PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS

COUNTY OF BEXAR

OF SAN ANTONIO

ARCHITECTURAL DESIGN SERVICES

FOR THE RENOVATION AND EXPANSION OF COMMERCIAL FEDERAL INSPECTION STATION FACILITY AT SAN ANTONIO INTERNATIONAL AIRPORT

(PROJECT NUMBER 33-00096)

This 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

FIRM ADDRESS

an Architect duly licensed and practicing under the laws of the State of Texas (hereafter referred to as "Consultant") (City and Consultant hereafter individually referred to as "a Party" and collectively referred to as "the Parties") said Agreement being executed by City pursuant to City Charter, Ordinances and Resolutions of the San Antonio City Council, and by Consultant for Architectural Design Services, as set forth herein in connection with the above designated Project for City.

INDEX

ARTICLE		PAGE
I.	DEFINITIONS	4
II.	CONSULTANT'S RESPONSIBILITIES	6
III.	BASIC SERVICES	7
IV.	ADDITIONAL SERVICES	19
V.	FURTHER SERVICES REQUIRING AMENDMENT	19
VI.	ESTIMATED COST OF WORK	20
VII.	REVISIONS TO DRAWINGS AND SPECIFICATIONS	20
VIII.	TIME AND PERIOD OF SERVICE	21
IX.	INSURANCE REQUIREMENTS	22
X.	CITY'S RESPONSIBILITIES	25
XI.	COMPENSATION	25
XII.	OWNERSHIP OF DOCUMENTS	28
XIII.	TERMINATION AND/OR SUSPENSION OF WORK	30
XIV.	INDEMNIFICATION	32
XV.	CLAIMS AND DISPUTES	33
XVI.	NON-DISCRIMINATION POLICY	35
XVII.	ASSIGNMENT OR TRANSFER OF INTEREST	35
XVIII.	SEVERABILITY	36
XIX.	INTEREST IN CITY CONTRACTS PROHIBITED	36
XX.	CONFLICTS OF INTEREST DISCLOSURE	36
XXI.	RIGHT OF REVIEW AND AUDIT	37
XXII.	ENTIRE AGREEMENT	38
XXIII.	VENUE	38
XXIV.	NOTICES	38

XXV. INDEPENDENT CONTRACTOR **39**

XXVI. CAPTIONS **39**

XXVII. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS **39**

XXVIII. AIRPORT SECURITY **40**

XXIX. ATTORNEY FEES **41**

XXX. CONFLICT RESOLUTION BETWEEN DOCUMENTS **41**

EXHIBIT A - SCOPE / BUDGET / REIMBURSEABLES **43**

EXHIBIT B - SCHEDULE OF PROJECT SERVICES **44**

EXHIBIT C - ADDITIONAL SERVICES **45**

EXHIBIT D - SBEDA SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN/ SBEDA ORDINANCE COMPLIANCE AND PROVISION **46**

EXHIBIT E - GENERAL CONDITIONS **55**

EXHIBIT F - ADDENDUM **56**

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, to include Consultant's proposal, to the extent accepted by City and not in conflict with the Articles of this Agreement: Scope / Budget / Reimbursables – **Exhibit A;** Schedule of Project Services - **Exhibit B;** Additional Services - **Exhibit C;** and SBEDA Subcontractor/Supplier Utilization Plan and SBEDA Ordinance Compliance and Provision - **Exhibit D**; General Conditions for City of San Antonio Construction Projects – **Exhibit E**; and issued Addendum **– Exhibit F**.

1.2 "Application for Payment" means the electronic filing by the Construction Contractor requesting to be paid for completed Work and materials stored at site.

1.3 "Consultant" means **FIRM NAME** 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.

1.4 "Consultant's Schedule of Services" means a detailed listing of the services to be performed and the time sequence for the delivery to include an estimated dollar value which shall be attached for the payment of the services over the term of this Agreement.

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

1.6 "Certificate of Substantial Completion" means the document issued by Consultant with City's consent at the stage in the progress of the Work when the Work, or designated portion thereof, is sufficiently complete in accordance with the Contract, so City may occupy or utilize the Work for its intended use.

1.7 "City" and "Owner" mean the City of San Antonio, Texas.

1.8 "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.

1.9 "Compensation" means the amount paid by City to Consultant for completed services accepted by City under this Agreement.

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

1.11 "Construction Documents" are the complete set of documents approved by City for the Work to complete the Project, including the Construction Drawings and Specifications as set out in paragraph 3.10.2 herein.

1.12 "Construction Drawings and Specifications" are the documents used to convey the intent of Consultant for the purposes of constructing the Project.

1.13 "Director" means the Director of City's Transportation and Capital Improvements (hereafter referred to as "TCI") Department, or his/her designated project manager identified in the Notice to Proceed.

1.14 "Estimated Cost of Work" means Consultant's estimate of probable construction costs.

1.15 "Final Compensation" means the final amounts paid by City to Consultant for completed services accepted by City under this Agreement.

1.16 "Final Payment" means the final amounts paid by City to Construction Contractor for completed Work under the Construction Documents.

1.17 "Invoice" means written request for compensation from Consultant to City for services completed under this Agreement.

1.18 "Project" means the capital improvement/construction development undertaking of City.

1.19 "Proposal" means the proposal of Services submitted by Consultant in response to City's Request for Qualifications.

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

1.21 "Schedule of Values" a schedule, submitted by the Construction Contractor before the first Application for Payment, allocating dollar amounts to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Consultant may require. This schedule, unless objected to by Consultant, shall be used as the basis for reviewing Contractor's Applications for Payment.

1.22 "Schematic Design Document" shall have the meaning as defined in Paragraph 3.9.5 of this Agreement.

1.23 "Services" means the services performed by Consultant, as required by and stated in **Article III** and **Article IV** of this Agreement.

1.24 “Total Compensation” means the not to exceed amount of this Agreement.

1.25 “Work” means the construction work performed by the Construction Contractor.

ARTICLE II.
CONSULTANT’S RESPONSIBILITIES

2.1 Consultant shall hold periodic conferences with Director or his/her representatives through the end of the Project so Consultant has the full benefit of City’s experience and knowledge of existing needs and facilities, and so the Project is consistent with City’s current policies and standards and the requirements of the U.S. Department of Homeland Security, U.S. Customs and Border Protection’s June 2012 version of the Airport Technical Design Standards for Passenger Processing Facilities. 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 its 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 or completion of the Project or if instructed to do so by the Director.

2.2 Consultant warrants Services provided by Consultant under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in Bexar County, Texas.

2.3 Unless otherwise required by City, Consultant shall apply for and assist City in obtaining building permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for the completion of the Project. Consultant shall 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.

2.4 If and when necessary for the Project, Consultant shall serve as City’s Registered Design Professional in Responsible Charge (hereafter referred to as “RDPiRC”). As RDPiRC, Consultant, as a licensed professional in the State of Texas, shall implement the special inspections program and is responsible for the Determination of Required Special Instructions, as cited in Section 1704.2 of the International Building Code. Consultant hereby confirms that it is not and shall not be in the employ of the Project’s Contractor, and Subcontractors or Suppliers for the duration of the Project. As RDPiRC, Consultant shall employ or contract with the Special Inspectors required for the Project and shall supply Contractor with a list of all required Special Inspectors and associated Special Inspectors. As RDPiRC, Consultant shall submit associated Special Inspector field reports to City’s building official(s), with a copy to the Special Inspector(s), City and Contractor, indicating compliance with any Notice of Non-Compliance items reported and advising City’s building official(s) to allow work to continue. As RDPiRC,

Consultant is responsible to prepare and shall sign and submit the Final Report of Required Inspections, on a form approved by City's building official(s), after Contractor completes its Work in accordance with Consultant's approved Project plans. The employment of Consultant as City's RDPiRC does not relieve City's building official(s) of his/her/their responsibility/responsibilities for such inspection(s) acceptance or for the other periodic and called for inspection(s), as required by the current building code(s).

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

2.6 Consultant shall prepare Change Orders and Field Work Directives and, with concurrence of City, have authority to order minor changes in the Work not involving an adjustment in the Total Compensation or an extension of the time for construction. Such changes shall be effected by written order, which the Construction Contractor shall carry out promptly and record on the as-built record documents.

2.7 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.

2.8 Consultant shall ensure all Consultant's employees, subcontractors, agents and other individuals under Consultant's control that access the Airport Technical Design Standards, Passenger Processing Facilities, prior to obtaining such access, execute and submit, the Deaprtment of Homeland Security Non-Disclosure Agreement (DHS Dorm 11000-6(08-04)) to City.

2.9 Acceptance of the final plans by City shall not constitute nor be deemed a release of the responsibility and liability of Consultant, its employees, associates, agents or 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.

2.10 Consultant warrants 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 it has not, for the purpose of soliciting or securing this Agreement, paid or agreed to pay any company or person, 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 XII herein.

ARTICLE III.
BASIC SERVICES

3.1 Consultant shall not commence performance of any Services on this Project until being thoroughly briefed on the scope of the Project and being notified by City in writing to proceed. The scope of the Project and Consultants Services required shall be dependent on Consultant's review of City's criteria and the development of a Proposal by Consultant to define the Services based on this Agreement and a complete understanding of the goals of City for this Project. Should the goals of the Project subsequently change, either Consultant or City may request a review of the anticipated Services, along with an appropriate adjustment in compensation.

3.2 Consultant shall review laws, codes and regulations applicable to Consultant's services. Consultant shall be responsible for registering the Project with the Department of Licensing & Regulation, Architectural Barriers, and obtaining all reviews, inspections and approvals of Construction Documents necessary to comply with all state and federal handicapped and Americans with Disabilities Act (hereafter referred to as "ADA") requirements. Consultant also shall be responsible for ensuring all facilities, which have been constructed in accordance with the Construction Documents created under this Agreement, comply with all state and federal handicapped and ADA requirements.

3.3 Consultant shall render the professional services described in this **Article III** necessary for the development of the Project to Substantial Completion, including Construction Drawings and Specifications in phases as required, construction services, any special and general conditions and instructions to bidders, as acceptable to the Director and subject to other provisions of this Agreement. Any service(s) customarily required by law or by common due diligent architectural practice shall presumed to be included in Consultant's Scope of Services. The General Conditions for City's Construction Contracts have been attached hereto, labeled as **Exhibit "E"** and made a part of this Agreement. Consultant hereby acknowledges and accepts its responsibilities, as defined therein, under City's General Conditions.

3.4 Consultant shall advise and consult with City. City's instruction to Construction Contractor may be issued through Consultant but City reserves the right to issue instructions directly to Construction Contractor through other designated City representatives. Construction Contractor understands City may modify the authority of Consultant, as provided in the terms of its contract relationship with Consultant, and the Director shall, in such event, be vested with powers formerly exercised by such Consultant, provided written notice of such modification promptly has been served on Construction Contractor in writing. Nothing herein shall authorize independent agreements between Construction Contractor and Consultant, nor shall Consultant be deemed to have a legal relationship with Construction Contractor.

3.5 Consultant shall make visits to the Site at intervals appropriate to the phases:

(1) to become generally familiar with and to keep City informed about the progress and quality of the portion of the Work completed; and

(2) to endeavor to guard City against defects in the Work. However, Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work, unless so negotiated and agreed upon with City.

3.6 Consultant neither shall have control over or charge of, nor be responsible for, the

construction means, methods, techniques, sequences or procedures or for the safety precautions and programs in connection with the Work, since these solely are Construction Contractor's rights and responsibilities under the Contract Documents. Consultant's efforts shall be directed toward providing for City a greater degree of confidence the completed Work generally shall conform to the Contract Documents.

3.7 Consultant shall coordinate its services with those services provided by City and City's Architects. Consultant shall be entitled to rely on the completeness of services and information furnished by City and City's Architects.

3.8 Consultant shall manage Consultant's services, consult with City, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to City. Additionally, Consultant shall attend all public hearings, presentations, council meetings or other official or public meeting concerning the Project, as requested by City. All Project meetings and a total of three (3) public hearings, presentations, council meetings or other official or public meetings shall be included in basic service. Any additional public hearings, presentations, council meetings or other official or public meeting shall be considered Additional Services as described in **Article IV** herein.

3.9 SCHEMATIC DESIGN PHASE SERVICES

3.9.1 Consultant shall prepare a preliminary evaluation of City's program, schedule, budget for the Estimated Cost of the Work, Project site and the proposed procurement or delivery method and other initial information, each in terms of the other, to ascertain the requirements of the Project. Consultant shall notify City of (1) any inconsistencies discovered in the information, and (2) other information or consulting services which reasonably may be needed for the Project.

3.9.2 Consultant shall present its preliminary evaluation to City and shall present to City alternative approaches to design and construction of the Project. Consultant shall consider environmentally responsible and sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design consistent with City's program, schedule and budget. Consultant shall meet City's requirements of the Project, as set out in this Agreement.

3.9.3 Consultant shall consider the value of alternative materials, building system and equipment, together with other considerations, based on program and aesthetics, in developing a design for the Project which is consistent with City's program, schedule and budget for the Estimated Cost of the Work.

3.9.4 Based on the Project's requirements, Consultant shall prepare and present, for City's approval, a preliminary design illustrating the scale and relationship of the Project components.

3.9.5 Based on City's approval of the preliminary design, Consultant shall prepare Schematic Design Documents for City's approval. Schematic Design Documents means the drawings and other documents, including a site plan, which shall incorporate the site

survey issued by City, preliminary building floor plans, preliminary sections and elevations for all sides of the building, systems evaluations for structural and Mechanical, Electrical and Plumbing (hereafter referred to as "MEP") solutions. The Schematic Design Documents may include some combination of study models, perspective sketches or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

3.9.6 Consultant, if applicable, shall submit the Schematic Design Documents to the Historical Design Review Commission (hereafter referred to as "HDRC") for initial schematic approval, prior City's acceptance of the Schematic Design.

3.9.7 Consultant shall submit to City an estimate of the Estimated Cost of Work, prepared in accordance with **Article V** herein.

3.9.8 Consultant shall submit the Schematic Design Documents to City and request City's approval. Consultant shall submit two (2) full size and two (2) half size sets of Schematic Design Documents, two (2) sets of any reports and the Estimated Cost of Work. Consultant shall submit an evaluation and comparison of the Estimated Cost of Work to City's budget and studies, as required. All models and documents also shall be provided in electronic format.

3.10 DESIGN DEVELOPMENT PHASE SERVICES

3.10.1 After City's issuance of its written approval of the Schematic Design Documents, and on Director's written authorization of any adjustments in the Project's requirements and/or the budget for the Estimated Cost of the Work, Consultant shall prepare Design Development Documents for City's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and consist of drawings and other documents including well defined floor plans, sections, elevations, typical construction details and diagrammatic layouts of building systems, to fix and describe the size and character of the Project as to civil, structural, architectural, mechanical, plumbing and electrical systems, and such other elements as may be appropriate. The Design Development Documents also shall include outline specifications which identify major materials and systems and establish, in general, their quality level.

3.10.2 Consultant shall submit Design Development Documents to City and request City's approval signature. Consultant shall submit to City two (2) full size and two (2) half size sets of Design Development Documents, two (2) sets of any reports and an Estimated Cost of Work. Consultant shall submit an evaluation and comparison of the Estimated Cost of Work to City's budget and studies, as required or as requested by City. All models and documents shall also be provided in electronic format.

3.10.3 Upon approval of the completed Design Development Documents, Consultant shall prepare such bidding document as requested by City, to include, but not limited to:

(1) Bidding and procurement information which describes the time, place and requirements for bids or proposal forms;

(2) Form of Agreement between City and Construction Contractor;

(3) Conditions of the Construction Contract and General, Supplementary and other Conditions.

Consultant also shall compile a Project manual, which shall include the Table of Contents and Specifications with CSI Format Division 1 through 32, as required by the scope of Work, and the General, Supplementary and other Conditions of the Construction Contract and may include bidding requirements and sample forms.

3.10.4 Consultant shall update the Estimated Cost of Work and the associated evaluation and comparison to City's budget and submit with the Design Development Drawings, Specifications and Reports.

3.11 CONSTRUCTION DOCUMENTS PHASE SERVICES

3.11.1 Following City's written approval of Design Development Documents, and on City's written authorization of any adjustments in the Project requirements and/or the budget for the Estimated Cost of Work, Consultant shall prepare Construction Documents for City's approval.

3.11.2 The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. City and Consultant acknowledge, in order to construct the Work, Construction Contractor shall provide additional information, including shop drawings, product data, samples and other similar submittals, which Consultant promptly shall review, evaluate and make recommendation.

3.11.3 Consultant shall comply with and incorporate into the Construction Documents all requirements of the governmental authorities having jurisdiction over the Project including, but not limited to, the Texas Commission on Environmental Quality (hereafter referred to as "TCEQ"), San Antonio Water Systems (hereafter referred to as "SAWS") and CPS Energy.

3.11.4 Consultant shall submit the Construction Drawings to City for review and approval at the fifty percent (50%), ninety five percent (95%) and one hundred percent (100%) stage of completion of the Construction Drawings. Consultant shall include an updated Estimated Cost of Work with each of the aforementioned submittals and take any and all action required under **ARTICLE VI** herein.

3.11.5 Consultant shall meet with the HDRC Officer and receive HDRC final approval of Construction Documents.

3.11.6 Prior to the actual printing of the final Construction Documents (plans and specifications), one (1) advance copy shall be submitted to City. Upon review and

approval of said documents, Consultant shall provide and submit same to City as follows:

3.11.6.1 Consultant shall submit three (3) sets of Plans and Specifications, addressed to City Architect's Office, for use by City Architect, Project Manager and Building Maintenance Department.

3.11.6.2 Consultant shall deliver one (1) set of Plans and Specifications in electronic format (PDF format) to City's Plans and Records Office TCI, Contract Services.

3.11.6.3 Consultant shall submit the Building Permit Application, signed and sealed Construction Document Drawings, Specifications, special inspection letter and copies of the site survey, geotechnical report, Environmental Clean Letter and any other documents required, to City of San Antonio Planning and Development Services Department for the building permit. Consultant shall respond to questions from the Planning and Development Services Department and shall be responsible for receipt of a Building Permit. Permit fees shall be paid by City. Any additional review fees required, due to improper submittal, shall be the responsibility of Consultant.

3.12 BIDDING OR NEGOTIATION PHASE SERVICES

3.12.1 Following City's written approval of the Construction Documents, Consultant shall assist City in:

(1) obtaining either competitive bids or negotiated proposals;

(2) confirming responsiveness of bids and proposals;

(3) determining the successful bid or proposal, if any; and

(4) awarding and preparing Contracts for Construction.

3.12.2 Consultant shall assist City in bidding the Project by:

(1) Procuring the reproduction of Bidding Documents for distribution to prospective bidders.

(2) Distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders.

(3) Participating in a pre-bid conference for prospective bidders.

(4) Preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective

bidders in the form of addenda.

3.12.3 Consultant shall consider and evaluate requests for product and material substitutions, if the Bidding Documents permit substitutions, and shall recommend approval or rejection of substitutions to City. If City approves Consultant's recommendation, Consultant shall prepare addenda identifying approved substitutions and provide such addenda to distribute to prospective bidders and to City for distribution on City's Website. All requests for product and material substitutions must be submitted in writing to Consultant at a minimum of ten (10) calendar days prior to the proposed bid opening. If approved, an Addendum outlining the acceptance of the substitution shall be prepared and distributed no less than three (3) calendar days prior to the bid opening. At no time shall substitutions be allowed following the bid opening, unless extenuating circumstances arise and all parties are in agreement a substitution is necessary and for the betterment of the overall project.

3.13 ALTERNATIVE DELIVERY METHODS

3.13.1 If City decides to utilize an alternative delivery method, following City's approval of the Construction Documents, Consultant shall assist City in the following:

(1) Obtaining proposals for Construction Manager at Risk solicitations or Competitive Sealed Proposals;

(2) Confirming responsiveness of proposals; and

(3) Determining the successful proposal.

3.13.2 **Awarding and preparing contracts for construction.** Consultant shall consider and evaluate requests for product and material substitutions, if the Construction Documents permit substitutions, and shall recommend approval or rejection of substitutions to City. If City approves Consultant's recommendation, Consultant shall prepare addenda identifying approved substitutions and provide such addenda to distribute to prospective bidders and to City for distribution on City's Website. All requests for product and material substitutions must be submitted in writing to Consultant a minimum of ten (10) calendar days prior to the proposed bid opening. If approved, an Addendum outlining the acceptance of the substitution shall be prepared and distributed no less than three (3) calendar days prior to the bid opening. At no time shall substitutions be allowed following the bid opening unless extenuating circumstances arise and all parties are in agreement a substitution is necessary and for the betterment of the overall Project.

3.14 CONSTRUCTION PHASE SERVICES

3.14.1 Consultant shall provide administration of the contract between City and Construction Contractor, as set forth in this Agreement and the General Conditions of the Construction Contract.

3.14.2 Upon written request of Construction Contractor, Consultant shall issue its interpretation of the requirements of the plans and specifications. Consultant's response to such requests shall be made in writing within agreed upon time limits developed by Construction Contractor and Consultant and approved by City at the beginning of construction. If no agreement is made concerning the time within which interpretation is required by Consultant, then such interpretation shall be provided by Consultant within fourteen (14) calendar days after written request is made.

3.14.3 Interpretations and decisions of Consultant shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings.

3.14.4 Consultant's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by City.

3.14.5 Consultant shall advise and consult with City during Construction Phase Services. Consultant shall have authority to act on behalf of City only to the extent provided in this Agreement. Consultant shall not have control over, charge of or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall Consultant be responsible for Construction Contractor's failure to perform the Work in accordance with the Work requirements of the Contract Documents. Consultant shall be responsible for Consultant's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of Construction Contractor or of any other persons or entities performing portions of the Work.

3.14.6 Consultant shall provide assistance with warranty issues for the twelve (12) month warranty period following substantial completion, on an as needed basis.

3.14.7 Prior to the expiration of the one (1) year warranty period, Consultant shall accompany City and Construction Contractor on re-inspection of the Project. Consultant shall prepare and submit to City a report listing deficiencies not caused by City or by the use of the Project which are observed during the re-inspection.

3.14.8 Consultant's responsibility to provide Construction Phase Services commences with the award of Contract for Construction and terminates on the date City accepts the corrections of the deficiencies identified during the re-inspection and listed in the report.

3.14.9 Consultant shall consider and evaluate requests for product and material substitutions and shall recommend approval or rejection of substitutions to City. At no time shall substitutions be allowed, unless extenuating circumstances arise and all parties are in agreement a substitution is necessary and for the betterment of the overall Project.

3.15 EVALUATION OF THE WORK

3.15.1 Consultant shall observe the initial start-up of the Project and the necessary performance tests, required by the Specifications, of any machinery or equipment installed in and made a part of the Project. Consultant shall advise City if, in its opinion, the machinery or equipment is not operating properly. Consultant shall review and approve, in concert with City, equipment required to be submitted and tested by the Plans and Specifications for compliance with Project design and performance specifications. Consultant shall review Construction Contractor's building construction layout, specifically foundation elevations.

3.15.2 As cited in **Section 3.5** herein, Consultant agrees to visit the site in intervals appropriate to the stage of construction, or as otherwise agreed by the Parties in writing, but no longer than, at minimum, every fourteen (14) calendar days throughout construction to become familiar with the progress and quality of the Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Included in this scope is the review of the Construction Contractor's Record Drawings which must be maintained continuously during the construction process. However, Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of such on site observations as a professional Architect, Consultant should keep City informed of the progress and quality of each major division of the Work and shall endeavor to guard City against defects and deficiencies in the Work of Construction Contractor. Consultant shall provide City with a Memorandum Record of each jobsite visit and shall submit a monthly report to City in electronic format and by e-mail. The monthly report shall include the status of the Project and include information which indicates the progress and performance of Construction Contractor in accordance with the Contract Documents.

3.15.3 Consultant's efforts shall be directed towards providing assurance for City the completed Project conforms to the Plans and Specifications. Consultant shall not be responsible for the failure of Construction Contractor to perform the construction Work in accordance with the Plans and Specifications and Construction Contractor's contract. However, Consultant shall report to City any deficiencies in the Work actually detected.

3.15.4 Submittals: Consultant shall review and take other appropriate action (approve with modifications, reject, etc.) with regard to Construction Contractor's submittals, such as shop drawings, product data and samples, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Such action shall be taken with reasonable promptness, so as to cause no delay in the Project, but shall not take greater than fourteen (14) calendar days to complete and may require a more prompt response by Consultant, if City so directs. Such reviews and approvals, or other appropriate actions, shall not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions and program incident thereto. The approval of a specific item shall not indicate approval of an assembly of which the item is a component.

3.15.5 Consultant shall provide, receive and review certificates of inspections, testing (to include field, laboratory, shop and mill testing of materials) and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents, to determine generally the results certified substantially comply with the Contract Documents, which are submitted to it. Consultant also shall recommend to City special inspection or testing, when deemed necessary, to assure materials, products, assemblages and equipment conform to the design concept and the Contract Documents.

3.15.6 Consultant shall participate in a Substantial Completion walk and a final inspection of the Project, to observe any apparent defects in the completed construction, assist City in consultation and discussions with Construction Contractor(s) concerning such deficiencies and make recommendations as to replacements or corrections of defective Work.

3.15.7 Consultant shall develop, at the request of City, any changes, alterations or modifications to the Project, which appear to be advisable, feasible and in the best interest of City. Such alterations shall appear on or be attached to City's Change Order Request form. Consultant shall obtain Construction Contractor's acceptance of the proposed alteration, prior to submitting it to City for its approval. Consultant shall not authorize Construction Contractor to perform any additional Work prior to receipt of City's written approval of the Change Order Request.

3.15.8 Except as otherwise provided in any Supplementary or Special Conditions to this Agreement, Consultant and City shall have authority to reject Work not conforming to the Construction Documents. Whenever Consultant or City considers it necessary or advisable, Consultant, with written approval of City, may require inspection or testing of the Work, whether or not such Work is fabricated, installed or completed. However, neither this authority of Consultant or City, nor a decision made by either, in good faith, to exercise or not to exercise such authority, shall give rise to a duty or responsibility of Consultant or City to require testing or inspection not otherwise specified in the Construction Contract Documents by Construction Contractor, subcontractors, suppliers, agents or employees, or other persons or entities.

3.16 APPLICATION FOR PAYMENT BY CONSTRUCTION CONTRACTOR

3.16.1 Before the Construction Contractor submits its first Application for Payment during the construction phase, Consultant shall receive from Construction Contractor a Schedule of Values, allocated to various portions of the Work, prepared in such form and supported by such data to substantiate accuracy as Consultant may require. This schedule shall be used as the basis for reviewing Consultant's invoice during the construction phase.

3.16.2 Construction Contractor shall submit monthly Applications for Payment to City electronically through City's PRIMElink, as defined in **Section 11.11** herein. Upon such submission, Consultant shall determine the amounts due to Construction Contractor, based on observations at the site and on evaluations of Construction Contractor's Monthly Application for Payments (and Final Application for Payment) and approve or reject

Contractor's application.

3.16.3 The approval of an Application For Payment shall constitute a representation by Consultant to City, based on Consultant's observations at the site, as required herein, and in the data comprising Construction Contractor's Monthly Application for Payment (and Final Application for Payment), the Work has progressed to the point indicated; to the best of Consultant's knowledge, information and belief, the quality of Work is in accordance with the Contract Documents and to any specific qualifications stated in the Certification For Payment; and Construction Contractor is entitled to payment in the amount recommended. The approval of an Application for Payment shall not be a representation Consultant has:

(1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;

(2) reviewed construction means, methods, techniques, sequences or procedures;

(3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by City to substantiate Construction Contractor's right to payment; or

(4) made any examination to ascertain how or for what purpose Construction Contractor has used money previously paid on account of the Agreement sum.

3.16.4 Consultant shall, within three (3) calendar days after notification of Construction Contractor's submission of its Application for Payment, either approve the Application for Payment, based upon the percentage of work completed by Construction Contractor, or reject the Application for Payment, noting the reasons for withholding approval.

3.16.5 When the Work is found to be substantially complete, Consultant shall inform City about the balance of the Contract Sum remaining to be paid to Construction Contractor, including the amount to be retained from the Contract Sum, if any, for final completion of the Work.

3.16.6 Consultant shall reject Construction Contractor's Application for Payment, to the extent reasonably necessary to protect City, if, in Consultant's opinion, the representations to City, required by Section 3.15 herein, cannot be made. If Consultant is unable to approve payment in the amount of the Application, Consultant shall notify City, as provided in Section 3.15 herein. Consultant also may withhold approval of an Application for Payment because of subsequently discovered evidence from loss for which the Construction Contractor is responsible, including loss resulting from acts and omissions described below:

3.16.6.1 Defective Work not remedied.

3.16.6.2 Third party Claims filed or reasonable evidence indicating probable filing of such Claims, for which Construction Contractor is responsible hereunder, unless security acceptable to City is

provided by Construction Contractor.

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

3.16.6.4 Reasonable evidence the Work cannot be completed for the unpaid balance of the Construction Contract sum and Construction Contractor has failed to provide City adequate assurance of its continued performance within a reasonable time after demand.

3.16.7.5 Damage to City or another Construction Contractor.

3.16.6.6 Reasonable evidence the Work shall not be completed within the Construction Contract time andthe unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay.

3.16.6.7 Persistent failure by Construction Contractor to carry out the Work, in accordance with the Contract Documents.

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

3.17 PROJECT COMPLETION

3.17.1 Consultant and City shall:

(1) conduct inspections to determine the date or dates of Substantial Completion;

(2) issue Certificate of Substantial Completion; and

(3) receive from Construction Contractor and forward to City, for City's review and records, written warranties and related documents required by the Contract Documents and assembled by Construction Contractor.

3.17.2 When all of the Work is completed and ready for a final inspection, Construction Contractor shall notify Consultant in writing Construction Contractor requests Final Completion. Consultant then shall notify City in writing of receipt of Final Completion request from Construction Contractor. Thereupon, Consultant and City shall make final inspection of the Work and, if the Work is complete in full accordance with this Agreement and this Agreement has been fully performed, Consultant shall confirm with City and promptly issue a final Certificate for Payment, certifying to City the Project is complete and Construction Contractor is entitled to the remainder of the unpaid Construction Contract Sum, less any amount withheld pursuant to the terms of this Agreement. If Consultant is unable to issue its final Certificate of Payment, for reasons for which Consultant is responsible, and is required to repeat its final inspection of the

Work, Consultant shall bear the full cost of such repeat final inspection(s). Consultant also shall review the close out documents.

3.17.3 After completion of the Work, and before final payment to Construction Contractor, it shall be Consultant's responsibility to recommend to City Construction Contactor receive final payment from City, based on the completion of all close-out activities, including the delivery of "Record Drawings" by Construction Contractor, which has control of the Work and which is in a position to know how the Project was constructed. Consultant shall not be held liable for the information supplied it by Construction Contractor and/or City.

3.17.4 City shall require Construction Contractor to submit to Consultant, which then shall review and deliver to City, all manufacturer's warranties or bonds, equipment maintenance, operating manuals and similar data on materials and equipment incorporated in the Project, as required by the Contract Documents, and shall attend and monitor Construction Contractor's commissioning and operator training of systems and equipment, as applicable.

3.17.5 Consultant shall forward to City the following information received from Construction Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying City.

ARTICLE IV.
ADDITIONAL SERVICES

Additional Services are not included in Basic Services but may be required for the delivery of the Project. All Additional Services, to include the cost thereof, shall be listed in **Exhibit C** hereto, and if such Additional Services are to be performed by Subcontractors or Sub-Consultants, then Consultant shall list such subcontractors or Sub-Consultants, to include the legal names, addresses and telephone numbers. The cost of all Additional Services shall be included in the not-to-exceed Total Compensation for this Contract.

ARTICLE V.
FURTHER SERVICES REQUIRING AMENDMENT

5.1 If, during the performance of the Project, further services are required of Consultant, Consultant shall notify City, in a timely manner, to explain the reasons for the further services. Any further Architectural services shall be negotiated, agreed upon and added to this Agreement by a written amendment executed by both parties hereto.

5.2 Further Architectural services may be provided after the execution of this Agreement without nullifying the Agreement. If further Architectural services are required, to redraw or redesign as a result of City's decision to change the scope or redirect the goals after drawings have been completed, and Consultant shall be charging City for these additional services,

Consultant shall agree to work on the agreed-upon fully-loaded hourly basis per task, established in the negotiation of this Agreement, to complete the services. If City elects to add scope and increase the services to be provided by Consultant, there shall be a written agreement between both City and Consultant to change the scope and a written agreement reached for additional fees, based upon hours necessary, if any. If additional compensation is negotiated for these requested increased services, compensation shall be added to the Final Compensation and paid to Consultant after a written amendment incorporating such services into the Agreement has been executed by both parties. Any further services which Consultant negotiates to charge City shall be provided in accordance with the labor rates set out in **Exhibit A** hereto on a not-to-exceed basis and set out in a written amendment approving such services.

ARTICLE VI.
ESTIMATED COST OF WORK

6.1 The Estimated Cost of Work shall be the total estimated cost for the Project to construct all elements of the Project, designed or specified by Consultant, and must include and incorporate City's General Conditions for Construction Costs, overhead and profit, but not the Cost for Design, land or City's equipment. The format of the Estimated Cost of Work shall follow the divisions of the specifications and show contingency, general conditions, insurances and bond costs and profit and overhead through the Project's end.

6.2 City's budget for the Estimated Cost of Work is provided in this Agreement and may be adjusted throughout the Project, as agreed upon by City. It is the responsibility of Consultant to professionally evaluate City's budget and recommend scope changes which may be required to meet City's budget. If Consultant's consideration of City's budget is not challenged during the schematic phase of design, it is understood City's Project budget is approved by Consultant and to be correct, in Consultant's professional opinion, to cover financial requirements of the Estimated Cost of Work.

6.3 Since Consultant has no control over Construction Contractor's cost of labor, materials or equipment, or over Construction Contractor's methods of determining prices, or over competitive bidding or market conditions, Consultant's opinions of probable Project Cost or Construction Cost provided for herein are to be made on the basis of Consultant's experience and qualifications and represent Consultant's best judgment as a design professional familiar with the construction industry, but Consultant cannot and does not guarantee proposals, bids or the construction cost shall not vary from the Estimated Cost of Work prepared by Consultant.

6.4 Consultant shall be permitted to include in the Estimated Cost of Work contingencies for price escalation early in the Project and identify Design Elements and systems which shall deliver the Project within City's budget. If, at the end of each phase of Work, Consultant's Estimated Cost of Work is higher than City's budget, Consultant shall, at its own cost, revise the documents to bring them into budget, unless a written agreement from City approves a budget change.

ARTICLE VII.
REVISIONS TO DRAWINGS AND SPECIFICATIONS

7.1 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, which are within the Scope of the Project. 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 based on Rates set forth in **Exhibit A** hereto.

7.2 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 VIII.
TIME AND PERIOD OF SERVICE

8.1 Prior to commencement of any Services, Consultant shall provide City with:

(1) Service Fees and Reimbursables, listed in Consultant's Scope and Budget on **Exhibit A** hereto, which shall list labor categories and associated fully-loaded hourly rates and reimbursable cost and expenses required for completion of the Services; and

(2) a Schedule of Project Services, listed in **Exhibit B** hereto, which shall detail the various service phases, as described in **Article III** and **Article IV** herein, with the expected time frame for delivery and shall delineate all services to be performed during each phase, the total estimated time and labor by Consultant and all Subcontractors required for the completion of each phase and the Additional Services and Reimbursables, if any, for each phase.

8.2 Time is of the essence for this Agreement. Consultant shall perform and complete its obligations for the Services as stated in **Article III "Scope of Basic Service"** and **Article IV "Additional Services"** of this Agreement in a prompt and continuous manner, so as to not delay the development of the design and Construction Documents and so as to not delay the Construction of the Project in accordance with the schedules approved by City. If, upon review of any phase of Services, City determines corrections, modifications, alterations or additions are required by Consultant, Consultant shall complete these corrections, modifications, alterations or additions before that Phase of Services is approved by City.

8.3 Consultant shall not proceed with the next appropriate Phase of Services without written authorization from City. City may, at any time, elect to discontinue Consultant's Services for any reason. However, if circumstance dictates, City may make adjustments to the scope of Consultant's obligations at any time to achieve the required design.

8.4 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 ten (10) calendar days from the occurrence of any event, for which time for performance by Consultant shall significantly be 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 Consultant is responsible for the need for extended time City shall have the right to make a Claim, as provided in this Agreement.

ARTICLE IX
INSURANCE REQUIREMENTS

9.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City's TCI/Contract Services Department, which clearly shall be labeled "Design Services for the Renovation and Expansion of Commercial Federal Inspection Station Facility Project at San Antonio International Airport" 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 the furnished Certificate(s) represent Consultant's current coverages. City shall not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's TCI Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

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

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

TYPE	AMOUNTS
1. Workers' Compensation	Statutory

2. Employers' Liability	$500,000/$500,000/$500,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence ($5,000,000 per occurrence if driving on the AOA is required)
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages to the extent caused by any negligent act, error, or omission in performance of professional services.

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

9.4 Consultant agrees to require, by written contract, 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 naming Consultant and City as additional insureds. Consultant shall maintain said certificate and endorsement prior to the commencement of any work by any Sub-Consultant and/or Subcontractor and through the period referenced in **Section 9.3.5**. 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.

9.5 If City requests a copy/copies of an insurance policy, Consultant promptly shall comply and Consultant shall mark those portions of the policy, if any, Consultant regards as confidential. In the event a third party makes and Open Records Request, under the Texas Freedom of

Information Act or other public information law asking to view or copy Consultant's policy, City shall submit the received request, along with Consultant's information, to the Texas Attorney General (hereafter referred to as "AG") for an opinion regarding the release of Consultant's policy information. Consultant and City agree City shall be bound by the AG opinion/decision. Similarly, Consultant agrees and accepts City shall provide all Consultant information pursuant to a court order or a litigation discovery rule requiring or directing City to disclose any of Consultant's information.

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

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

- Provide for an endorsement the "other insurance" clause shall not apply to the City of San Antonio where City is an additional insured shown on the policy, as allowed by respective policy provisions, terms and conditions;

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

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

9.7 Within ten (10) calendar days of notice to Consultant of a cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance, should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

9.8 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.

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

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

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

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

ARTICLE X.
CITY'S RESPONSIBILITIES

10.1 The Director or a representative appointed by the Director shall act on behalf of City, with respect to the Services to be performed under this Agreement. The Director shall have complete authority to transmit instructions, receive information and interpret and define City's policies and decisions with respect to materials, equipment, elements and systems pertinent to Consultant's services.

10.2 City shall give prompt written notice to Consultant whenever City observes or otherwise becomes aware of any defect in Consultant's Services, in the Work of Construction Contractor or any development which affects the scope or timing of Consultant's Services.

10.3 City reserves the right to contract directly for the services of the geotechnical engineers, surveyors, material testing and special testing of materials, as required by the code and Contract Documents. In some instances, however, City may request these listed services to be managed by Consultant as an Additional Services. In most instances, Environmental and hazardous waste testing shall be contracted by City.

ARTICLE XI.
COMPENSATION

11.1 The Total Compensation for all services defined by this Agreement, to include Basic Services, Additional Services and Reimbursables, is the not-to-exceed sum of **XXXXXX AND NO/100 DOLLARS ($XXX,XXX.00)**. It is agreed and understood such amount shall constitute full compensation to Consultant for all Basic Services, Additional Services and Reimbursables listed on Consultant's Scope of Services on **Exhibit A** hereto, and shall meet all requirements of City's Design Guidelines and the requirements of the U.S. Department of Homeland Security, U.S. Customs and Border Protection's June 2012 version of the Airport Technical Design Standards for Passenger Processing Facilities. Such amount has been approved and appropriated by the San Antonio City Council for expenditure under this Agreement. Unless and until City further makes appropriations for any additional services not included in the Scope Services, Additional Services and Reimbursables of this Agreement, the obligation of City to Consultant for Total Compensation in connection with this Agreement cannot and shall not exceed such sum of **XXX AND NO/100 DOLLARS ($XXX,XXX.00)** without further amendment to this

Agreement.

11.2 Consultant's Schedule of Project Services, as found in **Exhibit B** hereto, shall be used as the basis for reviewing Consultant's Invoices. The Schedule shall include all services to be performed for both the design phases and construction administration of the Project and also shall include Additional Services and Reimbursable which make up the Total Compensation.

11.2.1 Before the first Invoice, City shall receive from Consultant a Schedule of Project Services, reflecting the fully-loaded hourly rates and projected actual hours required for each task, along with the expected time frame for delivery based on the Design Phases, as described in **Article III** and **Article IV** herein, prepared in such form and supported by such data to substantiate its accuracy as City may require. This Consultant's Schedule of Project Services shall be used as the basis for reviewing Consultant's Invoice during each phase of the Services.

11.2.2. Consultant and City acknowledge the total not-to-exceed Compensation amount contained in **Section 11.1** herein has been established predicated upon the not-to-exceed costs of all Services to be rendered under this Agreement.

11.2.3 All Invoices shall be submitted electronically through City's Program Management Portal (hereafter referred to as "PRIMELink"), as defined in **Section 11.11** herein. Any changes with Consultant's Schedule, once approved, shall be processed and approved as task orders through PRIMELink.

11.3 Consultant warrants title to all Services covered by its Invoices shall pass to City no later than the time of Compensation. Consultant further warrants, upon submittal of an Invoice, all Services for which Invoices previously have been issued and compensation 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 the Work. 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 COMPENSATION PAID BY CITY TO CONSULTANT.

11.4 Consultant shall, within ten (10) calendar days following receipt of Compensation from City, pay all bills for services performed and furnished by Sub-Consultants or vendors in connection with the Project and shall provide City with evidence of such payment through City's electronic City of San Antonio Contract Management System (hereafter referred to as "CCMS"). Consultant's failure to make payments within such time shall constitute a material breach of this Agreement, unless Consultant is able to demonstrate to City bona fide disputes associated with the unpaid Sub-Consultant(s) or vendors for their services or products. Consultant shall include a provision in each of its sub-agreements imposing the same payment obligations on Sub-Consultants and vendors as are applicable to Consultant hereunder, and require Sub-Consultants to provide confirmation to City of receipt of payments through CCMS and, if City so requests, shall provide copies of such payments by the Sub-Consultants and/or vendors.

11.5 The final compensation to be made by City to Consultant shall be payable upon submission of a statement of release, with the final Invoice notifying City there is no further compensation owed to Consultant by City beyond the final Invoice.

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

11.6.1 Delays in the performance of Consultant's Services;

11.6.2 Third party Claims filed or reasonable evidence indicating a probable filing of such Claims, unless security acceptable to City is provided by Consultant;

11.6.3 Failure of Consultant to make payments properly to Sub-Consultants or vendors for labor, materials or equipment;

11.6.4 Reasonable evidence Consultant's Services cannot be completed for the amount unpaid under this Agreement.

11.6.5 Damage to City or Construction Contractor; and/or

11.6.6 Persistent failure by Consultant to carry out the performance of its Services in accordance with this Agreement.

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

11.8 In the event of any dispute between the parties regarding the amount of compensation for any Phase or as final Compensation, or regarding any amount withheld by City, Consultant shall be required to make a Claim pursuant to and in accordance with the terms of this Agreement and follow the procedures provided herein for resolution of such dispute. In the event Consultant does not initiate and follow the Claims procedures provided in this Agreement, in a timely manner and as required by the terms herein, as cited in **Paragraph 15.2** herein, any such Claim shall be deemed to have been waived.

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

11.10 **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 shall be entitled to reimbursement at actual cost incurred for services and related expenses for the following:

11.10.1 Travel outside SAMSA only if approved in writing by City prior to such travel. If approved by City, reimbursement for travel costs shall be limited to costs directly associated with Consultant's performance of Service under this Agreement. 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 shall not exceed the amount noted in attached **Exhibit A** Scope/Budget/Reimbursables without further approval of City. City shall not pay for Consultant's travel within SAMSA.

11.10.2 Mailing, courier services and copies of documents requested in writing by City in excess of the copies which are to be provided under the Agreement. These costs shall not exceed the amount noted in attached Scope/Budget/Reimbursables without further approval of City.

11.10.3 Graphics, physical models and presentation boards requested in writing by City in excess of those which are to be provided under this Agreement. These costs shall not exceed the amount noted in attached Scope/Budget without further approval of City.

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

11.11 **Internet-based Project Management Systems**. City shall administer its services through an Internet-Based Project Management System ("PRIMELink"). In such case, Consultant shall conduct communication through PRIMELink and perform all Project-related functions utilizing this system, with the exception of Sub-Consultant payment monitoring activities through CCMS. This includes correspondence, submittals, requests for information, vouchers, invoices or payment requests and processing, amendments, change orders and other administrative activities. City shall administer the software, shall provide training to Project Team Members and shall make the software accessible via the Internet to all Project Team Members.

ARTICLE XII.
OWNERSHIP OF DOCUMENTS

12.1 All previously owned documents not relating to this Project, including any original drawings, estimates, specifications and all other documents and data of Consultant, shall remain the property of Consultant as instruments of service. However, Consultant understands and agrees City shall have free access to all such information with the right to make and retain copies of previously owned drawings, estimates, specifications and all other documents and data. Any reuse of any documents and data by City without the specific written verification or adaptation by Consultant shall be at City's sole risk and without liability or legal exposure to Consultant.

12.2 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 Consultant licensed to practice in Texas.

12.3 Consultant acknowledges and agrees, upon payment, City exclusively shall own any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to or as a result of this Project and Agreement and shall be used as City desires. 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 or termination or completion of this Agreement without restriction on future use. However, any reuse of documents on a different Project, without specific written verification or adaptation by Consultant, shall be at City's sole risk and without liability or legal exposure to Consultant.

12.4 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 termination or completion of this Agreement or if instructed to do so by City.

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

12.6 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 City or other Consultants and/or engineers and/or other persons, subsequent to the completion of the Project. Consultant shall note Consultant's agreement or disagreement with all changes or modifications on all drawings, specifications and other documents by other Consultants and/or engineers or other persons outside of Consultant's control, including electronic copies, prior to the completion of the Project.

12.7 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 which are sealed and signed by Consultant. Files in editable electronic media format of text, data, graphics or other types, (such as .DWG and the REVIT MODEL) which are furnished by Consultant to City only are for

convenience of City or a utility. Any conclusion or information obtained or derived from such electronic files shall be at the user's sole risk. However, any reuse without specific written verification or adaptation by Consultant, shall be at City's sole risk and without liability or legal exposure to Consultant.

12.8 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 and/or its suppliers.

ARTICLE XIII.
TERMINATION AND/OR SUSPENSION OF WORK

13.1 Right of Either Party to Terminate for Default

13.1.1 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**.

13.1.2 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.

13.2 City reserves the right to terminate this Agreement for reasons other than substantial failure by Consultant to perform 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.

13.3 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 calendar days of suspension which may occur. Such suspension shall take effect immediately upon Consultant's receipt of said Notice of Suspension.

13.4 Consultant hereby is given the right to terminate this Agreement in the event a suspension extends for a period in excess of one hundred and twenty (120) 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 one hundred and twenty (120) 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.

13.5 The procedures which Consultant shall follow, upon Receipt of Notice of Termination, are:

13.5.1 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) calendar 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.

13.5.2 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.

13.5.3 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.

13.5.4 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 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.

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

13.6.1 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.

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

13.6.3 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.

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

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

13.6.6 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.

13.6.7 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 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.

ARTICLE XIV.
INDEMNIFICATION

14.1 CONSULTANT FULLY SHALL INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, VOLUNTEERS, DIRECTORS AND REPRESENTATIVES (HEREAFTER REFERRED TO AS "INDEMNITEE" OR "INDEMNITEES" FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LIABILITIES OR COSTS, INCLUDING REASONABLE ATTORNEY FEE 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.

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

ARTICLE XV.
CLAIMS AND DISPUTES

15.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the Agreement terms, payment of money, and/or an 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. Claims must be initiated by written notice to the other party. 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.

15.2 **Time Limit on Claims**. Claims by Consultant or by City must be initiated within twenty one (21) calendar days after occurrence of the event giving rise to such Claim. Claims by Consultant shall be initiated by written notice to City. Claims by City shall be initiated by written notice to Consultant.

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

15.4 **Claims for Additional Time**. If Consultant wishes to make a Claim for an increase in the time for performance, written notice, as provided in this **Section 15**, shall be given. Consultant's Claim shall include an estimate of probable effect(s) of a delay on the progress of the Work. In the case of a continuing delay only one Claim is necessary.

15.5 **Claims for Consequential Damages**. Except as otherwise provided in this Agreement, in calculating the amount of any Claim or any measure of damages for Breach of Contract (such provision to survive any termination following such breach), the following standards shall apply

to Claims by either Consultant or City:

15.5.1 No consequential damages shall be allowed;

15.5.2 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; and

15.5.3 No profit shall be allowed on any damage Claim by Consultant.

15.6 No Waiver of Governmental Immunity. Nothing in this Section **XV** shall be construed to waive City's Governmental Immunity from a lawsuit. Governmental Immunity expressly is retained to the extent it is not clearly and unambiguously waived by State law.

15.7 Alternative Dispute Resolution

15.7.1 **Continuation of Services Pending Dispute Resolution**. Each party is required to continue to perform its obligations under this Agreement, pending final resolution of any dispute arising out of or relating to this Agreement, less it would be impossible or impracticable under the circumstances.

15.7.2 **Requirement for Senior Level Negotiations**. Before invoking mediation or any other alternative dispute process set forth herein, the Parties hereto agree they first shall try to resolve a dispute arising out of or related to this Agreement through discussions directly between senior management representatives within their respective organizations who have overall managerial responsibility for this or similar Projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the Parties' senior management representatives cannot resolve the dispute within thirty (30) calendar days after a Party delivers a written notice of such dispute, then the Parties shall proceed with mediation alternative dispute resolution process contained herein.

15.7.3 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.

15.8 Mediation.

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

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

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

15.8.4 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 XVI.
NON-DISCRIMINATION POLICY

16.1 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 it has complied with City's *Non-Discrimination Policy* throughout the course of this solicitation and Agreement award process and shall continue to comply with said *Non-Discrimination Policy*. As part of said compliance, Consultant shall adhere to City's *Non-Discrimination Policy* in the solicitation, selection, hiring or commercial treatment of Sub-Consultants, vendors, suppliers or commercial customers, nor shall Consultant retaliate against any person for reporting instances of such discrimination. Consultant shall provide equal opportunity for Sub-Consultants, vendors and suppliers to participate in all of its public sector and private sector sub-consulting and supply opportunities, provided 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 it understands and agrees 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 **Section 16.1** is not enforceable by or for the benefit of, nor creates any obligation to, any third party. Consultant's certification of its compliance with this *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.

16.2 Sub-Consultants. Upon execution of this Agreement by Consultant, Consultant shall provide to City a detailed outreach and diversity plan for approval by City, including a list of Sub-Consultants and shall require all of its Sub-Consultants to register in City's Centralized Vendor Registry (hereafter referred to as "CVR") through the San Antonio Internet-Bases Project Management System. Consultant shall obtain approval in writing from City prior to adding, substituting or deleting any Sub-Consultants from this Project.

ARTICLE XVII.
ASSIGNMENT OR TRANSFER OF INTEREST

Consultant shall not assign or transfer Consultant's interest in this Agreement without the written

consent of City.

ARTICLE XVIII.
SEVERABILITY

If for any reason, any one or more paragraphs of this Agreement are held invalid or unenforceable, such invalidity or unenforceability shall not affect, impair or invalidate the remaining paragraphs of this Agreement but shall be confined in its effect to the specific section, sentences, clauses or parts of this Agreement held invalid or unenforceable. The invalidity or unenforceability of any 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 XIX.
INTEREST IN CITY CONTRACTS PROHIBITED

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

19.2 Consultant acknowledges it is informed the Charter of City and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency, such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: (1) a City officer or employee; his parent, child or spouse; (2) a business entity in which the officer or employee, or his 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; and/or (3) a business entity in which any individual or entity above listed is a sub-Consultant on a City contract, a partner or a parent or subsidiary business entity.

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

ARTICLE XX.
CONFLICTS OF INTEREST DISCLOSURE

Consultant shall disclose if it is associated in any manner with a City Official or employee

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

(1) being in a partnership or joint venture with the officer or employee;

(2) having a contract with the officer or employee;

(3) being joint owners of a business; or

(4) owning at least ten percent (10%) of the stock in a corporation in which a City officer or employee also owns at least ten percent (10%), or having an established business relationship as client or customer.

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 Work under this Agreement during the term of this Agreement and during the 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 the termination of this Agreement, unless there is an ongoing dispute under the contract; then, such retention period shall extend until final resolution of the dispute. "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 any issue in question, and any and all other agreements, sources of information and matters which 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 it shall exercise the right to audit, examine or inspect only during regular business hours. Consultant agrees to allow City's designee access to all of Consultant's Records, 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 shall include this audit clause in any Sub-Consultant, Sub-Consultant, supplier or vendor contract.

ARTICLE XXII.

ENTIRE AGREEMENT

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

ARTICLE XXIII.
VENUE

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

ARTICLE XXIV.
NOTICES

Except as may be provided elsewhere herein, all notices, communications and reports, required or permitted under this Contract, shall personally be delivered or mailed to the respective party by depositing the same in the United States Postal Service, addressed to the applicable address shown below, unless and until either party 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) calendar days of mailing.

If intended for City, to:	If intended for Consultant, to:
Transportation and Capital Improvements Department	CONSULTANT'S NAME
Attention: Contract Services 114 West Commerce, 9th Floor San Antonio, Texas 78205	CONSULTANT'S ADDRESS

With a copy to:

Transportation and Capital
Improvements Department
Attention: City Architect's Office
114 West Commerce, 4th Floor. Room 412
San Antonio, Texas 78205

ARTICLE XXV.

INDEPENDENT CONTRACTOR

In performing services under this Agreement, the relationship between City and Consultant is that of 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 workflow and determining how the Services are 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/or 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.
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

27.1 By execution of this Agreement, the undersigned authorized representative of Consultant certifies, and the City relies thereon, that neither Consultant., nor its Principals are presently debarred, suspended, proposed for debarment, or declared ineligible, or voluntarily excluded for the award of contracts by any Federal governmental agency or department; “Principals”, for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

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

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

ARTICLE XXVIII.
AIRPORT SECURITY

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

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

28.3 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.

28.4 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.

ARTICLE XXIX
ATTORNEY FEES

The Parties expressly agree, in the event of litigation, both parties waive rights to payment of attorneys' fees that otherwise might be recoverable pursuant to Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code §271.153, the Prompt Payment Act, common law or any other provision for payment of attorney's fees.

ARTICLE XXX
CONFLICT RESOLUTION BETWEEN DOCUMENTS

Consultant hereby agrees and acknowledges if anything contained in Consultant's prepared Scope/Budget/Reimburseables, attached hereto and labeled as **Exhibit A**, or contained in any other document prepared by Consultant and included herein is in conflict with this Agreement and/or with City's General Conditions for City of San Antonio Construction Contracts, attached hereto and labeled as **Exhibit E**, this Agreement and/or City's General Conditions for City of San Antonio Construction Contracts shall take precedence and control to resolve said conflict(s).

IN WITNESS WHEREOF, the City of San Antonio lawfully has caused these present to execute this Agreement by the hand of City Manager or his/her designee; Consultant, acting by the hand of _____ thereunto authorized _____ (TITLE) does now sign, execute and deliver this document.

Executed on this ____ day of _____, 20_____

.

CITY OF SAN ANTONIO

_____
ED BELMARES
ASSISTANT CITY MANAGER

_____
FIRM NAME

_____
FIRM REPRESENTATIVE'S NAME

_____
TITLE

APPROVED:

_____

CITY ATTORNEY

EXHIBIT A

SCOPE / BUDGET / REIMBURSEABLES
See Attached Proposal Dated _____

Consultant hereby agrees and acknowledges if anything contained in this Consultant prepared Exhibit A, Consultant's Scope/Budget/Reimburseables, or contained in any other document prepared by Consultant and included herein is in conflict with this Agreement and/or City's General Conditions for City of San Antonio Construction Contracts, attached hereto and labeled as Exhibit E, this Agreement and/or City's General Conditions for City of San Antonio Construction Contracts shall take precedence and control to resolve said conflict.

EXHIBIT B

SCHEDULE OF PROJECT SERVICES

EXHIBIT C

ADDITIONAL SERVICES

See Attached Proposal Dated _____

EXHIBIT D

SBEDA SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN AND SBEDA ORDINANCE COMPLIANCE AND PROVISION

I. SBEDA ORDINANCE COMPLIANCE AND PROVISION

A. SBEDA Program

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 City's Economic Development (EDD) website page and is also available in hard copy form upon request to 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 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.

B. Definitions

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.)

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein City requires all prospective Respondents and Sub-Consultants that are ready, willing and able to sell goods or services to 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 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.

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, 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.

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

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 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.

Good Faith Efforts – documentation of the Consultants 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 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 Consultants posting of a bond covering the work of SBE or M/WBE Sub-Consultants; 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 Consultants Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

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).]

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.

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

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

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.

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

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 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).

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

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

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

American origin.

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

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

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

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

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).

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 City. For purposes of this agreement, this term refers to the Consultant.

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.

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

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.

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.

San Antonio Metropolitan Statistical Area (SAMSA) – also known as the Relevant Marketplace, the geographic market area from which 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).

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

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.

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.

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

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

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.

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

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 Consultants 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.

Sub-Consultant/Supplier Utilization Plan – a binding part of this contract agreement which states the Consultants commitment for the use of Joint Venture Partners and / or Sub-Consultants/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 Consultants 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.

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 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.

C. 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 Consultants 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 City. Without limitation, Consultant further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. Consultant shall cooperate fully with the Small Business Office and other City departments in their data collection and monitoring efforts regarding Consultants 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 Sub-Consultants with this term;

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

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

4. Consultant shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Consultants 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.

5. Consultant shall immediately notify the Originating Department and SBO of any transfer or

assignment of its contract with City, as well as any transfer or change in its ownership or business structure.

6. 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.

7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a Consultants 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.

8. Consultant acknowledges that 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.

D. SBEDA Program Compliance – Affirmative Procurement Initiatives

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:

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, **and**

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, **and**

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 subcontract at least **thirty-three percent (33%)** 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 Sub-Consultant / Supplier Utilization Plan that Consultant is required to submit to City on a quarterly basis from the date of execution of this contract (except for the last quarter of this contract term, during which Consultant shall submit for each accepted task order) , and that contains the names of the certified S/M/WBE Sub-Consultants that were used by Consultant on this contract, the respective percentages of the total prime contract dollar value awarded and

performed by each S/M/WBE Sub-Consultant, and documentation including a description of each S/M/WBE Sub-Consultant's scope of work is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of Consultant to attain this subcontracting goal for S/M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with City, and may result in debarment from performing future City contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon S/M/WBE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

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 33% 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 services industry, as reflected in the City's Centralized Vendor Registration system for the month of August 2014, African-American owned firms represent approximately 1.74% of available subcontractors, Hispanic-American firms represent approximately 10.30%, Asian-American firms represent approximately 1.74%, Native American firms represent approximately 0.37%, and Women-owned firms represent approximately 6.70% of available architecture and engineering sub-consultants.

E. 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. Consultants certification of its compliance with this Commercial Nondiscrimination Policy as submitted to 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.

F. 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 Consultants 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 Consultants 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 City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

G. Violations, Sanctions and Penalties

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

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;

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;

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;

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

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.

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:

1. Suspension of contract;

2. Withholding of funds;

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

4. Refusal to accept a response or proposal; and

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).

EXHIBIT E

GENERAL CONDITIONS
FOR
CITY OF SAN ANTONIO CONSTRUCTION CONTRACTS

EXHIBIT F

ADDENDUM