN PART OR IN WHOLE, WAS PRODUCED FROM THIS AGREEMENT, INCLUDING ALL EQUITABLE RIGHTS. NO REPORTS, MAPS, PROJECT LOGOS, DRAWINGS, DOCUMENTS OR OTHER COPYRIGHTABLE WORKS, PRODUCED IN WHOLE OR IN PART BY THIS AGREEMENT, SHALL BE SUBJECT OF AN APPLICATION FOR COPYRIGHT BY CONSULTANT. ALL REPORTS, MAPS, PROJECT LOGOS, DRAWINGS OR OTHER COPYRIGHTABLE WORK PRODUCED UNDER THIS AGREEMENT SHALL BECOME THE PROPERTY OF CITY (EXCLUDING ANY INSTRUMENT OF SERVICES, AS OTHERWISE SPECIFIED HEREIN). CONSULTANT SHALL, AT ITS OWN EXPENSE, DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST CITY AND CONSULTANT SHALL PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION AGAINST CITY, INSOFAR AS THE SAME IS BASED ON ANY CLAIM THAT MATERIALS OR WORK PROVIDED UNDER THIS AGREEMENT CONSTITUTE AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS.

9.5 Consultant may make copies of any and all documents and items for its files. Consultant shall have no liability for changes made to or use of the drawings, specifications and other documents by architects and/or engineers or other persons, subsequent to the completion of the Project. City requires that Consultant appropriately mark all changes or modifications on all drawings, specifications and other documents by architects and/or engineers or other persons, including electronic copies, subsequent to the completion of the Project.

9.6 Copies of documents, which may be relied upon by City, are limited to the printed copies (also known as hard copies) and PDF electronic versions that are sealed and signed by Consultant. Files in editable electronic media format of text, data, graphics or other types, (such as DWG or DGN) that are furnished by Consultant to City or public utility only are for convenience of City or public utility. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

9.7 Notwithstanding anything to the contrary contained herein, all previously owned intellectual property of Consultant including, but not limited to, any computer software (object code and source code), tools, systems, equipment or other information used by Consultant or its suppliers in the course of delivering the Services hereunder, and any know-how, methodologies or processes used by Consultant to provide the services or protect deliverables to City, including without limitation, all copyrights, trademarks, patents, trade secrets and any other proprietary rights inherent therein and appurtenant thereto, shall remain the sole and exclusive property of Consultant or its suppliers.

ARTICLE X.
TERMINATION AND/OR SUSPENSION

10.1 Right of Either Party to Terminate for Default

10.1.1 This Agreement may be terminated by either party for substantial failure by the other party to perform (through no fault of the terminating party) in accordance with the terms of this Agreement and a failure to cure, as provided in this Article XIII.

10.1.2 The party not in default must issue a signed, written Notice of Termination, citing this paragraph, to the other party, declaring the other party to be in default and stating the reason(s) why it is in default. Upon receipt of such written notice of default, the party in receipt shall have a period of ten (10) calendar days to cure any failure to perform under this Agreement. Upon the completion of such 10-day calendar period, commencing upon receipt of notice of termination, if such party has not cured any failure to perform, such termination shall become effective without further written notice.

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

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

10.4 Consultant hereby is given the right to terminate this Agreement in the event a suspension extends for a period in excess of sixty (60) consecutive calendar days. Consultant may exercise its right to terminate by issuing a written and signed Notice of Termination, citing this paragraph, to City after the expiration of sixty (60) consecutive calendar days from the effective date of the suspension. Termination, as defined under this paragraph, shall become effective immediately upon City's receipt of said written and signed Notice of Termination from Consultant.

10.5 The procedures which Consultant will follow upon Receipt of Notice of Termination are:

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

10.5.2 Copies of all completed or partially completed specifications and all reproductions of all completed or partially completed designs, plans and exhibits, prepared under this Agreement prior to the effective date of termination, shall be delivered to City, in the form requested by City, as a pre-condition to the payment of final Compensation.

10.5.3 Upon the above conditions being met, City promptly shall compensate Consultant that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less previously paid Compensation.

10.5.4 City, as a public entity, has a duty to document the expenditure of public funds. Consultant acknowledges this duty on the part of City. To that end, Consultant further acknowledges that the failure of Consultant to comply with the submittal of the statement and documents, as required herein, shall constitute a waiver by Consultant of any and all rights or Claims to compensation for services performed under this Agreement and for which Consultant otherwise may be entitled for services performed under this Agreement.

10.6 The procedures Consultant is to follow, upon Receipt of Notice of Suspension, are:

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

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

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

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

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

10.6.6 Upon the above conditions being met, City promptly shall compensate Consultant that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less previously paid Compensation.

10.6.7 City, as a public entity, has a duty to document the expenditure of public funds. Consultant acknowledges this duty on the part of City. To that end, Consultant further acknowledges that the failure of Consultant to comply with the submittal of the statement and documents, as required herein, shall constitute a waiver by Consultant of any and all rights or Claims to compensation for services performed under this Agreement and for which Consultant otherwise may be entitled for services performed under this Agreement.

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

ARTICLE XI.
CONSULTANT'S WARRANTY

Consultant warrants that the services required under this Agreement shall be performed with the same degree of professional skill and care that typically are exercised by similar consulting professionals performing similar services in Bexar County, Texas. Consultant further warrants that it has not employed or retained any company or person other than a bona fide employee, working solely for Consultant, to solicit or secure this Agreement and that it has not, for the purpose of soliciting or securing this Agreement, paid or agreed to pay any company or person any commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach of this warranty, City shall have the right to terminate this Agreement under the provisions of Article X herein.

ARTICLE XII.
SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY REQUIREMENTS

12.1 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.

12.2 Definitions.

12.2.1 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.)

12.2.2 Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein the City requires <u>all</u> prospective Respondents and SubConsultants 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.

12.2.3 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.

12.2.4 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 subConsultant 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.

12.2.5 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 or Respondents.

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

12.2.7 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).]

12.2.8 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.

12.2.9 Individual − an adult person that is of legal majority age.

12.2.10 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."

12.2.11 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.

12.2.12 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.

12.2.13 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).

12.2.14 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:

12.2.14.1 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.

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

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

12.2.14.4 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.

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

12.2.16 Payment – dollars actually paid to Consultants and/or Sub-Consultants and vendors for City contracted goods and/or services.

12.2.17 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).

12.2.18 Prime Consultant – the vendor or Consultant 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.

12.2.19 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.

12.2.20 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 Respondent.

12.2.21 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.

12.2.22 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.

12.2.23 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).

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

12.2.25 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.

12.2.26 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.

12.2.27 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.

12.2.28 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 Consultant and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

12.2.29 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.

12.2.30 Sub-Consultant – any vendor or Consultant that is providing goods or services to a Prime Consultant or Consultant in furtherance of the Prime Consultant's performance under a contract or purchase order with the City. A copy of each binding agreement between the Consultant and its subConsultants shall be submitted to the City prior to execution of this contract agreement and any contract modification agreement.

12.2.31 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.

12.2.32 Sub-Consultant/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 SubConsultants/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 Sub-Consultants/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Sub-Consultant/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Sub-Consultant/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.

12.2.33 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.

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

12.3.1 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 Sub-Consultants, 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 SubConsultants with this term;

12.3.1.1 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 SubConsultants or suppliers;

12.3.1.2 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 Sub-Consultants and workers to determine whether there has been a violation of the terms of this Agreement;

12.3.1.3 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 Sub-Consultant / 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 Sub-Consultant / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Sub-Consultant / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Consultant of work previously designated for performance by Sub-Consultant or supplier, substitutions of new Sub-Consultants, terminations of previously designated Sub-Consultants, or reductions in the scope of work and value of work awarded to Sub-Consultants or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

12.3.1.4 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.

12.3.1.5 Consultant shall retain all records of its Sub-Consultant 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.

12.3.1.6 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 Sub-Consultant / Supplier Utilization Plan, the Consultant shall not be given credit for the participation of its S/M/WBE or HUBZone Sub-Consultant(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.

12.3.1.7 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 Sub-Consultants 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 Sub-Consultant will be performing under for this contract.

12.4 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:

12.4.1 SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 3. (b), 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, <u>and</u>

12.4.2 M/WBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 4. (b), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, Consultant affirms that if it is presently certified as an M/WBE (see *Minority/Women Business Enterprise* definition), Consultant agrees not to subcontract more than 49% of the contract value to a non-M/WBE firm.

12.4.3 SBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 3. (a), this contract is also being awarded pursuant to the SBE Subcontracting Program. Consultant agrees to sub-consult at least twenty-five percent (25%) 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 which 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 Sub-consultants 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 Sub-consultant, and documentation including a description of each SBE Sub-Consultant's scope of work and confirmation of each SBE Sub-consultant'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 Sub-consultant 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 City, and may result in debarment from performing future City contracts 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.

12.4.5 Subcontractor 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 sub-consulting goal of 25% that has 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 architecture and engineering industry, as reflected in the City's Centralized Vendor Registration system for the month of December 2013, African-American owned firms represent approximately 1.17% of available sub-consultants, Hispanic-American firms represent approximately 11.95%, Asian-American firms represent approximately 1.75%, Native American firms represent approximately 0.29%, and Women-owned firms represent approximately 7.00% of available architecture and engineering sub-consultants.

12.5 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 Sub-Consultants, 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 Sub-Consultants, 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 Sub-Consultant and supplier agreements entered into pursuant to City contracts.

12.6 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 Sub-Consultants, including HUBZone Sub-Consultants, to ensure that the Consultant's reported subcontract participation is accurate. Consultant shall pay its Sub-Consultants 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.

12.7 Violations, Sanctions and Penalties.

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

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

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

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

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

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

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

12.7.2.1.1 Suspension of contract;

12.7.2.1.2 Withholding of funds;

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

12.7.2.1.4 Refusal to accept a response or proposal; and

12.7.2.1.5 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).

ARTICLE XIII.
ASSIGNMENT OR TRANSFER OF INTEREST

13.1 Except as otherwise required herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement without the prior written consent of City. As a condition of consent, if same is given, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor consultant, assignee, transferee or subcontractor. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by City in accordance with this Article.

13.2 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this Agreement, without said written approval, shall be void, and shall confer no rights upon any third person. Should Consultant assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest 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.

ARTICLE XIV.
INSURANCE REQUIREMENTS

14.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City's Aviation Department, which clearly shall be labeled "On-Call Airport General Engineering Consulting Services" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed and signed by an Agent, accompanied by an affidavit also signed by Consultant, attesting that the furnished Certificate(s) represent Consultant's current coverages. 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 City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's Aviation Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

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

14.3 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	For Bodily Injury and Property Damage of

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	$1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. $100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $5,000,000 per occurrence (to include AOA access).
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.

14.4 Consultant agrees to require, by written contract, that all sub-consultants and/or subcontractors providing goods or services hereunder obtain the same insurance coverage required of Consultant herein, and provide to Consultant a certificate of insurance and endorsement that names Consultant and City as additional insureds. Consultant shall maintain said certificate and endorsement prior to the commencement of any work by any sub-consultant and/or subcontractor and through the period referenced in 14.3.5. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions or circumstances surrounding this Agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

14.5 As they apply to the limits required by the City, upon the occurrence of an event giving rise to an insurable event, 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. City shall pay any costs incurred resulting from said changes.

Aviation Department
Attn.: Assistant Aviation Director of Planning, Development & Construction
P.O. Box 839966
San Antonio, Texas 78283-3966

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

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

- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

14.8 In addition to any other remedies City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements, to the extent and within the time herein required, City shall have the right to order Consultant to stop work hereunder until Consultant demonstrates compliance with the requirements hereof.

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

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

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

14.12 Consultant and any sub-consultants and/or subcontractors are responsible for all damage to their own equipment and/or property.

ARTICLE XV.
INDEMNIFICATION

15.1 **CONSULTANT WILL FULLY INDEMNIFY** and **HOLD HARMLESS CITY** and its officials, officers, agents, employees, volunteers, directors and representatives (hereafter referred to as "indemnitee") from and against any and all claims, damages, liabilities or costs, including reasonable attorney fees and defense costs, made upon indemnitee **CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT OR ITS AGENT, CONSULTANT UNDER CONTRACT OR ANOTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL WHILE IN THE EXERCISE OF RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT**. This **INDEMNIFICATION SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM INDEMNITEE'S NEGLIGENCE OR WILLFUL MISCONDUCT** in instances where **THE NEGLIGENCE OR WILLFUL MISCONDUCT CAUSES** personal injury, bodily injury, death, or property damage. **IF A COURT OF COMPETENT JURISDICTION FINDS CONSULTANT AND CITY JOINTLY LIABLE, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE WITHOUT, HOWEVER, WAIVING ANY**

GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

15.2 The provisions of this **Article XV** solely are for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Consultant shall advise City in writing within twenty four (24) hours of any claim or demand against City or Consultant known to Consultant related to or arising out of Consultant's activities under this Agreement.

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

15.4 Acceptance of any deliverable or final designs, drawings, plans, specifications, or exhibits by the City shall not constitute nor be deemed a release of the responsibility and liability of the Consultant, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, working drawings, plans, specifications, exhibits or other documents and Services; nor shall such acceptance be deemed an assumption of responsibility or liability by the City for any defect in the in the Services, designs, working drawings, plans, specifications, or exhibits or other documents and work prepared by said Consultant.

ARTICLE XVI.
CLAIMS AND DISPUTES

16.1 A Claim is a demand or assertion by one of the parties seeking, as a matter of right, an adjustment or interpretation of the Agreement terms, payment of money, an extension of time or other relief, with respect to the terms of the Agreement. The term "Claim" also includes other disputes and matters in question between City and Consultant arising out of or relating to this Agreement. Claims must be initiated by written notice. Every Claim of Consultant, whether for additional compensation, additional time or other relief, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind Consultant by his/her signature) of Consultant, verifying the truth and accuracy of the Claim. The responsibility to substantiate Claims shall rest with the party making the Claim.

16.2 Claims by Consultant or by City must be initiated in writing to the other party within ninety (90) days after the occurrence of the event giving rise to such Claim.

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

16.4 If Consultant wishes to make a Claim for an increase in the time for performance, written notice, as stated in this Section XVI, shall be given. Consultant's Claim shall include an estimate of probable effect of delay on progress of the Services. In the case of a continuing delay, only one Claim is necessary.

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

16.5.1 No consequential damages will be allowed.

16.5.2 Damages are limited to extra costs specifically shown to have been directly

caused by a proven wrong for which the other party is claimed to be responsible.

16.5.3 No profit will be allowed on any damage claim.

16.6 **NOTHING IN THIS SECTION XVI SHALL BE CONSTRUED TO WAIVE CITY'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY STATE LAW**.

16.7 Alternative Dispute Resolution.

16.7.1 Each party is required to continue to perform its obligations under this Agreement, pending a final resolution of any dispute arising out of or relating to this Agreement, unless it would be impossible or impracticable under the circumstances.

16.7.2 Before invoking mediation or any other alternative dispute process set forth herein, the parties hereto agree that they first shall try to resolve any dispute arising out of or related to this Agreement through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the parties' senior management representatives cannot resolve the dispute within thirty (30) days after a party delivers a written notice of such dispute, the parties then shall proceed with mediation. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

16.7.3 All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for the purposes of applicable rules of evidence.

16.8 Mediation.

16.8.1 In the event that City or Consultant shall contend that the other has committed a material breach of this Agreement, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

16.8.2 Request for mediation shall be in writing to the other party and shall request that the mediation commence not less than thirty (30) or more than ninety (90) days following the date of the request, except upon mutual written agreement of both parties.

16.8.3 In the event City and Consultant are unable to agree to a date for the mediation or to the identity of the mediator or mediators within thirty (30) days following the date of the request for mediation, all conditions precedent in this article shall be deemed to have occurred.

16.8.4 The parties shall share the mediator's fee and any filing fees equally. Venue for any mediation or lawsuit arising under this Agreement shall be in Bexar County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Agreement shall waive any immunity or defense. No provision of this Agreement is a consent to suit.

ARTICLE XVII.
SEVERABILITY

If, for any reason, any one or more Articles or Sections of this Agreement are held invalid or unenforceable, such invalidity or unenforceability shall not affect, impair or invalidate the remaining Articles or Sections of this Agreement but shall be confined in its effect to the specific Article, Section, sentences, clauses or parts of this Agreement held invalid or unenforceable. The invalidity or unenforceability of any Article, Section, sentence, clause or parts of this Agreement, in any one or more instance, shall not affect or prejudice in any way the validity of this Agreement in any other instance.

ARTICLE XVIII.
INTEREST IN CITY CONTRACTS PROHIBITED

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

18.2 Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency, such as the City-owned utilities. Consultant's officer(s) or employee(s) has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the Agreement or sale:

a. a City officer or employee;

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

c. a business entity in which the City officer or employee, or the officer or employee's parent, child or spouse, owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10)%) or more of the fair market value of the business entity; or

d. a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

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

ARTICLE XIX.
CONFLICTS OF INTEREST DISCLOSURE

Consultant must disclose if it is associated in any manner with a City officer or employee in a business venture or business dealings. Failure to do so will constitute a violation of City Ordinance No. 76933. To be "associated" in a business venture or business dealings includes:

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

b. having a contract with a City officer or employee;

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

d. owning at least ten percent (10%) of the stock in a corporation in which a City officer or employee also owns at least ten percent (10%); or

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

ARTICLE XX.
STANDARD OF CARE/LICENSING

20.1 Services provided by Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

20.2 Consultant shall be represented by personnel with appropriate certification(s) at meetings of any official nature concerning the Project including, but not limited to, scope meetings, review meetings, pre-bid meetings and preconstruction meetings.

20.3 Consultant is responsible for and shall retain a certified and registered engineer(s) and/or architect(s) as needed to perform the services set out in a Finalized Task Order.

ARTICLE XXI.
RIGHT OF REVIEW AND AUDIT

21.1 Consultant grants City, or its designees, the right to audit, examine or inspect, at City's election, all of Consultant's records relating to the performance of the Services under the Agreement, during the term of the Agreement and retention period herein. The audit, examination or inspection may be performed by a City designee, which may include its internal auditors or an outside representative engaged by City. Consultant agrees to retain its records for a minimum of four (4) years following termination of the Agreement, unless there is an ongoing dispute under the Agreement which last beyond the four-year retention period, then, such retention period shall extend until final resolution of the dispute. "Consultant's records" include any and all information, materials and data of every kind and character generated as a result of the work under this Agreement. Example of Consultant records include, but are not limited to, billings, books, general ledger, cost ledgers, invoices, production sheets, documents, correspondence, meeting notes, subscriptions, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers, memoranda, time sheets, payroll records, policies, procedures, federal and state tax filings for issue in question and any and all other agreements, sources of information and matters that may, in City's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

21.2 City agrees that it will exercise the right to audit, examine or inspect Consultant’s records only during regular business hours. Consultant agrees to allow City's designee access to all of Consultant's Records, Consultant's facilities and current or former employees of Consultant, deemed necessary by City or its designee(s), to perform such audit, inspection or examination. Consultant also agrees to provide adequate and appropriate work space necessary to City or its designees to conduct such audits, inspections or examinations.

21.3 Consultant must include this audit clause in any subcontractor, supplier or vendor Agreement.

ARTICLE XXII.
ENTIRE AGREEMENT

This Agreement, and all exhibits attached to and incorporated herein, represents the entire and integrated Agreement between City and Consultant and supersedes all prior negotiations, representations or agreements, either oral or written.

ARTICLE XXIII.
VENUE

THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS AND COURT DECISIONS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

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

ARTICLE XXIV.
NOTICES

Except as may be provided elsewhere herein, all notices, communications, and reports required or permitted under this Agreement shall be personally delivered or mailed to the respective party by depositing the same in the United States Postal Service, addressed to the applicable address shown below, unless and until either party is otherwise notified in writing by the other party of a change of such address. Mailed notices shall be deemed communicated as of five (5) days of mailing.

If intended for City to:	If intended for Consultant, to:
Aviation Department	**NAME OF FIRM**
Attention: Assistant Director of Planning & Development Construction	**Attention: POC**
9800 Airport Boulevard	**FIRM'S ADDRESS**
San Antonio, Texas 78201	

ARTICLE XXV.
INDEPENDENT CONTRACTOR

In performing services under this Agreement, the relationship between City and Consultant is that of an independent contractor. By the execution of this Agreement, Consultant and City do not change the independent contractor status of Consultant. Consultant shall exercise independent judgment in performing its duties and obligations under this Agreement and solely is responsible for setting working hours, scheduling or prioritizing the work flow and determining how the work is to be performed. No term or provision of this Agreement or act of Consultant, in the performance of this Agreement, shall be construed as making Consultant the agent, servant or employee of City, or as making Consultant or any of its agents or employees eligible for any fringe benefits, such as retirement, insurance and worker's compensation, which City provides to or for its employees.

ARTICLE XXVI
CAPTIONS

The captions for the individual provisions of this Agreement are for informational purposes only and shall not be construed to effect or modify the substance of the terms and conditions of this Agreement to which any caption relates.

ARTICLE XXVII
CONTRACT CONSTRUCTION

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

ARTICLE XXVIII
EQUAL EMPLOYMENT OPPORTUNITY

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

ARTICLE XXIX
AMENDMENTS

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

ARTICLE XXX
FAMILIARITY WITH LAW AND CONTRACT TERMS

30.1 Consultant represents that, prior to signing this Agreement, Consultant has become thoroughly acquainted with all matters relating to the performance of this Agreement, the terms and conditions of this Agreement, all applicable laws, regulations, ordinances, and codes including, but not limited to, FAA Advisory Circulars and guidelines, Texas Commission for Environmental Quality (TCEQ) and the U.S. Environmental Protection Agency (USEPA) regulations, and will comply therewith.

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

ARTICLE XXXI
SUCCESSORS

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

ARTICLE XXXII
NON-WAIVER OF PERFORMANCE

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

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

ARTICLE XXXIII.
RELATIONSHIP OF THE PARTIES

33.1 Consultant accepts the relationship of trust, good faith and fair dealing established by this Agreement and shall cooperate with the City in furthering the City's interests. The Consultant accepts this relationship of trust and confidence established with the City and covenants with the City to furnish the Consultant's professional skill and judgment in furthering the interests of the City. The Consultant shall furnish consulting services as set forth herein and shall use the Consultant's professional efforts to perform the services in an expeditious and economical manner consistent with the interests of the City. The Consultant will perform the required services consistent with sound and generally accepted consulting practices, exercising the degree of skill, care and judgment consistent with such practices in San Antonio, Texas.

33.2 Consultant shall require each sub-consultant, to the extent of the Services to be performed by the sub-consultant, to be bound to Consultant by the terms of the Agreement, and to assume toward Consultant all the obligations and responsibilities that Consultant, by this Agreement, assumes toward City. Each subcontract agreement shall preserve and protect the rights of City under the Agreement with respect to the Services to be performed by the Sub-consultant so that subcontracting thereof will not prejudice such rights.

ARTICLE XXXIV
NON-DISCRIMINATION

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

as otherwise established herein. Consultant represents and warrants that it has complied with City's *Non-Discrimination Policy* throughout the course of this solicitation and Agreement award process and will continue to comply with said *Non-Discrimination Policy*. As part of said compliance, Consultant shall adhere to City's *Non-Discrimination Policy* in the solicitation, selection, hiring or commercial treatment of Sub- Consultants, vendors, suppliers or commercial customers, nor shall Consultant retaliate against any person for reporting instances of such discrimination. Consultant shall provide equal opportunity for Sub-Consultants, vendors and suppliers to participate in all of its public sector and private sector sub-consulting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination which have occurred or are occurring in City's Relevant Marketplace. Consultant acknowledges that it understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Consultant from participating in City contracts, or other sanctions. This Article 34 is not enforceable by or for the benefit of, nor creates any obligation to, any third party. Consultant's certification of its compliance with City's *Non-Discrimination Policy*, as submitted to City pursuant to the solicitation for this Agreement, is hereby incorporated into the material terms of this Agreement. Consultant shall incorporate this clause into each of its Sub-Consultant and supplier agreements entered into, pursuant to City agreements/contracts.

ARTICLE XXXV
AIRPORT SECURITY

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

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

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

35.4 In connection with the implementation of its security program, Consultant may receive, gain access to or otherwise obtain certain knowledge and information related to the City's overall Airport security program. Consultant acknowledges that all such knowledge and information is of a highly confidential nature. Consultant covenants that no person will be permitted to gain access

to such knowledge and information, unless the person has been approved by the City or the Aviation Director in advance in writing. Consultant further must indemnify, hold harmless and defend the City and other users of the Airport from and against any and all claims, reasonable costs, reasonable expenses, damages and liabilities, including all reasonable attorney's fees and costs, resulting directly or indirectly from the breach of Licensee's covenants and agreements as set forth in this section.

EXECUTED ON THIS, THE _____ DAY OF _____, 2013.

CITY OF SAN ANTONIO

_____
Sheryl Sculley
City Manager

APPROVED AS TO FORM:

_____
City Attorney

CONSULTANT

_____
Name

_____
Title

EXHIBIT 1

SCOPE OF SERVICES

Consultant shall interact closely and coordinate all services and/or phases of services associated with any Finalized Task Order with the Aviation Department, airport tenants and other stakeholders, other City departments, external agencies, and local and regional FAA offices as required. Consultant shall be responsible for compliance with all applicable FAA Advisory Circulars, Orders, and other airport and regulatory guidance documents as well as all federal, state, and local laws and Aviation Department rules and regulations. Scope for individual projects shall be set out in individual Finalized Task Orders and may include but is not limited to:

A. PLANNING SERVICES

Consultant shall perform planning services that may include Airport Master Plan Updates and any sub-component such as Terminal Area Forecasts (TAFs), Airport Geographical Information System (AGIS)/electronic-Airport Layout Plan updates, environmental assessments (EAs), Part 150 Noise Compatibility Updates and/or Noise Exposure Map (NEM) Updates, Site Selections, and various airfield analysis and other National Environmental Policy Act (NEPA) studies.

B. ARCHITECTURAL/ENGINEERING DESIGN SERVICES

Consultant shall provide design and bid phase services resulting in contract documentation suitable for bidding and awarding a construction contract in accordance with FAA and City standards. Consultant shall further aid the Department in determining the appropriate construction delivery method such as Construction Manager at Risk, Competitive Sealed Proposal, or Invitation for Bid. Consultant shall maximize scope and quality within the established schedule and budget for a variety of projects.

Consultant shall perform site investigations to include but not be limited to geotechnical and environmental investigations, surveys that may include mapping underground features, and review of existing record documents. Additionally, Consultant shall perform feasibility and vehicle traffic analyses, project and/or facility assessments and programming and shall prepare cost estimates and schedules.

Consultant shall incorporate the Airport's Safety Management System (SMS) program into all services performed by following the SMS process at major submittal milestones or as otherwise applicable in evaluating design and construction phasing and sequencing alternatives.

C. CONSTRUCTION MANAGEMENT SERVICES

Consultant shall provide construction management services including overseeing construction progress meetings, performing constructability reviews, reviewing contractor Quality Assurance/Quality Control and safety plans, reviewing pay estimates, and performing project closeout activities.

Consultant shall provide construction administration services through completion of each project assigned per a Finalized Task Order. These services shall include preparing meeting minutes, maintaining shop drawings and submittal logs; responding to Requests for Information (RFIs) and maintaining the RFI Log; preparing and processing change orders, including review, negotiation, and recommendation on change order requests made by construction contractor(s).

Consultant shall be responsible for preparing as-built drawings in hard copy, electronic (PDF and AutoCAD), AGIS, and MicroPaver formats. Additionally, Consultant shall prepare a final test and quality control report documenting the results of all tests performed, highlighting those tests that failed or that did not meet the applicable test standard, and perform final and warranty inspections. If required, Consultant shall perform commissioning.

Consultant shall provide a Resident Project Representative (RPR) and/or dedicated Resident

Inspection Services (RIS), observe the project sites through final completion, serve as engineer's liaison, observe and review tests, and provide general observation and assessment of work based on the selected Respondent's professional judgment to ensure that the completed Work conforms to the construction contract documents. Depending on the scope contained in a Finalized Task Order, the RPR may be required to be dedicated, onsite, certified, and/or licensed, and be responsible for overseeing the RIS.

D. PROJECT MANAGEMENT SERVICES

Consultant shall 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.

Consultant shall provide program support services such as developing overall construction contract sequencing and packaging strategies, document control management system, design and airport standards, and policies and procedures. Consultant shall also be responsible for developing, analyzing, and monitoring project and program schedules at various levels of detail as required.

Consultant shall provide program-level budget, cost and trend management services that may include establishing a cost management system in alignment with, and supportive of, the City's budgeting and accounting requirements. Consultant shall collect and present data from identified program projects; provide reports monthly, quarterly, annually, or at other intervals; prepare construction cost estimates, including concept, budgetary, and design estimates. Consultant shall further review estimates provided by other agents and assist City in the development of supporting project data for use in securing various types of funding.

E. OTHER REQUIREMENTS

Consultant must obtain proper Transportation Security Administration (TSA) security clearances, to include the required background check for airfield access for personnel performing services pursuant to this Agreement Consultant shall ensure that all sub-consultants are properly badged or provide escorts for such sub-consultants as needed to properly staff each project. Consultant shall ensure that all persons driving within the secured areas of the airfield are in possession of an airfield driver's license.

Consultant shall be required to comply with provisions of FAA 150/5100-14D "Architectural, Engineering, and Planning Consultant Services for Airport Grants Projects", or its most current version.

EXHIBIT 2

FEE SCHEDULE

EXHIBIT 3

Consultant
And
Contractor
Travel, Living & Relocation Expense Policy

City of San Antonio

As of 6/2/08

Reimbursable Expense Policy
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1. GENERAL

1.1 Introduction

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

1.2 Scope

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

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

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

1.3 Policy

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

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

1.4 Definitions

The following definitions apply to this Policy:

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

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

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

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

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

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

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

1.5 Reimbursements

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

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

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

Entertainment expenses, including alcohol, are not reimbursable.

1.6 Interrupted Itinerary

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

2. Transportation Expenses

2.1 Guideline

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

2.2 Air Travel

Lowest Available Airfare

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

Use of Business or First Class

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

Extended Travel to Save Costs

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

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

2.3 Travel by Private Automobile

Reimbursement for Travel by Private Automobile

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

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

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

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

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

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

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

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

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

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

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

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

2.6 Ground Transportation

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

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

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

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

3. Living Expenses

3.1 Lodging

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

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

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

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

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

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

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

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

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

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

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

3.4 Incidental Expenses

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

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

3.5 Daily Allowance and Lodging Allowance for Extended Travel

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

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

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

4. Relocation Assistance

4.1 Requirements

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

4.2 Limitations

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

Relocation Assistance Limitations

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

4.3 Allowable Expenses In General

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

4.4 Travel Expenses by Car

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

- Actual expenses for gas and oil for the personal vehicle, if accurate records are maintained for these expenses, **or**

- The standard mileage reimbursement rate for moving expenses, as the Internal Revenue Service regulations.

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

4.5 Household Goods and Personal Effect Expenses

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

4.6 Storage Expenses

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

4.7 Travel Expenses

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

4.8 Non-reimbursable Relocation Expenses

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

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

4.9 Relocation Assistance Recovery

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

5. Miscellaneous Expenses

5.1 General

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

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

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

- Business gifts.

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

5.2 Telephone Calls

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

Personal phone calls are not reimbursable.

5.3 Local Business Meetings

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

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

6. Travel Expense Settlement

6.1 Reimbursement

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

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

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

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

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

6.2 Right to Audit

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