PROFESSIONAL SERVICES AGREEMENT

FOR

ON-CALL INDEPENDENT FEE ESTIMATE (IFE) SERVICES

FOR

THE SAN ANTONIO AIRPORT SYSTEM

STATE OF TEXAS

COUNTY OF BEXAR

CITY OF SAN ANTONIO

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

KUTCHINS & GROH, LLC
7 TRAILSIDE COURT
MANSFIELD, TX 76063

hereafter referred to as "Consultant", said Agreement being executed by City pursuant to Ordinance No._____ _____, and by Consultant for on-call independent fee estimate services, hereinafter set forth. City and Consultant hereafter individually referred to as “Party” and collectively referred to as “Parties”. The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

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ARTICLE I.
DEFINITIONS

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

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

1.2 “Airport” means the San Antonio International Airport or Stinson Municipal Airport.

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

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

1.5 “Compensation” means amounts paid for services rendered under this Agreement.

1.6 "Consultant" means Kutchins & Groh, LLC and its officers, partners, employees, agents and representatives, and all sub-contractors, if any, as well as all other persons or entities for which Consultant legally is responsible.

1.7 "Director" means the Director of City’s Aviation Department or his designee.

1.8 “Emergency” means a sudden, urgent, and serious event, condition or situation that is likely to endanger life, health or property or result in other serious consequences that necessitate immediate action.

1.9 “FAA” means the Federal Aviation Administration.

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

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

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

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

1.14 “SAT” means San Antonio International Airport.

1.15 “"SSF” means Stinson Municipal Airport.

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

1.17 SAWS” means the San Antonio Water System, Inc.

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

1.19 "Total Compensation" means the not-to-exceed amount of this Agreement.

ARTICLE II.
COMPENSATION

2.1 The total Compensation for all services included in this Agreement **SHALL NOT EXCEED SEVEN HUNDRED AND FIFTY THOUSAND DOLLARS AND NO/100 CENTS ($750,000.00)**. Nothing contained in this Agreement shall require City to pay for any unsatisfactory work, as reasonably determined by Director, or for work that is not in compliance with the terms of this Agreement. City shall not be required to make any payments to Consultant at any time Consultant is in default under this Agreement.

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

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

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

2.3 Each Task Order amount shall be based on the scope of services for a particular Project and shall be invoiced at the hourly rates included in **Exhibit 2, Fee Schedule**,.

2.4 Reimbursable Expenses. Unless otherwise provided for in a specific Finalized Task Order, in order for expense to be reimbursable, written prior approval for such expenses from the City is required. City is not required to pay any expenses that have not been agreed to and accepted in writing by City. If Consultant, sub-consultant or vendor of Consultant should make an expenditure which, prior to its occurrence, was not approved in writing by City, those costs shall be the sole responsibility of Consultant and not City. When authorized by City in writing, Consultant will be entitled to reimbursement at actual cost incurred for services and related expenses for the following:

2.4.1 Travel outside SAMSA only if approved in writing by City prior to such travel. Reimbursement for travel costs will be limited to costs directly associated with Consultant’s performance of Service under this Agreement and must comply with the travel management policy established by the U.S. General Services Administration (“GSA”) Travel costs are limited to the per diem rates set annually by the GSA. Consultant shall provide detailed receipts for all reimbursable charges with the exception of per diem. Travel expenses, if any, shall be negotiated with each Finalized Task Order issued. City does not pay for Consultant’s travel within SAMSA.

2.4.2 Mailing, courier services and copies of documents requested by City in writing.

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

2.4.4 City shall not allow a markup on any of the above reimbursable items and shall only reimburse actual costs incurred with City's written approval. All expenses shall be reimbursed at actual cost incurred for the services and related expenses without markup. Expenses shall not be invoiced and will not be reimbursed on a lump sum basis.

ARTICLE III.
METHOD OF PAYMENT

3.1 Consultant shall submit invoices no more than once monthly, per Finalized Task Order. Such invoices must be for services completed in accordance with a Finalized Task Order and approved by the Director and actual travel and other expenses incurred, if previously approved in writing and not previously invoiced, and must show: a) the hours being billed delineated by task performed, employee name and position for Finalized Task Orders compensated on a not to exceed basis or the percentage of work completed by task for Finalized Task Order to be compensated on a lump sum basis, b) a summary of the services performed during the period covered by the invoice, c) travel and other previously approved expenses with supporting documentation attached; and d) the total amount due for services, travel and expenses. City reserves the right to request such additional information as the City deems necessary to support the invoiced charges. The final payment due hereunder will not be paid until all reports, data and documents have been submitted, received, accepted and approved by City.

3.1.1 Payment shall be made based solely on the services completed and approved by City and billed at the hourly rates set out in **Exhibit 2**.

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

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

3.4 Project close out and final compensation:

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

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

3.4.2.1 delays in the performance of Consultant's work;

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

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

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

3.4.2.5 damage to City; or

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

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

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

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

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

ARTICLE IV.
SCOPE OF SERVICES

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

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

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

4.4 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.

4.5 The Consultant may be notified by phone or in writing, to include emails, of a Task Order Proposal Request, The Consultant must provide a written Proposal within the timelines established in the Task Order Proposal Request. If Consultant is unable to meet established timeline they must notify the City in writing within 24 hours of request. Inability to meet timelines or provide notice could jeopardize future work with City.

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

4.7 Consultant, in consideration for the compensation herein provided, shall render the professional services described in this **Article IV** necessary for the advancement of the Project to completion.

4.8 Consultant shall perform its obligations under this Agreement in accordance with **Exhibit 1**, Scope of Services and each Finalized Task Order, in accordance with the **Exhibit 2, Fee Schedule**.

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

4.10 Acceptance of final independent fee estimates 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 independent fee estimate documents or other documents and Services; nor shall such acceptance be deemed an assumption of responsibility or liability by City for any defect in the documents or other documents and work prepared by said Consultant, its employees, sub-consultants and agents.

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

4.12 City retains the right to request replacement, for reasonable cause, of any employee or subconsultant assigned by Consultant to a Project. City's decisions in this regard shall not be the basis for any claim for additional compensation by Consultant. However, in no event shall City's direction be construed as the City's assumption of Consultant's duties to direct, coordinate and manage implementation of a Project, unless specific processes, procedures and systems, if any, are directed by the City.

ARTICLE V.
TIME AND PERIOD OF SERVICE

5.1 The term of this Agreement shall commence upon its approval by the San Antonio City Council and the execution by both parties and shall remain in full force and effect for a period of three (3) years, herein referred to as the "Initial Term", unless otherwise terminated in accordance with the terms of this Agreement. The City shall retain an option to extend this Agreement for two (2) additional one year periods, hereinafter referred to as "Extension Periods". The Director shall have the authority to exercise such options at his discretion without City Council action.

5.2 Time is of the essence for this Agreement. Consultant shall perform and complete its obligations for the various Projects in a prompt and continuous manner. If, upon review of Finalized Task Orders, corrections, modifications, alterations or additions are required of Consultant, these items shall be completed by Consultant before that Finalized Task Order is approved.

5.3 Consultant shall not proceed with a Finalized Task Order without written authorization from City. City may elect to discontinue Consultant's services at any time and for any reason or for no reason.

5.4 All Finalized Task Orders issued prior to the expiration of this Agreement, shall remain valid for a period which reasonably may be required for the completion of the work associated with those Finalized Task Orders, including any extra work and any required extensions thereto, unless discontinued as provided for elsewhere in this Agreement. The terms and conditions of this Agreement, including, but not limited to, the insurance, indemnity and bonding requirements, shall continue to be applicable and in effect for any Finalized Task Orders which services extend past the expiration of the Agreement until such time as all services associated with such Finalized Task Orders have been completed.

ARTICLE VI.
PROJECT SERVICES REQUEST PROCESS

6.1 Necessary on-call independent fee estimate services requirements shall be established with each Project-specific Finalized Task Order.

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

6.3 Consultant shall prepare and submit to City, within the timeline stated in a Task Order Request, a Proposal for the requested services which will include, at minimum: scope of services, specific staffing, an estimate of Project cost based on rates and fees in **Exhibit 2**. Consultant shall submit the Proposal in editable electronic format to City. By submitting a Proposal, Consultant agrees to perform the requested service(s) within the time stated in the Task Order Proposal Request unless otherwise clearly noted in the Proposal. Each Task Order amount shall be based on the scope of services for a particular Project and will be based on either a negotiated lump sum amount or a not to exceed amount, each of which shall be based on the hourly rates included in Exhibit 2, Fee Schedule, attached hereto, incorporated herein and made a part of this agreement.

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

6.5 The Director or designee has the authority to execute a Finalized Task Order, or any amendment thereof, on behalf of City without further City Council action, so long as such finalized Task Order does not exceed the total Agreement value and funds are provided for in the Project budget as appropriated by City Council.

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

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

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

ARTICLE VII.
COORDINATION WITH THE CITY

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

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

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

ARTICLE VIII.
REVISIONS TO DOCUMENTS

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

The Director may require Consultant to revise the independent fee estimate documents, reports or other documents.

ARTICLE IX.
OWNERSHIP OF DOCUMENTS

9.1 Consultant acknowledges and agrees that City exclusively shall own any and all information in whatsoever form and character created or produced in accordance with, pursuant to or as a result of this Agreement . Consultant further agrees that City has the right to use said information as City desires. Any and all documents, including the original drawings, estimates, specifications and all other documents and data shall be delivered to City, at no additional cost to City, upon request, termination or completion of this Agreement without restriction on future use. Any reuse by City of such information and/or documents created by Consultant and provided to City pursuant to this Agreement will be at City's sole risk and without liability or legal exposure to Consultant. City will be providing reports developed pursuant to this Agreement to the FAA.

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

9.3 CONSULTANT HEREBY ASSIGNS ALL STATUTORY AND COMMON LAW COPYRIGHTS TO ANY COPYRIGHTABLE WORK TO CITY THAT, IN PART OR IN WHOLE, WAS PRODUCED FROM THIS AGREEMENT, INCLUDING ALL EQUITABLE RIGHTS. NO REPORTS, MAPS, PROJECT LOGOS, DRAWINGS, DOCUMENTS OR OTHER COPYRIGHTABLE WORKS, PRODUCED IN WHOLE OR IN

PART UNDER THIS AGREEMENT, SHALL BE SUBJECT OF AN APPLICATION FOR COPYRIGHT BY CONSULTANT. ALL REPORTS, MAPS, PROJECT LOGOS, DRAWINGS OR OTHER COPYRIGHTABLE WORK PRODUCED UNDER THIS AGREEMENT SHALL BECOME THE PROPERTY OF CITY (EXCLUDING ANY INSTRUMENT OF SERVICES, AS OTHERWISE SPECIFIED HEREIN). CONSULTANT SHALL, AT ITS OWN EXPENSE, DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST CITY AND CONSULTANT SHALL PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION AGAINST CITY, INSOFAR AS THE SAME IS BASED ON ANY CLAIM THAT MATERIALS OR WORK PROVIDED UNDER THIS AGREEMENT CONSTITUTE AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS.

9.4 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 other persons, subsequent to the completion of the Project. City requires that Consultant appropriately mark all changes or modifications on all drawings, specifications and other documents by other persons, including electronic copies, subsequent to the completion of the Project.

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

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

ARTICLE X.
TERMINATION AND/OR SUSPENSION

10.1 Right of Either Party to Terminate for Default

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

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

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

10.3 Consultant shall not be entitled to lost or anticipated profit on unperformed services, should City choose to exercise its option to terminate, nor shall Consultant be entitled to compensation for any unnecessary or unapproved work, performed during time between the issuance of the City's notice of termination and the actual termination date.

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

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

10.6 The procedures which Consultant will follow upon receipt of notice of termination are:

10.6.1 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 forty-five (45) 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 and associated costs performed under this Agreement prior to the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days of the effective date of termination shall negate any liability on part of City and constitute a waiver by Consultant of any and all right to claim or collect monies that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement. City shall have the option to grant an extension to the time period allowable for the submittal of such statement.

10.6.2 Copies of all completed or partially completed independent fee estimate documents, reports, or exhibits and all reproductions of all completed or partially completed independent fee estimate documents, reports and exhibits, prepared under this Agreement prior to the effective date of termination, shall be delivered to City, in the form requested by City, as a pre-condition to the payment of final Compensation.

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

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

10.7 The procedures Consultant is to follow, upon receipt of notice of suspension, are:

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

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

10.7.3 Copies of all completed or partially completed independent fee estimate documents, reports, exhibits, and models, prepared under this Agreement prior to the effective date of suspension, shall

be prepared for possible delivery to City but shall be retained by Consultant until such time as City may exercise the right to terminate this Agreement.

10.7.4 In the event that Consultant elects to exercises its right to terminate sixty (60) calendar days after the effective suspension date, within forty-five (45) 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 and associated costs showing in detail the services performed under this Agreement, prior to the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days of the effective date of termination shall negate any liability on part of City and constitute a waiver by Consultant of any and all right to claim or collect monies that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

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

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

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

10.8 In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

ARTICLE XI.
CONSULTANT'S WARRANTY

11.1 Consultant warrants the services required under this Agreement shall be performed with the same degree of professional skill and care ordinarily provided by similar competent consulting professionals performing similar services under same or similar circumstances in Bexar County, Texas. Consultant further 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 any commission, percentage, brokerage fee, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach of this warranty, City shall have the right to terminate this Agreement under the provisions of **Article X** herein.

11.2 Consultant shall be represented by personnel with appropriate certification(s) at meetings of any official nature concerning planned Project(s).

ARTICLE XII.
DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

12.1 It is the policy of the City of San Antonio that disadvantaged business enterprises (DBEs) as defined under 49 CFR Part 26, shall have "equality of opportunity" to participate in the awarding of federally-assisted Aviation Department contracts and related subcontracts, to include sub-tier subcontracts. This policy supports the position of the U.S. Department of Transportation (DOT) and the FAA in creating a level playing field and removing barriers by ensuring nondiscrimination in the award and administration of contracts financed in whole or in part with federal funds under this contract. Therefore, on all Department of

Transportation or FAA-assisted projects the DBE program requirements of 49 CFR Part 26 apply to the contract.

12.2 The Consultant agrees to employ good-faith efforts (as defined in the Aviation Department's DBE Program) to carry out this policy through award of sub-consultant contracts to disadvantaged business enterprises to the fullest extent participation is consistent with the performance of the Aviation Department Contract, and/or the utilization of DBE suppliers where feasible. Consultants are expected to solicit bids from available DBE's on contracts which offer subcontracting opportunities.

12.3 Consultant specifically agrees to comply with all applicable provisions of the Aviation Department's DBE Program. The DBE Program may be obtained through the airport's DBE Liaison Officer at (210) 207-3592 or by contacting the City's Aviation Department.

12.4 DBE contract specific goal has been established for this Agreement. The applicable DBE goal for Aviation On-Call Professional Independent fee estimate Agreement is **8%** of the total amount of the contract.

12.5 The Consultant shall appoint a high-level official to administer and coordinate the Consultant's efforts to carry out the DBE/ Policy and Program requisites The Consultant's official should coordinate and ensure approval of the required "Good-Faith Effort Plan" (DBE Form 1)

12.6 All Consultants with contracts subject to formal review and approval shall make good-faith efforts (as defined and approved by the City through the Aviation Department in its DBE Program) to subcontract and achieve the applicable contract specific DBE goal with certified DBEs. Consultants failing to achieve the applicable contract specific DBE goal or Consultants failing to maintain the specific DBE goal percentage involvement initially achieved, will be required to provide documentation demonstrating that they have made good-faith efforts in attempting to do so through the submittal of an Aviation Department approved "DBE Good-Faith Effort Plan".

12.7 The Consultant, sub recipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the City deems appropriate, which may include, but is not limited to:

a) Withholding monthly progress payments;
b) Assessing sanctions;
c) Liquidated damages; and/or
d) Disqualifying the contractor from future bidding as non-responsible."

Consultant agrees to include this clause in each sub-consultant contract the prime consultant signs with a sub-consultant.

:

12.8 Additionally, Consultant agree to the following prompt payment clause for all services performed pursuant to this Agreement and the retainage payment clause for construction services in the event Consultant performs such work. Consultant further confirms and agrees that Consultant will not withhold any portion of payments due to any subconsultant for work performed pursuant to this contract.

The Consultant agrees to pay each sub-consultant under this Contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the Consultant receives from the City of San Antonio. All changes to the list of sub-consultants submitted with the proposal and approved by the City or Aviation Department, including major vendors, shall be submitted for review and approval by Aviation Department's DBE Liaison Officer. DBE Form 3, Change of Subcontractors/Suppliers is to be completed and submitted to Aviation Department officials for approval when adding, changing, or deleting sub-consultants on airport projects. Consultants shall make a good-faith effort to replace DBE sub-consultants unable to perform on the contract with another DBE.

12.9 Consultant shall not terminate for convenience a DBE sub-consultant submitted with the proposal and approved by the City or the Aviation Department (or an approved substitute DBE firm) and then perform the work of the terminated sub-consultant with its own forces or those of an affiliate, without prior written permission by the City.

12.10 During the term of this Agreement, the Consultant must report the actual payments made to all subcontractors to the City in a time interval and a format determined by the City. The City reserves the right, at any time during the term of this Agreement, to request additional information, documentation or verification of payments made to subcontractors in connection with this Agreement. Verification of amounts being reported may take the form of requesting copies of cancelled checks paid to participating DBEs and/or confirmation inquiries directly with participating DBEs. Proof of payment such as copies of check must properly identify the project name or project number to substantiate payment.

12.11 Consultant shall report Disadvantaged Business Enterprise (DBE) Subcontractor/Supplier Activity and Expenditures through the City of San Antonio online monitoring system. The reporting shall be done on a monthly basis and in the format required by the City's online monitoring system. Reporting shall include all awards and payments to subcontractors/suppliers for goods and services provided under the agreement during the previous month. This report may be used by the City to verify utilization of and payment to DBEs

12.12 The Consultant shall maintain records, as specified in the audit and records section of the contract, showing: (i) all subcontract/supplier awards, specifically awards to DBE firms; (ii) specific efforts to identify and award such contracts to DBEs; and (iii) submit when requested, copies of executed contracts to establish actual DBE participation

12.13 The Consultant shall agree to submit periodic reports of subcontract and/or supplier awards to DBE firms in such form and manner and at such times as the Aviation Department shall prescribe and shall provide access to books, records, and accounts to authorized officials of the City, Aviation Department, state, and/or federal agencies for the purpose of verifying DBE participation and good-faith efforts to carry out the DBE Policy and Program. All Aviation Department Consultants may be subject to a post-contract DBE audit. Audit determination(s) may be considered and have a bearing in the evaluation of a Consultant's good-faith efforts on future airport contracts

12.14 The Consultant shall comply with the DBE Compliance and Enforcement Policy attached hereto as **Exhibit 4.**

12.15 Failure or refusal by Consultant to comply with the DBE provisions herein or any applicable provisions of the DBE Program, either during the proposal process or at any time during the term of the Contract, may constitute a material breach of Contract, whereupon the Contract, at the option of the Aviation Department, may be cancelled, terminated, or suspended in whole or in part, and the Contractor may be debarred from further contracts with the City of San Antonio.

12.16 The goals on this contract shall also apply to amendments that require work beyond the scope of services originally required to accomplish the project. The Consultant is asked to make "good faith efforts' to obtain DBE/ participation for additional scope(s) of services. Amendments that do not alter the type of service originally required to accomplish the project may be undertaken using the subcontractor and suppliers already under contract to the prime contractor. Any amendment affecting the scope of service or value of the contract should be documented on a form acceptable to the City

12.17 The City requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of four (4) years. These records will be made available for inspection upon request by any authorized representative of the City or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

ARTICLE XIII.
ASSIGNMENT OR TRANSFER OF INTEREST

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

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

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

ARTICLE XIV.
INSURANCE REQUIREMENTS

14.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the Aviation Department, which shall be clearly labeled "Aviation On-Call Independent fee estimate" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the Aviation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

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

INSURANCE TYPE	***LIMITS***
1. Workers' Compensation 2. Employers' Liability	Statutory $1,000,000/$1,000,000/$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability *e. Independent Contractors	For Bodily Injury and Property Damage $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. * If AOA access required $5,000,000 CSL
5. Professional Liability (Claims-made Coverage)	$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service. Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.
* If Applicable	

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

14.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Consultant shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Consultant shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: **Aviation Department**
P.O. Box 839966
San Antonio, Texas 78283-3966

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

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

14.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the

option to suspend Consultant's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

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

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

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

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

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

ARTICLE XV.
INDEMNIFICATION

15.1 CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Contract, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. In addition, Respondent agrees to indemnify, defend, and hold the City harmless from any claim involving patent infringement, trademarks, trade secrets, and copyrights on goods supplied.

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

15.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by Consultant in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Consultant shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If Consultant

fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Consultant shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

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

15.5 Acceptance of any independent fee estimate documents or exhibits by the City shall not constitute nor be deemed a release of the responsibility and liability of the Consultant, its employees, associates, agents or subcontractors for the accuracy and competency of their independent fee estimate documents, exhibits or other documents and Services; nor shall such acceptance be deemed an assumption of responsibility or liability by the City for any defect in the in the Services, independent fee estimate documents, exhibits or other documents and work prepared or services rendered by said Consultant.

ARTICLE XVI.
CLAIMS AND DISPUTES

16.1 Claims must be initiated by written notice. Every Claim of Consultant, whether for additional compensation, additional time or other relief, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind Consultant by his/her signature) of Consultant, verifying the truth and accuracy of the Claim. The responsibility to substantiate Claims shall rest with the party making the Claim.

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

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

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

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

16.5.1 No consequential damages will be allowed.

16.5.2 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong for which the other Party is claimed to be responsible.

16.5.3 No profit will be allowed on any damage claim.

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

16.7 Alternative Dispute Resolution.

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

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

16.8 Mediation.

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

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

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

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

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

ARTICLE XVII.
SEVERABILITY

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

ARTICLE XVIII.
INTEREST IN CITY CONTRACTS PROHIBITED

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

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

18.2.1 a City officer or employee;

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

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

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

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

ARTICLE XIX.
PROHIBITION ON CONTRACTS WITH COMPANIES

19.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

19.1.1 does not boycott Israel; and

19.1.2 will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. Based on the definition above, Consultant qualifies as a Company.

By executing contract documents with the City of San Antonio, Consultant hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the Agreement. City hereby relies on Consultant's verification. If affirmation is found to be false, City may terminate the Agreement for material breach.

19.2 Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. **Consultant hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City.**

City hereby relies on Consultant's certification. **If found to be false, or if Consultant is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.**

19.3 Texas Government Code §2274 provides that a governmental entity may not enter into a contract with a company that boycotts energy companies and that it will not boycott energy companies during the term of the Agreement.

By executing contract documents with the City of San Antonio**, Consultant hereby verifies that it does not boycott energy companies and will not boycott energy companies during the term of the Agreement. City hereby relies on Consultant's verification. If affirmation is found to be false, City may terminate the Agreement for material breach.**

ARTICLE XX.
FORCE MAJEURE

20.1 Consultant shall not be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes (which causes are hereinafter referred to as "Force Majeure"), to the extent such failure or delay is beyond its reasonable control: strikes, riots, ,acts of God, national emergency, war, terrorist act, epidemic, pandemic, governmental restrictions, changes in laws or regulations; provided that the Parties stipulate that Force Majeure shall not include the novel coronavirus Covid-19 pandemic, which is ongoing as of the date of the execution of this Agreement.

20.2 For the avoidance of doubt, Force Majeure shall not include (a) financial distress nor the inability of either party to make a profit or avoid a financial loss, (b) changes in the market prices or conditions, or (c) a party's financial inability to perform its obligations hereunder.

20.3 Within twenty one (21) days from the occurrence of any Force Majeure event, for which time for performance shall be extended under this Article, Consultant shall give written notice thereof to City stating the reason for such extension and the actual or estimated time thereof. If City reasonably determines that Consultant is responsible for the need for extended time, City shall have the right to make a Claim as provided in this Agreement and/or deny Consultant's request for an extension.

ARTICLE XXI.
RIGHT OF REVIEW AND AUDIT

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

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

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

ARTICLE XXII.
ENTIRE AGREEMENT

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

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

ARTICLE XXIII.
VENUE AND CHOICE OF LAW

THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS AND COURT DECISIONS OF THE STATE OF TEXAS, WITHOUT REFERENCE TO CONFLICT OF LAW PRINCIPLES, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS AND, IF LEGAL ACTION BECOMES NECESSARY, EXCLUSIVE VENUE SHALL LIE IN BEXAR COUNTY, TEXAS. The federal and state courts in Bexar County shall have exclusive jurisdiction to adjudicate any dispute relating to this Agreement and, in the event of any such dispute, the parties waive all rights to interpose any objections to personal jurisdiction or venue in those courts.

ARTICLE XXIV.
NOTICES

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

If intended for City, to:	If intended for Consultant, to:
City of San Antonio Attn.: Director of Airports 9800 Airport Blvd., Mezzanine San Antonio, TX 78216	Kutchins & Groh, LLC Attn: Mr. Bradley Kutchins, Managing Principal 7 Trailside Court Mansfield, TX 76063

ARTICLE XXV.
INDEPENDENT CONTRACTOR

25.1 Consultant covenants and agrees that it is an independent contractor and not an officer, agent, servant, or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of

respondeat superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Consultant. No term or provision of this Agreement or act of the Consultant in the performance of this Agreement shall be construed as making the Consultant the agent, servant or employee of the City, or as making the Consultant or any of its agents or employees eligible for any fringe benefits, such as retirement, insurance and worker's compensation, which the City provides to or for its employees.

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

ARTICLE XXVI
CAPTIONS

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

ARTICLE XXVII
CONTRACT CONSTRUCTION

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

ARTICLE XXVIII
NON-DISCRIMINATION POLICY

28.1 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.

28.2 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. sub-consultant Consultant shall incorporate this clause into each of its sub-consultant and supplier agreements entered into, pursuant to City agreements/contracts.

28.3 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.

28.4 This **Article 28** is not enforceable by or for the benefit of, nor creates any obligation to, any third party.

28.5 Consultant understands and agrees to comply with the Mandatory Federal Contract Provisions attached hereto as **Exhibit C.**

ARTICLE XXIX
AMENDMENTS

29.1 Any alterations, additions, or deletions to the terms of this Agreement shall be effected by amendment, in writing, executed by City and Consultant. The Director shall have the authority to execute amendments that require up to $50,000.00 in increased cost on behalf of the City without further action by the San Antonio City Council, subject to appropriation of funds for the increase in cost. Any other change will require approval of the City Council by passage of an ordinance therefore.

29.2 If a Finalized Task Order is comprised of multiple tasks, Director or designee shall have the authority to reallocate scope and/or funding between tasks within that Finalized Task Order without further Council action so long as such reallocation does not increase the not to exceed contract amount set out in **Article II**, as that amount may be amended in accordance with this Agreement.

ARTICLE XXX
FAMILIARITY WITH LAW AND CONTRACT TERMS

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

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

ARTICLE XXXI
SUCCESSORS

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

ARTICLE XXXII
NON-WAIVER OF PERFORMANCE

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

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

ARTICLE XXXIII.
RELATIONSHIP OF THE PARTIES

33.1 Consultant accepts the relationship of good faith and fair dealing established by this Agreement and shall cooperate with the City in furthering the City's interests. The Consultant accepts this relationship of good faith and confidence established with the City and covenants with the City to furnish the Consultant's professional skill and judgment in furthering the interests of the City. The Consultant shall furnish consulting services as set forth herein and shall use the Consultant's professional efforts to perform the services in an expeditious and economical manner consistent with the interests of the City. The Consultant will perform the required services in accordance with **Article XI** Consultant's Warranty.

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

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

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

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

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

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

ARTICLE XXXV
AIRPORT SECURITY

34.4 To the extent Consultant will be responsible for work which necessitates entrance to the Air Operations Area or other secure area of the Airport, this Agreement is expressly subject to the airport security requirements of Title 49 of the United States Code, Chapter 449, as amended ("Airport Security Act"), the provisions of which govern airport security and are incorporated by reference, including without limitation the rules and

regulations promulgated under it. Consultant is subject to, and further must conduct with respect to its Subcontractors and the respective employees of each, such employment investigations, including criminal history record checks, as the Aviation Director, the Transportation Security Administration ("TSA") or the FAA may deem necessary. Further, in the event of any threat to civil aviation, Consultant must promptly report any information in accordance with those regulations promulgated by the FAA, the TSA and the City. Consultant must, notwithstanding anything contained in this Agreement to the contrary, at no additional cost to the City, perform under this Agreement in compliance with those guidelines developed by the City, the TSA and the FAA with the objective of maximum security enhancement.

34.5 Personnel provided by Consultant must be able to obtain proper TSA security clearances, to include the required background check for airfield access. Consultant shall be responsible for either having all sub-consultants properly badged or providing escorts as needed to properly staff each Project. Driving within the secured areas of the airfield will be necessary and will require an airfield driver's license.

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

34.7 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.

34.8 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.

Signatures to follow

EXECUTED BY THE CITY AND EFFECTIVE ON THIS _____ DAY OF _____, 2023.

CITY OF SAN ANTONIO

By: _____
Erik Walsh
City Manager

KUTCHINS & GROH, LLC

By: Bradley C. Kutchins
Digitally signed by Bradley C. Kutchins
DN: cn=Bradley C. Kutchins, o=Kutchins & Groh, LLC, ou, email=brad@kutchins-groh.com, c=US
Date: 2023.07.10 16:13:34 -05'00'
Bradley Kutchins
Managing Principal

65-1188493
Federal Tax ID#

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT 1

SCOPE OF SERVICES

Consultant shall provide professional IFE services over the term of the Contract for projects at San Antonio International Airport (SAT) and Stinson Municipal Airport (SSF). Project services that require an IFE include but are not limited to planning, design, construction administration and other construction phase services, project and program management, or other services supporting a grant-funded project.

All IFEs shall be performed in general accordance with the most current edition of the Federal Aviation Administration (FAA) Advisory Circular (AC) for Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects, other airport, and regulatory guidance documents, as well as all federal, state, and local laws, such as 2 CFR part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Services will include labor, fee, and cost estimating, project management, client management, task order/project documentation, budget management, scope/fee reconciliation meeting(s) with San Antonio Airport System (SAAS), fee negotiation meeting(s) with SAAS and other SAAS consultant(s) to finalize pricing, and development of the Record of Negotiations (RON).

The Airport shall designate a project manager contact for each IFE task order assignment to the Consultant. These IFE task order assignments shall be delivered in writing with an expected due date and a clear description of the IFE to be completed. The Consultant shall acknowledge such work assignment, provide an estimated cost to complete, and be solely responsible for its completion.

IFE Preparation

Consultant shall review the project and consultant's scopes of work, proposed tasks, and project deliverables provided by SAAS. The Consultant shall consult SAAS on questions and requests for additional information. Consultant shall develop and provide a detailed fee/cost analysis utilizing a fee breakdown schedule per task in alignment with the Scope of Services being estimated. Consultant shall determine the level of effort necessary for completing the proposed work based on acceptable industry standards. The Consultant shall assign qualified staff to provide an estimate of hours necessary for each projected task of the proposed scope of work, assign reasonable hourly rates, and estimate reimbursables. The Consultant shall also provide a letter or memorandum summarizing the estimated fees, explaining the results of the IFE including the assumptions necessary for the completion of the IFE, and any recommendations for clarifications to improve the accuracy of the IFE and clarity of the scoping document. Consultant shall provide the detailed fee/cost analysis and supporting documentation to SAAS as a draft deliverable for review. If required, Consultant shall address any comments or questions prior to finalizing, participating in a review meeting through written correspondence.

IFE Review –Scope/Fee Reconciliation Meetings

Following the submission of the IFE, if necessary, Consultant shall prepare for and attend a review meeting with Airport staff to review the results of the IFE. The intent of this meeting is to review any discrepancies or questions related to the IFE and proposed task order and provide comparable fee estimates.

The Consultant shall review differences of the IFE and proposed task order when the fee difference of the proposal exceeds 10%. The Consultant shall provide analysis and review analysis findings with SAT to determine if there is a misunderstanding of the scope of services or level of effort required to complete the work.

Prepare Revised IFE

Consultant shall revise the IFE, if necessary, based on the IFE review meeting(s) and further understanding of the project scope. Revisions will be made based on the IFE review and a better understanding of the original scope of work. Revisions will not be made if the original scope of work is changed. In the event the original scope of work is changed, the Consultant shall prepare a supplemental request for the additional services, if required.

Fee Negotiation

When requested, Consultant shall participate in fee negotiations with the GEC or other consultant(s) to finalize

pricing of the GEC or other consultant's proposed work. Consultant will prepare for and attend negotiation meeting(s), create, and provide meeting notes of negotiation items and actions, and develop a draft and final RON for the project to include required information in compliance with applicable FAA Orders, FAA ACs, and state and local requirements.

Meetings

Consultant shall participate in client meetings virtually (via WebEx, Teams, or conference call). Should Consultant be requested to participate in any in-person meeting(s) in carrying out their services under an assigned task order, Consultant must have prior written approval for any travel outside the SAMSA and conform to the current City Travel Policy.

Consultant Deliverables

Consultant shall deliver the IFE for each assigned project including any assumptions utilized for its development. The IFE deliverable will include a populated fee breakdown schedule per task, summaries of labor hours, fees, and reimbursables by tasks and by prime and sub consultants, and any other pertinent backup information used to develop the IFE. The IFE deliverable will also include a memorandum summarizing assumptions, explanations of IFE results, and any Consultant recommendations for clarifications to improve the accuracy of the IFE/clarity of the scoping document. Consultant shall provide revised IFE deliverables, if necessary, after

Consultant shall deliver a RON when requested to participate in fee negotiations with the GEC or other consultant(s) to finalize pricing of the GEC or other consultant's proposed work. The RON deliverable will include an initial draft RON for review and comment, and a Final RON documenting the negotiations process up to the final accepted fee. The RON deliverable will also include documented meeting notes and actions submitted no later than one day after the negotiation meeting throughout the negotiations process.

EXHIBIT 2

FEE SCHEDULE

If work is necessary that requires a labor category or level of expertise not included in the table below, the parties shall negotiate the addition of such labor category and the associated rate, as evidenced by written approval by the Director or designee. Once the City approves a labor category and associated rate, that rate shall apply to all subsequent work and task orders, as those rates may be adjusted in accordance with the terms of this agreement.

If a labor category below does not have a negotiated hourly rate associated with it (rate is listed as blank or "TBD"), no work falling within such labor category shall be performed pursuant to this Agreement by Consultant unless and until City and Consultant have negotiated and City has approved a rate, as evidenced by written approval by Director or designee for that labor category.

Consultant shall not make any additions or changes to the approved classification of labor categories and labor rates without obtaining prior written approval by Director or designee. Consultant must obtain prior written approval for any changes to the labor categories or associated rates prior to Consultant utilizing such labor category hereunder. No adjustments to rates or labor categories shall be allowed without prior written approval by the Director or his designee.

At the request of Consultant, labor rates may be adjusted every year beginning in calendar year 2024 based on the overall percentage of increase reflected in the Consumer Price Index (CPI) released each January by the Bureau of Labor Statistics. Consultant and subconsultants may adjust salaries only once each calendar year, not to exceed that year's current CPI rate. Failure to request a CPI increase by the end of February in a particular year does not entitle Consultant to request such increase in subsequent years. No adjustments may be made for decrease in the CPI.

Consultant shall not charge and City will not pay for the following:

1. any mark-up on the work performed by subconsultants hereunder.

2. administrative overhead, invoiced in addition to and outside of the overhead rate, including but not limited to, bookkeeping, accounting, payroll, scheduling, and human resources.

SAN ANTONIO AIRPORT SYSTEM
Project Name:
Project Team Master Billing Rates
Consultant: **Kutchins & Groh, LLC**

Labor Category	# Years Experience	Qualifications / Licensing	2023 APPROVED HOURLY BILLING	
			Min	Max
MANAGEMENT				
Project Executive (Principal)	15+ years		$ 317.87	$ 351.33
Program Manager	15+ years		$ 250.95	$ 284.41
Senior Project Manager	15+ years		$ 234.22	$ 267.68
Project Manager	5-15 years		$ 217.49	$ 250.95
CIVIL ENGINEER / AVIATION				
Intern Engineer	0+ years		$ 56.88	$ 83.65
Engineer IV	8+ years		$ 217.49	$ 250.95
AVIATION				
Aviation Planner I	0+ years		$ 100.38	$ 133.84
Aviation Planner III	4+ years		$ 117.11	$ 150.57
Aviation Planner IV	8+ years		$ 150.57	$ 184.03
Aviation Planner V	14+ years		$ 184.03	$ 200.76

SAN ANTONIO AIRPORT SYSTEM
Project Name:
Project Team Master Billing Rates
Consultant: **KSA Engineers, Inc.**

Labor Category	# Years Experience	Qualifications / Licensing	2023 APPROVED HOURLY BILLING	
			Min	Max
Engineer III	4+ years	Bachelor of Science, Professional Registration	$ 144.78	$ 144.78
Engineer IV	8+ years	Bachelor of Science, Professional Registration	$ 225.86	$ 225.86
Engineer V	14+ years	Bachelor of Science, Professional Registration	$ 233.25	$ 257.38

SAN ANTONIO AIRPORT SYSTEM
Project Name:
Project Team Master Billing Rates
Consultant: **Alliance Geotechnical Group, Inc. (AGG)**

Labor Category	# Years Experience	Qualifications / Licensing	2023 APPROVED HOURLY BILLING	
			Min	Max
MANAGEMENT				
Project Executive (Principal)	15+ years	Professional Registration or Certification	$ 228.43	$ 228.43

SAN ANTONIO AIRPORT SYSTEM

Project Name:

Project Team Master Billing Rates

Program Manager	15+ years	Professional Registration or Certification	$ 220.17	$ 228.43
Senior Project Manager	15+ years	Professional Registration or Certification	$ 220.17	$ 228.43
Project Manager	5-15 years	Professional Registration or Certification	$ 152.01	$ 188.21
GENERAL, SPECIALTY, & SUPPORT				
Administration I	0+ years	H.S. Diploma (or Equivalent)	$ 97.04	$ 97.04
Administration II	5+ years	H.S. Diploma (or Equivalent)	$ 110.42	$ 110.42
Administration III	10+ years	H.S. Diploma (or Equivalent); Associate Degree preferred	$ 117.11	$ 117.11
Administration IV	15+ years	H.S. Diploma (or Equivalent); Associate or Bachelor's Degree pref.	$ 118.08	$ 118.08
GEOTECHNICAL/CONSTRUCTION MATERIALS ENGINEER				
Intern Engineer	0+ years	H.S. Diploma (or Equivalent)	$ -	$ -
Engineer I	0+ years	Bachelor of Science	$ 116.64	$ 116.64
Engineer II	2+ years	Bachelor of Science, EIT	$ 127.89	$ 156.03
Engineer III	4+ years	Bachelor of Science, Professional Registration	$ 152.01	$ 152.01
Engineer IV	8+ years	Bachelor of Science, Professional Registration	$ 153.15	$ 188.21
Engineer V	14+ years	Bachelor of Science, Professional Registration	$ 220.17	$ 228.43

EXHIBIT 3

FEDERAL CONTRACT PROVISIONS

As used in this Exhibit, the term “contractor” or “Contractor” shall refer to Consultant. Consultant shall include the provisions of set out in this exhibit in every subcontract, including procurements of materials and leases of equipment, unless exempt by Federal regulations and directives issued pursuant thereto.

ACCESS TO RECORDS AND REPORTS

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Owner, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the Consultant or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide Consultant written notice that describes the nature of the breach and corrective actions the Consultant must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner’s notice will identify a specific date by which the Consultant must correct the breach. Owner may proceed with termination of the contract if the Consultant fails to correct the breach by the deadline indicated in the Owner’s notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

GENERAL CIVIL RIGHTS PROVISIONS

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

The above provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract.

TITLE VI LIST OF PERTINENT NONDISCRIMINATION ACTS AND AUTHORITIES

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq*., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq*.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq*.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records,

accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

    a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or

    b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

CLEAN AIR AND WATER POLLUTION CONTROL

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC §§ 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration. Contractor must include this requirement in all subcontracts that exceed $150,000.

CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of $29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA) or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to

be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

4. Subcontractors.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

CERTIFICATION OF OFFEROR/BIDDER REGARDING DEBARMENT

By entering into this contract, Contractor certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

Contractor, by administering each lower tier subcontract that exceeds $25,000 as a “covered transaction”, must confirm each lower tier participant of a “covered transaction” under the project is not presently debarred or otherwise disqualified from participation in this federally-assisted project. Contractor will accomplish this by:

1. Checking the System for Award Management at website: http://www.sam.gov.
2. Collecting a certification statement similar to the Certification of Offeror /Bidder Regarding Debarment, above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

CONTRACT ASSURANCE

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

1) Withholding monthly progress payments;

2) Assessing sanctions;

3) Liquidated damages; and/or

4) Disqualifying the Contractor from future bidding as non-responsible.

PROMPT PAYMENT

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the prime contractor receives from City of San Antonio. The prime contractor agrees further to return retainage payments to each subcontractor within ten (10)days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of San Antonio. This clause applies to both DBE and non-DBE subcontractors.

TERMINATION OF DBE SUBCONTRACTS

The prime contractor must not terminate a DBE subcontractor listed in response to Section 015 and 016 to RFQ 23-010; RFx 6100016271 (or an approved substitute DBE firm) without prior written consent of City of San Antonio. This includes, but is not limited to, instances in which the prime contractor seeks to perform work originally

designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.
The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains written consent City of San Antonio. Unless City of San Antonio consent is provided, the prime contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.
[Name of Recipient] may provide such written consent only if City of San Antonio agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the circumstances listed in 49 CFR §26.53.
Before transmitting to City of San Antonio its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to City of San Antonio, of its intent to request to terminate and/or substitute, and the reason for the request.
The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise [Name of Recipient] and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why City of San Antonio should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), City of San Antonio may provide a response period shorter than five days.
In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

TEXTING WHEN DRIVING

Include in all contracts exceeding $10,000.

In accordance with Executive Order 13513, “Federal Leadership on Reducing Text Messaging While Driving”, (10/1/2009) and DOT Order 3902.10, “Text Messaging While Driving”, (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding $10,000 that involve driving a motor vehicle in performance of work activities associated with the project.

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)].

EQUAL OPPORTUNITY CLAUSE

During the performance of this contract, the Contractor agrees as follows:

1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identify, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under this section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS

1) As used in these specifications:
    a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
    b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
    c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
    d. "Minority" includes:
        i. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
        ii. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
        iii. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
        iv. American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2) Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3) If the Contractor is participating (pursuant to 41 CFR part 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables

4) The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in a geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
    a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

    b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

    c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by

the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel, for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8) Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

11) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR part 60-4.8.

14) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government, and to keep records. Records shall at least include for each employee, the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g. those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

FAIR LABOR STANDARDS ACT (Federal Minimum Wage)

This contract hereby incorporates by reference the provisions of 29 CFR part 201, et seq, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

Consultant has full responsibility to monitor compliance to the referenced statute or regulation. Consultant must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

Consultant must include this requirement in all subcontracts.

CERTIFICATION REGARDING LOBBYING

Contractor certifies by signing and submitting this contract, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

This contract hereby incorporates by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Contractor retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR Part 1910). The Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

Contractor must include this requirement in all subcontracts.

PROCUREMENT OF RECOVERED MATERIALS

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

1) The contract requires procurement of $10,000 or more of a designated item during the fiscal year; or

2) The contractor has procured $10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products.

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
b) Fails to meet reasonable contract performance requirements; or
c) Is only available at an unreasonable price.

CERTIFICATION OF OFFEROR/BIDDER REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

Contractor must complete the following two certification statements. Contractor must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. Contractor will incorporate this provision for certification in all lower tier subcontracts.

Certifications

1) Contractor represents that it is ( ) is not ( ) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

2) Contractor represents that it is ( ) is not ( ) a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Note

If Contractor responds in the affirmative to either of the above representations, Contractor is ineligible to receive an award unless the Sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. Contractor therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

Term Definitions

Felony conviction: Felony conviction means a conviction within the preceding twenty four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 USC § 3559.

Tax Delinquency: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

TERMINATION FOR CONVENIENCE

The Owner may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the Owner, the Contractor must immediately discontinue all services affected.

Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

TERMINATION FOR CAUSE

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

a) **Termination by Owner**: The Owner may terminate this Agreement for cause in whole or in part, for the failure of the Consultant to:
   1. Perform the services within the time specified in this contract or by Owner approved extension;
   2. Make adequate progress so as to endanger satisfactory performance of the Project; or
   3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

   Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.
   Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.
   Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.
   If, after finalization of the termination action, the Owner determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Owner issued the termination for the convenience of the Owner.

b) **Termination by Consultant**: The Consultant may terminate this Agreement for cause in whole or in part, if the Owner:
   1. Defaults on its obligations under this Agreement;
   2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
   3. Suspends the project for more than [180] days due to reasons beyond the control of the Consultant.

   Upon receipt of a notice of termination from the Consultant, Owner agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Owner and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Owner's breach of the contract.

   In the event of termination due to Owner breach, the Consultant is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. Owner agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

TRADE RESTRICTION CERTIFICATION

Consultant certifies that with respect to the solicitation and this contract, Consultant –

1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);

2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and

3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC § 1001.

Consultant must provide immediate written notice to the Owner if the Consultant learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. Consultant must require subcontractors provide immediate written notice to the Consultant if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR § 30.17, no contract shall be awarded to Consultant or subcontractor:

1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR; or
2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list; or
3) who incorporates in the public works project any product of a foreign country on such USTR list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Consultant agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. Consultant may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Consultant has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Consultant or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

CERTIFICATION REGARDING DOMESTIC PREFERENCES FOR PROCUREMENTS

Consultant certifies by signing this contract, to the greatest extent practicable, Consultant has provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products) in compliance with 2 CFR § 200.322.

EXHIBIT 4

DBE COMPLIANCE AND ENFORCEMENT

DBE Subcontracting Obligation - Upon approval of the required DBE utilization documentation, the Submitting Firm receiving award of the contract shall enter into a subcontract with each approved DBE subcontractor listed in their Submittal. The contract shall be for the scope of work and amount stated in the Submittal documents. DBE subcontracts shall not be terminated, nor shall the scope of work or the amount to be paid to the DBE be altered by the prime consultant without the written approval of the Aviation Department's DBE Liaison Officer (DBELO).

Subcontractor Substitutions, Addition or Deletions - The Prime Consultant/Contractor must notify the DBELO in writing of the necessity to substitute, add or delete a DBE in order to fulfill the DBE requirements. A change shall not be made before the DBELO's approval is given as to the acceptability of the change. The request shall be made utilizing DBE Form 3 - Change of Subcontractor/Supplier (attached).

Failure to Meet DBE Contract Requirements – Failure to utilize DBEs as stated in the Consultant's/Contractor's Submittal assurances constitute breach of contract and may lead to the cancellation or termination of the Contract.

Relief from DBE Requirements – After award of the Contract, no relief of the DBE requirements will be granted except in exceptional circumstances. Requests for complete or partial wavier of the DBE requirements of this Contract must be submitted in writing the DBELO. The request for relief must contain details of the request, the circumstances that make the request necessary, and any additional relevant information. The request must be accompanied by a record of all efforts taken by the Consultant/Contractor to contract with the DBEs listed in the Submittal documents, locate and solicit replacement or substitute DBE subcontractor.

Penalties for Noncompliance - Failure to comply with any portion of the DBE Program, and whose failure to comply continues for a period of 30 calendar days after the Consultant/Contractor receives written notice of such noncompliance, may be subject to any or all of the following penalties:

a. Withholding of ten percent of all future payments for the Eligible project until it is determined the Consultant/Contractor is in compliance.
b. Withholding of all future payments for the Eligible project until it is determined the Consultant/Contractor is in compliance.
c. Cancellation of the Eligible Project.
d. Refusal of all future contracts or sub-contracts with the San Antonio Airport System for a minimum of one year and a maximum of three years from the date upon which this penalty is imposed. In the event a penalty is imposed, the Consultant/Contractor continues to be obligated to pay its subcontracts, laborer, suppliers, etc.

The San Antonio Airport System will provide a cure-period to allow Consultants/Contractors to comply with the terms of the contract and associated default provisions.

The City will actively implement the enforcement actions detailed above.

SAN ANTONIO INTERNATIONAL AIRPORT (SAIA)
CHANGE OR ADDITION OF SUBCONTRACTORS/SUPPLIERS ON FEDERALLY FUNDED CONTRACTS
(DBE Form 3)

NAME OF PROJECT: _____

Name of Bidder/Proposer: _____

The above named firm requests approval of the following addition(s) and/or deletion(s) of the Subcontractor/Supplier firm(s) to the approved DBE *Good Faith Effort Plan* for Federally Funded Contracts (**DBE Form 1**) and *Letter of Intent* (**DBE Form 2**) as originally submitted as part of the above referenced project. **No additional and/or substitute subcontractor/supplier shall begin work on the project until contractor receives written approval by the City.**

Delete	Name of Firm	Is firm a Subcontractor or Supplier	Description of Work to be Performed by Firm	Is firm DBE Certified Yes or No?	Total Dollars of Work to be Performed by Firm

REASON(S) FOR REMOVING EACH SUBCONTRACTOR(S)/SUPPLIER(S) LISTED ABOVE:_____

_____

_____

_____

Please indicate the name of the firm(s) you wish to add or substitute. ***A Letter of Intent*** **(DBE Form 2) for any additional/substitute subcontractor(s)/supplier(s) must be submitted to the City for approval with this form. No additional and/or substitute subcontractor/supplier shall begin work on the project until contractor receives written approval by the City.**

Add	Name of Firm	Is firm a Subcontractor or Supplier	Description of Work to be Performed by Firm	Is firm DBE Certified Yes or No?	Estimated Dollars of Work to be Performed by Firm

1. If a DBE Subcontractor/Supplier was deleted/terminated/replaced, was it replaced with another DBE Subcontractor/Supplier? Yes _____ No _____ If not, why not: _____
   _____
   _____
2. If another DBE Subcontractor/Supplier did not replace the DBE Subcontractor/Supplier, please submit for our review the good faith efforts used to find another DBE to perform at least the same amount of work under the contract as the DBE that was deleted/terminated/replaced.
3. If a Subcontractor/Supplier is added at any time during this project, Contractor shall submit for our review and approval the good faith efforts used to find a DBE to perform such work.

AFFIRMATION

THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF, I FURTHER UNDERSTAND AND AGREE THAT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.

Name & Title of Authorized Official:_____

Signature:_____

Approved:_____
AVIATION DEPARTMENT DBE LIAISON OFFICER

DBE Form 3 Revised 6/9/2022