ON-CALL ENVIRONMENTAL REMEDIATION CONSULTING SERVICES

PROFESSIONAL SERVICES AGREEMENT

FOR THE SAN ANTONIO AIRPORT SYSTEM

STATE OF TEXAS

COUNTY OF BEXAR

CITY OF SAN ANTONIO

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

Alamo Environmental, Inc. dba Alamo 1
2900 Nacogdoches Road
San Antonio, Texas 78217

hereafter referred to as "Consultant", said Agreement being executed by City pursuant to Ordinance No._____ _____, and by Consultant for on-call Environmental Remediation consulting 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 NO. TITLE PAGE

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 Alamo Environmental, Inc. dba Alamo 1 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 “Consultant” means Consultant and its officers, partners, employees, agents and representatives, and all sub-consultants, if any, and all other persons or entities for which Consultant legally is responsible.

1.9 “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.

1.10 “FAA” means the Federal Aviation Administration.

1.11 “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.

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

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

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

1.15 “SAT” means San Antonio International Airport.

1.16 "SSF” means Stinson Municipal Airport.

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

1.18 "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 TWO MILLION DOLLARS AND NO/100 CENTS ($2,000,000.00)**. 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 either will 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 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, had not been 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, 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**I.

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

4.3 Consultant shall provide all labor, equipment and transportation necessary to complete all services, agreed to by 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 Unless otherwise required by City, Consultant shall apply for and assist City in obtaining permits from all governmental authorities having jurisdiction over each Project and such approvals and consents from others as may be necessary for the completion of each Project. Consultant 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 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 substantial 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.

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.

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

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

ARTICLE VI.
PROJECT SERVICES REQUEST PROCESS

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

6.2 When City has a Project for which it desires to procure on-call Environmental Remediation consulting services, City shall notify Consultant by issuing a Task Order Proposal Request. Each Task Order Proposal 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 Environmental Remediation consulting services, and a deadline for providing City with a Proposal based on the above.

6.3 Consultant shall prepare and submit to City, within the timeline stated in a Task Order Proposal 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.

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 his/her 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 Proposal 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 in planning and designing the Project, all existing plans, maps, statistics, computations and other data in City's possession, relative to existing facilities and to this particular Project, at no cost to Consultant. However, any and all such information shall remain the property of City and shall be returned by Consultant upon termination, completion of the Project or if instructed to do so by City.

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

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

ARTICLE VIII.
REVISIONS TO DOCUMENTS

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

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

9.5 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 thirty (30) days after receipt of such notice of termination, unless Consultant successfully has cured a failure to perform, Consultant shall submit a statement to City showing in detail the services performed under this Agreement prior to the effective date of termination. City shall have the option to grant an extension to the time period allowable for the submittal of such statement.

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

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

10.7.4 In the event that Consultant elects to exercises its right to terminate sixty (60) calendar days after the effective suspension date, within thirty (30) calendar days after receipt by City of Consultant's notice of termination, Consultant promptly shall cancel all existing orders and contracts, insofar as such orders and contracts are chargeable to this Agreement, and shall submit the above referenced statement showing in detail the services performed under this Agreement, prior to the effective date of suspension.

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 the Project.

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 on this RFP. The applicable DBE goal for On-Call Environmental Remediation Consulting Services is 9% 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 and retainage payment clause

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 prime contract receives from the City of San Antonio. The Consultant further agrees to return retainage payments to each sub-consultant within ten (10) days after the sub-consultant's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the City. When the City has made an incremental acceptance of a portion of a prime contract, the work of a sub-consultant covered by that acceptance is deemed to be satisfactorily completed.

From the total of the amount determined to be payable on a partial payment, depending on contract value, not to exceed 10 percent of such total amount will be deducted and retained by the City until the final payment is made, except as may be provided (at the Consultant's option) in the subsection 90-08 titled PAYMENT OF WITHHELD FUNDS of this section. The balance of the amount payable, less all previous payments, shall be certified for payment. Should the Consultant exercise his or her option, as provided in

the subsection 90-08 titled PAYMENT OF WITHHELD FUNDS of this section, no such percent retainage shall be deducted.

When at least 95% of the work has been completed, the Engineer shall, at the City's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done.

The City may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Consultant.

12.9 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.

12.10 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.

12.11 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.

12.12 The prime contractor 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.

12.13 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.

12.14 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.

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

12.16 Failure or refusal by a Proposer or 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.

12.17 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.

12.18 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 9**, 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 City's Aviation Department, which shall be clearly labeled "*Environmental Remediation Consultant*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must 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 City's Aviation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

14.2 City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to 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:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations * b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. $100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $5,000,000 per occurrence (to include AOA access).
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

14.4 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 – Planning & Administration
P.O. Box 839966
San Antonio, Texas 78283-3966

14.5 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.

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

14.7 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.

14.8 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.

14.9 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.

14.10 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.

ARTICLE XV.
INDEMNIFICATION

15.1 **CONSULTANT FULLY SHALL INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES, VOLUNTEERS, DIRECTORS AND REPRESENTATIVES (HEREAFTER INDIVIDUALLY AND COLLECTIVELY REFERRED TO AS "INDEMNITEE") FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LIABILITIES OR COSTS, INCLUDING REASONABLE ATTORNEY FEES AND DEFENSE COSTS, MADE UPON INDEMNITEE TO THE EXTENT CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT OR ITS AGENT, CONSULTANT UNDER CONTRACT OR ANOTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL WHILE IN THE EXERCISE OF RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. THIS INDEMNIFICATION SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM INDEMNITEE'S NEGLIGENCE OR WILLFUL MISCONDUCT IN INSTANCES WHERE THE NEGLIGENCE OR WILLFUL MISCONDUCT CAUSES PERSONAL INJURY, BODILY INJURY, DEATH OR PROPERTY DAMAGE. IF A COURT OF COMPETENT JURISDICTION FINDS CONSULTANT AND CITY JOINTLY LIABLE, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

15.2 The provisions of this Article XV 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 City in writing within twenty four (24) hours of any claim or demand against City or Consultant known to Consultant related to or arising out of Consultant's activities under this Agreement.

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

15.4 Acceptance of any deliverable or final designs, drawings, plans, specifications, or exhibits by the City shall not constitute nor be deemed a release of the responsibility and liability of the Consultant, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, working drawings, plans, specifications, exhibits or other documents and Services; nor shall such acceptance be deemed an assumption of responsibility or liability by the City for any defect in the in the Services, designs, working drawings, plans, specifications, or exhibits or other documents and work prepared 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 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 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 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 contract. City hereby relies on Consultant's verification. If affirmation is found to be false, City may terminate the contract 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.

19.3 City hereby relies on Consultant's certification. If found to be false, or if Consultant is id**entified on such list during the course of its contract with City, City may terminate this 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	Alamo Environmental, Inc. Attn: Kevin Morrison, Project Manager 2900 Nacogdoches Road San Antonio, TX 78217

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

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 administrative amendments and 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.

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

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

35.2 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.

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

35.4 Gates and doors located in and around the Airport Premises utilized by Consultant that permit entry into sterile or secured areas at the Airports, if any, must be kept locked by Consultant at all times when not in

use, or under Consultant's constant security surveillance. Gate or door malfunctions must be reported to the Aviation Director or the Aviation Director's designee without delay and must be kept under constant surveillance by Consultant until the malfunction is remedied.

35.5 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 20th DAY OF September, 2023.

CITY OF SAN ANTONIO

By: _____
Erik Walsh
City Manager

ALAMO ENVIRONMENTAL, INC., DBA ALAMO 1

By: _____
Signature

J. Alex Salas
Printed Name

CEO
Title

20-0334965
Federal Tax ID#

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT 1

SCOPE OF SERVICES

This On-Call Contract will use Indefinite Delivery Orders (IDO) and Indefinite Delivery Quantities (IDQ) to respond to and perform environmental remediation related activities involving impacted soil and water media, environmental conditions, and hazardous material and fuel spills. The services to be provided will be used on an as-needed basis. Work to be performed under this Contract will consist of demolition and reconstruction, excavation, removal and or pumping, loading, transportation, management and disposal of impacted soils, mold, sewer, water and/or other media from the San Antonio Airport Systems and any other City owned properties. The contaminants that have the potential to be present in the media include, but they are not limited to RCRA 11 metals, semi-volatile organic compound (SVOC), volatile organic compounds (VOCs), Total Petroleum Hydrocarbons (TPH), polycyclic aromatic hydrocarbons (PAHs), Polychlorinated biphenyls (PCBs), glycol, lead based paint, molds (fungi), pollen and dust, and other hazardous or offensive substances. Other work may include backfilling excavations, stockpiling, removal, waste characterization, recycling of construction debris, and disposal of construction/waste debris, municipal solid waste, industrial waste, lavatory waste, hazardous waste, toxic waste, Petroleum Storage Tanks (PSTs) and petroleum impacted waste and liquid wastes from the San Antonio Airport System. The Contractor will provide project specific laboratory analytical data of the media to be handled when needed for disposal. The Contractor will be required to generate, maintain and provide copies of waste manifests to the Aviation Department when rendering disposal services.

The scope of work may include projects that require emergency response and mobilization for the immediate service (such activities may include the removal of liquid waste from a fuel spill, sewer spill, or hazardous chemical spill) to remove potentially impacted media from a given area. Projects that require emergency response will require the Contractor to respond by phone within **thirty (30) minutes** of notification and mobilize to being working within **two (2) hours** of verbal or electronic notification. The airport operates 24 hours a day; therefore, all Contractors must be able to perform required services 24/7 and on holidays and weekends.

In addition, during emergency spills and overflows Contractor's response should be based upon a three (3) phased approach to remediate the area which includes the following: phase one (1) mitigating the emergency, phase two (2) performing initial restoration work to make the area operational, and phase three (3) continuation of all final repairs. Not all requests for work under this contract must begin with Phase one (1) or include all three (3) phases.

A. WORK AUTHORIZATIONS

The Contractor will be verbally or electronically notified of the proposed scope of work when emergency or non-emergency responses are required. When emergency projects are initiated the electronic notification provided will serve as an approved work authorization. If a project does not require an emergency response the City will provide Contractor with required response time and the time allowed to complete the scope of work in a formal work authorization. As-Built construction drawings may not be available for all areas; therefore, the Contractor is responsible to familiarize himself with the existing conditions affecting the work through site verification if needed. The Contractor will be responsible for verification of all dimensions, layouts and site conditions. For secured areas the Contractor can schedule a site visit with the city.

1. Non-Emergency Response

At such time when non-emergency work is requested, the Contractor will meet with a City representative to inspect the proposed work site and discuss the specific scope of work. The Contractor will submit a written cost estimate proposal to City representative based on the Contract Unit Prices, as established in the Price Proposal Form contained herein. Only the applicable Unit Prices submitted on this form shall be considered in developing the cost estimate. If items not addressed in the Price Proposal Form are necessary the price will be negotiated on an as needed basis and based on current industry pricing. If the costs of services submitted by the Contractor are not specified in this document and are not agreed upon by the City, the City reserves the right to approve only the services established in the contract and retain

a different vendor to complete the remaining tasks. The City will review and approve the cost estimate prior to releasing a Work Authorization for all non-emergency work.

2. Emergency Response

When the Contractor is notified of emergency work he will be required to respond by phone within **thirty (30) minutes** and arrive onsite within **two (2) hours** of notification. After arrival the Contractor will perform a walkthrough of the damaged area with a city representative to determine the scope of work. The Contractor will start work immediately and must provide a written approach to the work and an estimate of time required to perform work that same day. The Contractor must maintain records of all emergency work performed. Once emergency work has been completed the Contractor will submit a proposal for the completed tasks which will be reviewed and approved by a City representative with all costs based on the Contract Unit Prices and hourly charges established in the Price Proposal Form. All costs, equipment, labor, profit and overhead shall be included in the Unit Price for each line item to complete the work. The Contractor shall use only those line items necessary to fulfill a particular work authorization. Any cost or scope of work discrepancies shall be corrected and agreed upon by City and Contractor prior to releasing the work authorization.

B. EXCAVATION OF IMPACTED SOILS

Contractor shall be responsible for field verifying all underground utilities and obtaining appropriate permits prior to beginning excavation activities. Contractor shall, at a minimum, contact a utility locate service (and any local utilities not included in the one call service) and coordinate utility inspections for field verification purposes. City shall not be responsible for any damage to utilities or other underground structures as a result of Contractor's excavation activities. Contractor fully shall be responsible and liable for any damages to utilities, private property, and infrastructure and any consequential damage arising from impact to utilities or underground structures as a result of Contractor's excavation or any other activity. Contractor shall be responsible for providing traffic control measures for projects deemed to need this service. Contractor shall excavate all soils using all necessary heavy equipment, including but not limited to such equipment as a backhoe, gradall, excavator, or bulldozer, unless field conditions warrant soft digging techniques such as hand excavation. Contractor shall employ work methods to prevent cross-contamination of media and equipment. When possible, Contractor shall excavate all soils and place the impacted soils directly into an authorized vehicle or container for transportation of impacted media. If soils are to be staged, Contractor shall take precautions to prevent cross-contamination to surrounding areas. Precautions may include placing the stockpile on asphalt or lining the staging area, constructing berms or silt fences around the staging area, and covering the stockpile to prevent Stormwater run-on/run-off and wind dispersion. Contractor shall implement engineering controls, such as wetting the material as necessary, to prevent dust and wind dispersion while excavating impacted soils. No visible dust or debris shall be generated during the excavation of impacted soils. Contractor may be required, at City's discretionary request, to provide air sampling to confirm no emissions of dust or contaminants of concern. Contractor shall prepare a Waste Management Plan (WMP) and a Health and Safety Plan (H&SP) prior to beginning any work. City's representative must receive and review these documents prior to issuing approval to proceed with the delivery order.

C. REMOVAL OF IMPACTED WATER

Contractor shall provide services for removal of contaminated water. When contaminated water is encountered on a site, the Contractor shall provide equipment to pump, filter and/or containerize the water for characterization, treatment, discharge and/or offsite disposal. The Contractor shall be responsible for coordination of a vacuum truck onto the airfield. Contractor shall employ work methods to prevent cross-contamination of surface and sub-surface water and equipment.

When possible, Contractor shall pump impacted water into an authorized vehicle for transportation of impacted water. Contractor shall implement engineering controls, such as berms, barriers or absorbent booms, to prevent contamination of surface water or subsurface water. Contractor may be required, at City's discretionary request, to provide water sampling to confirm no contaminants of concern and for hazardous waste characterization and disposal at a licensed wastewater disposal facility. Contractor shall prepare a Waste Management Plan (WMP) and a Health and Safety Plan (H&SP) prior to beginning any work. City's representative must receive and review these documents prior to issuing approval to proceed with the delivery order. Contractor shall be responsible for providing traffic control measures for projects deemed to need these services.

D. TRANSPORTATION AND DISPOSAL OF IMPACTED MEDIA

All impacted material shall be transported by an authorized hauler to an authorized disposal facility as described in this section, the Airport's Soil Management Plan and in compliance with applicable regulations. Contractor is responsible for selecting licensed and regulated facilities approved to receive the waste. The Contractor is responsible for ensuring all transporters are insured, licensed, and permitted by the state, federal and local agencies (waste hauler permit issued by City's Solid Waste Department), as required for the waste material that is to be hauled. The Contractor shall provide proof of licenses and permits, as required, prior to commencing the work. All transporting vehicles shall be in good working condition. All loads must be covered to prevent dispersion of material while transporting the media from the project site to the selected landfill, disposal facility, or selected location. City reserves the right to remove transporters from the site if the vehicles are not in good working condition or do not have a cover for the impacted media. All transporters shall haul impacted media directly to the disposal/recycling facility or any other authorized facility and shall not spill or track impacted material in route to the authorized facility. If the Contractor requires decontamination of the transporters, it shall be done at the end of the workday and at the expense of Contractor. Truck liners may be allowed, at the expense of Contractor. In some instances, Contractor might be required to transport lightly impacted or non-impacted material to a different authorized facility. The same rules previously mentioned above are applicable for this particular instance.

E. SPILL CLEANUP

The Contractor shall provide services for on-call response, remediation, disposal and monitoring of spilled materials presently or formerly used in operations located within the airport. Materials may include, but not be limited to the following items: oils and greases, fuels, lavatory fluids, and ethylene glycol. The Contractor will be required to respond to a spill discovery within 30 minutes of notice by the Airport. Spill locations could include outdoor areas near airport terminals, airport tenant facilities, runways, or other locations in the airport. The Contractor will develop and notify the airport of spill response actions when they report onsite. Spills can be contained with absorbent materials or dikes to prevent further contamination and limit exposure to sewer and Stormwater systems located on the airport property. Spill contaminated media will be containerized and labeled in accordance with State and Federal requirements. Transportation of spill contaminated media will be utilized with transporters are insured, licensed, and permitted by the state, federal and local agencies as required for the waste material that is to be hauled. The Contractor will provide an after-action spill cleanup report that identifies the details of the spill (location, spilled material, quantities) time and date, the response action taken, and the quantities of spill contaminated media treated, follow up remedial action, pictures, and copies of the transport and disposal manifests.

F. PETROLEUM STORAGE TANK REMOVAL

The Contractor properly shall remove and dispose of Underground/Aboveground Storage Tanks (USTs/ASTs) in accordance with Local, State and Federal regulations. The Contractor shall have and maintain current licenses, permits and training, as required, for storage tank removal, including, but not limited to:

- TCEQ A+B License (30 TAC 30.310)
- TCEQ Corrective Action Specialist (30 TAC 30.190)
- TCEQ Corrective Action Project Manager (30 TAC 30.180)

The Contractor shall properly notify the TCEQ and the City's Fire Marshall prior to any storage tank removal activities. The s Contractor shall properly render the tank vapor-free and inert prior to removal activities, in accordance with American Petroleum Institute (API) and other accepted industry practices. All storage tanks permanently shall be removed from service and shall be destroyed, disposed of or recycled for scrap metal. Contractor is responsible for making all proper notifications prior the removal activities.

Soil and/or water removed from the tank basin shall be sampled and analyzed in accordance with TCEQ procedures and directives. As required, the Contractor shall over-excavate and dispose of impacted soils at an authorized facility. Regulated Petroleum Storage Tank sites shall be closed in accordance with TCEQ regulations. As required by TCEQ, the Contractor shall collect samples from the tank basin excavation in accordance with TCEQ's RG 411 requirements. The Contractor shall provide a Tank Removal Report summarizing those activities, upon completion of the work. The Contractor shall be responsible for submitting the proper documentation to the

agencies requiring this information. Copies of this documentation shall be sent to City's representative at the completion of the project.

G. MOLD REMEDIATION

Contractor will be required to provide proof of mold remediation license/certification at the time of contract award and maintain mold remediation license/certification over the term of the contract. Mold remediation will involve containing and eliminating mold in areas such as offices, restrooms, building plenums, HVAC systems, duct work, and mechanical and IT rooms. Contractor must be able to or subcontract work to provide remediation, minor duct repairs, and cleaning/sanitizing of HVAC systems.

The City will provide an Environmental Consulting firm (referred to in this document as the City's On-Call Consultant) that will provide third-party air sampling and analysis. The Environmental Consulting firm will be responsible for providing CONTRACTOR with project remediation specifications. CONTRACTOR is responsible for all regulatory notifications.

H. WATER AND SEWER OVERFLOWS

The Contractor will be required to respond with equipment to collect all overflow liquids and solids within airport buildings and surrounding areas. The Contractor must be able to sanitize, dehumidify, perform water extraction, and remove and dispose of any damaged walls, floors and/or other non-salvageable items. Contractor must have proper tools to identify water damage and provide recommendations for removal and restorations.

I. DEMOLITION AND RESTORATION

Contractor will be required to perform minor demolition and restorations on projects causing damage to the building interior from things such as smoke, water/sewer damage, and mold. A partial demolition plan (nonstructural) must be provided to the city before any work can begin. In most cases the work will need to be done while allowing for continued operations of the area. Temporary walls or barriers may be required to protect area from the public. Once the damaged area has been demolished the Contractor will provide restoration services. The materials to be installed such as walls, flooring, and ceilings may be provided by the Airport or the Contractor and will be determined before restoration begins.

J. CONSULTANT COORDINATION

The Contractor may be required to coordinate third-party air monitoring or project oversight with the City's representative Environmental Consultant (referred to in this document as City's On-call Consultant) when performing regulated activities. This On-call consultant will provide project management and/or air monitoring services for projects to be conducted by the Contractor. On-call Consultants may also be used to provide expert recommendations during remediation activities at which time the Contractor will be expected to coordinate work through the on-call consultant.

K. DECONTAMINATION

Contractor shall prevent cross-contamination of the impacted material to surrounding media by decontaminating all equipment, tools, personnel, etc. It shall be Contractor's responsibility to decontaminate transporting trucks and/or roll-offs containers prior to leaving the site. A dry method, such as brushing off visible debris from wheels and sides of the transporter is allowed. If a wet method is necessary to decontaminate any piece of equipment or a transporter, all decontamination waste must be containerized and properly disposed. If the material is saturated with liquids and has the potential to adhere to the transporter, Contractor shall line the transporter with a minimum of one layer of 6-mil plastic. Contractor shall decontaminate all equipment that has been in contact with the impacted media. Dry methods are preferred. As necessary, Contractor shall decontaminate using high-pressure water and non-phosphate detergent. All personnel that come into contact with the impacted material shall be decontaminated before leaving the site by removing and disposing of impacted clothing and washing with water and low foaming soap. Contractor shall perform more stringent decontamination methods, as appropriate. All decontamination procedures shall be identified and described in Contractor's H&SP.

L. PERSONAL PROTECTIVE EQUIPMENT

All tasks required as part of this contract have the potential to expose the worker to hazardous substances. All employees working on site (such as but not limited to equipment operators, general laborers, and others) potentially exposed to hazardous substances, health hazards, or safety hazards and their supervisors responsible for the site must abide by OSHA regulations and specifications outlined in 29 CFR 1910.120 Hazardous Waste Operations and Emergency Response (HAZWOPER). Contractor is responsible for reviewing 29 CFR 1910.120, addressing engineering controls, work practices and personal protective equipment (PPE) for employee protection from exposure to hazardous substances and safety and health hazards. The personal protective equipment to be worn by the Contractor shall be identified and described in the H&SP provided by the Contractor and should abide by 29 CFR 1910.120 HAZWOPER. It is the Contractors responsibility to assess the work environment by providing personnel monitoring and determining, if additional PPE is necessary, once the scope of work is in process. The Contractor is responsible for the cost of providing PPE and equipment specified in the Contractor's HSP (bug spray, water, sunscreen).

The Contractor agrees to provide a healthy and safe work site and working environment for its, employees, and Subcontractors during performance of services. In addition, the Contractor shall protect the health, safety, and welfare of city personnel, tenants, customers, and other occupants of the work site and the surrounding areas from any danger or exposure associated with work being performed.

The Contractor shall, at the end of each workday, remove all debris and potentially hazardous/dangerous materials used on the project unless approved by the city to remain. The Contractor shall collect abatement/remediation/construction debris frequently and dispose of in a lawful manner. Large disposal containers should remain covered at all times other than during loading activities.

M. TRAINING

Contractor shall ensure that all workers have completed required safety training, including but not limited to HAZWOPER training, as required by 29 CFR 1910.120. At a minimum, all workers who handle impacted media shall receive forty (40) hours of HAZWOPER Training. Additionally, Contractor's Supervisor also must have an additional eight (8) hours of Supervisor HAZWOPER Training. Contractor must submit copies of certificates for workers involved in the project, as part of the HS&P, prior to beginning work. City reserves the right to verify 40-hour HAZWOPER Training certificates of each Supervisor and construction worker, to ensure compliance with OSHA 1910.120 regulations.

N. SAMPLING AND ANALYSIS

Contractor may be required to collect and analyze samples as required to characterize waste for disposal, confirm petroleum storage tank removal and document field conditions. All samples shall be collected and analyzed in accordance with Local, State and Federal guidelines. All sampling and analysis required to determine compliance with cleanup standards shall be conducted by Contractor unless otherwise agreed upon with the city before project begins.

O. ADDITIONAL ENVIRONMENTAL REQUIREMENTS

Contractor shall exhibit professionalism during all aspects of this contract and perform all work under this contract in accordance with accepted industry standards and practices. Contractor shall control site safety, badging, and security at all times after the notice to proceed for a specific work authorization has been provided by City. As necessary, Contractor shall install temporary fencing, barricade tape or other means to control access by unauthorized persons. Costs associated with site security, badging, and safety are considered incidental and should be included in the contract rates provided on RFP Attachment B, Pricing Schedule. Work methods and quality control measures are the responsibility of Contractor. City reserves the right to approve or suspend work methods considered unsafe, illegal or ultimately detrimental to the Project or the City.

P. DAMAGE TO CITY PROPERTY

Any damage to property such as roadways, aircraft, aprons, drainage structures, etc. caused by the action of the vendor shall be repaired or replaced at the expense of the vendor to the satisfaction of the City. Failure to provide a plan to restore said property within two (2) working days following notification will result in a deduction from the next invoice of City expenses incurred through the execution of appropriate labor, material and equipment use or rental to restore the property to its original conditions. This contract requires Contractor to perform most tasks on an active airfield which means that certain damages to aprons or other airfield pavement may require immediate correction to prevent closure of the area to aircraft. If a closure does happen due to the actions of the Contractor the delay costs to the airlines and other parties associated with the closure will be the responsibility of the Contractor.

Q. TRUCK STANDBY CHARGES

The Contractor shall be required to have an adequate number of transporters available for project specific dates and times as specified by City's representative. In the event that site activities delay the loading of the Contractor's transporters, due to unforeseen conditions, Contractor would be asked to switch to Standby charges. Standby time will begin two (2) hours after the truck has arrived at the project site. It will be Contractor's responsibility to notify City's representative on the arrival time of the trucks. City will not consider any standby charges that are not approved by City's representative within twenty four (24) hours of the incident. A unit bid item has been included in the Price Proposal Form to cover this charge in the event this situation arises.

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

EXHIBIT 2

FEE SCHEDULE

Consultant shall invoice City for work performed hereunder only at the approved labor categories and rates set out in the Approved Hourly Billing Rates table set out below.

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 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.

APPROVED LABOR RATES

The contractor's proposal must be based on the price list below. Any items that require work that are not listed on this pricing scheduled may be negotiated before beginning work.

Item	Item Description[1]	Est. Annual Quantity	Unit	Unit Price
1.0	**Mobilization**			
1.1	Mobilization of equipment, personnel, tools and appurtenances for delivery orders of 1 to 250 cubic yards	1	EA	$750.00
1.2.	Mobilization of equipment, personnel, tools and appurtenances for delivery orders of 251 to 750 cubic yards	1	EA	$900.00
1.3.	Mobilization of equipment, personnel, tools and appurtenances for delivery orders of 751 to 5,000 cubic yards	1	EA	$1,080.00
1.4.	Mobilization of equipment, personnel, tools and appurtenances for delivery orders of more than 5,000 cubic yards	1	EA	$1,300.00
1.6.	Demobilization of equipment, personnel, tools and appurtenances	4	EA	$1,300.00
2.0	**Bulk Excavation and Loading of Impacted Soils**			
2.1.	Excavation of bulk soils 1 to 250 loose cubic yards	400	CY	$20.75
2.2	Loading of bulk soils 1 to 250 loose cubic yards	400	CY	$19.75
2.3.	Excavation of bulk soils 251 to 750 cubic yards	500	CY	$53.50
2.4.	Loading of bulk soils 251 to 750 cubic yards	500	CY	$51.25
2.5.	Excavation of bulk soils 751 to 5,000 cubic yards	1,000	CY	$78.75
2.6.	Loading of bulk soils 751 to 5,000 cubic yards	1,000	CY	$77.50
2.7.	Excavation of bulk soils more than 5,000 loose cubic yards	5,000	CY	$23.00
2.8.	Loading of bulk soils more than 5,000 loose cubic yards	5,000	CY	$22.25
3.0	**Backfilling**			
3.1.	Backfilling and compaction of excavations	1,000	CY	$55.00
4.0	**Soils Stockpiling**			
4.1.	Soils stockpiling and protective measures	1,000	CY	$35.55
4.2	Installation of silt fence	250	FT	$13.00
4.3	Installation of straw filter socks	50	FT	$59.50
5.0	**Bulk Transportation of Impacted Soils**			
5.1.	Bulk transportation of LPST, Class 2, or Class 3 non-hazardous waste with a haul distance of 1 to 20 miles, one way.	25	CY	$28.75
5.2.	Bulk transportation of LPST, Class 2, or Class 3 Non-hazardous waste with a haul distance of greater than 20 miles, one way.	25	CY	$38.25
5.3.	Bulk transportation of Class 1 non-hazardous waste	500	CY	$38.25
5.4.	Bulk transportation of hazardous waste	25	CY	$65.00
5.5.	Bulk transportation of toxic (TSCA-regulated) waste	25	CY	$65.00
6.0	**Bulk Disposal of Impacted Soils**			
6.1.	Bulk disposal of LPST, Class 2, or Class 3 non-hazardous waste	25	CY	$49.75
6.2.	Bulk disposal of Class 1 non-hazardous waste	500	CY	$112.75
6.3.	Bulk disposal of hazardous waste	25	CY	$425.00
6.4.	Bulk disposal of TSCA-regulated waste	25	CY	$425.00
7.0	**Bulk Transportation and Disposal of Liquid Waste**			
7.1	Bulk transportation and disposal of non-hazardous liquid waste	20,000	GAL	$5.60
7.2.	Bulk transportation and disposal of hazardous liquid waste	100	GAL	$17.50
8.	**Transportation and Disposal of Drummed and Roll-Off Waste**			
8.1.	Transportation and disposal of non-hazardous drummed liquid waste	1	DRM	$665.00

8.2.	Transportation and disposal of hazardous drummed liquid waste	1	DRM	$1,955.00
8.3.	Transportation and disposal of non-hazardous drummed solid waste	1	DRM	$665.00
8.4.	Transportation and disposal of hazardous drummed solid waste	1	DRM	$1,955.00
8.5.	Transportation and disposal of 20yd roll-off containerized Class 2 and Class 3 non-hazardous waste	1,000	CY	$72.25
8.6.	Transportation and disposal of 30yd roll-off containerized Class 2 and Class 3 non-hazardous waste	1,000	CY	$72.25
8.7.	Transportation and disposal of 40yd roll-off containerized Class 2 and Class 3 non-hazardous waste	1,300	CY	$72.25
8.8	Transportation and disposal of 20yr roll-off containerized Class 1 non-hazardous waste	1,000	CY	$135.25
8.9	Transportation and disposal of 30yr roll-off containerized Class 1 non-hazardous waste	1,000	CY	$135.25
8.10	Transportation and disposal of 40yr roll-off containerized Class 1 non-hazardous waste	1,300	CY	$135.25
8.11	Transportation and disposal of 20yd roll-off containerized hazardous waste	500	CY	$400.00
9.0	**Miscellaneous Items**			
9.1	Liquid Storage Tank Rental (6,500 gallon cap.)	1	Wk	$250.00
9.2	Liquid Storage Tank Rental (20,000 gallon cap.)	1	Wk	$350.00
9.3	Pump Rental 4”	1	DAY	$250.00
9.4	Pump Rental 6”	1	DAY	$310.00
9.5	Liner Material	2	EA	$1,250.00
9.6	Traffic Control	7	DAY	$750.00
9.7	Sample Collection (collection only)	10	EA	$105.00
9.8	Health and Safety Plan	1	EA	$750.00
9.9	Modifications to the Health and Safety Plan	1	EA	$75.00
9.10	Waste Management Plan	1	EA	$750.00
9.11	Modifications to the Waste Management Plan	1	EA	$75.00
9.12	Overpack Drum	2	DRM	$350.00
9.13	Steel Open-Top Drum	5	DRM	$115.00
9.14	Steel Closed-Top Drum	5	DRM	$115.00
9.15	Bioremediation Pad	1	EA	$25,000.00
9.16	Petroleum Degrading Liquid	20	GAL	$35.00
9.17	Petroleum Storage Tank Removal <10,000 capacity gallons	1	EA	$40,000.00
9.18	Petroleum Storage Tank Removal >10,000 capacity gallons	1	EA	$58,000.00
9.19	Clearing and Grubbing	1	Acre	$4,500.00
9.20	Concrete/Asphalt and Bulky Item removal	20	TON	$575.00
9.21	Seeding	500	SF	$13.25
9.22	Liner Material	2	EA	$1,250.00
9.23	Annual Oil Water Separator Service	1	EA	$4,575.75
9.24	Removal, Transportation, and Disposal of Asbestos Cement Pipe <100 linear feet[2]	5	LF	$440.00
9.25	Removal, Transportation, and Disposal of Asbestos Cement Pipe >100 linear feet[2]	101	LF	$49.50
9.26	Transportation, and Disposal of Asbestos Cement Pipe <100 linear feet[2]	5	LF	$220.00
9.27	Transportation, and Disposal of Asbestos Cement Pipe >100 linear feet[2]	101	LF	$38.50
9.28	Written Report	10	EA	$750.00
9.29	Truck Standby Charges	5	HR	$135.00
9.30	Vacuum Truck 70-100 bbl	20	HR	$145.00
9.31	Vacuum Truck 100-120bbl	20	HR	$145.00
9.31	Municipal Solid Waste Disposal	100	CY	$50.00
10.0	**Mold Remediation Line Items**			
10.1	Establish negative pressure containment to include decon Unit	12	EA	$935.00

10.2	Apply Spray (micro-particle) Bio-cide to kill mold	5,000	SF	$2.20
10.3	HEPA Vacuum mold spores/hype	5,000	SF	$1.65
10.4	Wire Brush / Sand	5,000	SF	$2.20
10.5	Removal of Wall Board	5,000	SF	$5.50
10.6	Removal of Ceiling Tile (if needed)	5,000	SF	$3.30
10.7	Removal of Ceiling Grid (if needed)	1,000	LF	$1.10
10.8	Removal of Insulation	5,000	SF	$1.10
10.9	Application of Fungicide	5,000	SF	$1.10
10.10	Final Cleaning	5,000	SF	$2.20
10.11	Wiping with Bio-Cide	5,000	SF	$1.10
10.12	HEPA Vacuum Furniture	1,000	SF	$1.65
10.13	Wiping of Hard Furniture with Fungicide	500	SF	$2.20
10.14	Dry, HEPA Vacuum, Clean and Treat Carpet	5,000	SF	$4.40
10.15	Set-Up and Rental HEPA Air Scrubber	288	HR	$5.50
10.16	Set-Up and Rental of Dehumidifier	288	HR	$6.60
10.17	Clean Air Handler	12	EA	$2,805.00
10.18	Work Plan	12	EA	715.00
10.19	Pump Rental	14	Day	$495.00
10.20	Dumpster Rental	12	EA	$825.00
11.0	**Personnel**			
11.1	Project Manager	150	HR	$75.00
11.2	Project Supervisor	50	HR	$55.00
11.3	Project Technician	50	HR	$50.00
11.6	General Supervisor	250	HR	$55.00
11.7	General Forman	250	HR	$55.00
11.8	General Technician	250	HR	$50.00
11.9	General Laborer	250	HR	$45.00
11.10	Truck Driver	50	HR	$50.00

EXHIBIT 3

FEDERAL CONTRACT PROVISIONS

PROFESSIONAL SERVICE AGREEMENT
MANDATORY CONTRACT CLAUSES

As used in this Exhibit, the term "contractor" or "Contractor" shall refer to Consultant. Consultant shall include the provisions 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.

I. 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.

II. GENERAL CIVIL RIGHTS PROVISIONS

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

III. 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, or national origin 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 airport 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 airport 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 airport 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 airport 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 airport sponsor to enter into any litigation to protect the interests of the airport sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

IV. 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;

- 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 § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);

- The Civil Rights Restoration Act of 1987 (PL 100-209) (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, which 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 (42 USC §§ 12131 – 12189) 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, which 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. at 74087 to 74100);
- 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).

V. DISADVANTAGED BUSINESS ENTERPRISES

Contract Assurance (§ 26.13) –

The Contractor 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 Department of Transportation-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 Owner 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 (§26.29) – 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. 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 City. This clause applies to both DBE and non-DBE subcontractors.

VI. CERTIFICATION OF LOWER TIER CONTRACTORS REGARDING DEBARMENT

Consultant by entering into this Agreement certifies that each of Consultant's lower tier subcontractors with subcontracts that exceeds $25,000 is not presently debarred or otherwise disqualified from participation in this federally assisted project. Consultant agrees to verify the aforementioned subcontractors status by doing the following:

1. Checking the System for Award Management at website: http://www.sam.gov.
2. Collecting a certification statement similar to the Certification r 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.

VII. ENERGY CONSERVATION REQUIREMENTS

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201*et seq*).

VIII. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

This Agreement hereby incorporates by reference the provisions of 29 CFR part 201, 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.

IX. TRADE RESTRICTION CERTIFICATION

By entering into this Agreement Consultant certifies that 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 Section 1001.

Consultant must provide immediate written notice to the Owner if 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 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 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 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.

X. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

This Agreement incorporates by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Consultant must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Consultant 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 (20 CFR Part 1910). Consultant 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.

XI. CERTIFICATION REGARDING TAX DELINQUENCY AND FELONY CONVICTIONS

By entering into this Agreement Contractor certifies and represents that

1. Contractor 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 is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Contractor must ensure that no funding goes to any subcontractor who:

1. Has been convicted of a Federal felony within the last 24 months; or
2. Has any outstanding tax liability for which all judicial and administrative remedies have lapsed or been exhausted.

Contractor shall require each subcontractor to complete the two certificate statements below and include this requirement to complete the two certificate statements in all lower tier subcontracts. Subcontractor 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.

Certifications:

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

If any subcontractor responds in the affirmative to either of the above representations, the subcontractor is ineligible to receive a contract unless City 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.

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 U.S.C. § 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.

XII. FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

This contract hereby incorporate by reference the provisions of 29 CFR part 201, 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.

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

XIII. VETERAN'S PREFERENCE

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

XIV. TEXTING WHEN DRIVING

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 $3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

XV. 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, 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 considerations for employment without regard to race, color, religion, sex, or national origin.
3. 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 advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. 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.
5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said 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 or federally assisted construction 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.
7. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) 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 the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance*: Provided, however*, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

XVI. TERMINATION FOR CONVENIENCE

The Owner may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of Owner. Upon receipt of a written notice of termination, except as explicitly directed by the Owner, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

1. Contractor must immediately discontinue work as specified in the written notice.
2. Terminate all subcontracts to the extent they relate to the work terminated under the notice.
3. Discontinue orders for materials and services except as directed by the written notice.
4. Deliver to the Owner all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work, and as directed in the written notice.
5. Complete performance of the work not terminated by the notice.
6. Take action as directed by the Owner to protect and preserve property and work related to this contract that Owner will take possession.

Owner agrees to pay Contractor for:

1. completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
2. documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
3. reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
4. reasonable and substantiated expenses to the Contractor directly attributable to Owner's termination action.

Owner will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the Owner's termination action.

The rights and remedies this clause provide are in addition to any other rights and remedies provided by law or under this contract.

XVII. CERTIFICATION REGARDING DEBARMENT

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

XVIII. CERTIFICATION REGARDING LOBBYING

The Bidder or Offeror certifies by signing and submitting this bid or proposal, 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 Bidder or Offeror, 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.

XIX. 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 $10 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.

XX. BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of 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 Consultant must correct the breach. Owner may proceed with termination of the contract if 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.. If a PSA includes providing a manufactured good as a deliverable under the contract, the airport sponsor must include the Buy American Preference provision in the agreement.

XXI. 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 § 740-7671q) 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 exceeds $150,000.

XXII. PROHIBITION OF SEGREGATED FACILITIES

1. The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.
2. "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
3. The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.

XXIII. COPELAND "ANTI-KICKBACK" ACT

Contractor must comply with the requirements of the Copeland "Anti-Kickback" Act (18 USC 874 and 40 USC 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Owner must report any violations of the Act to the Federal Aviation Administration.

XXIV. DAVIS-BACON REQUIREMENTS

1. Minimum Wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii) (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: *Provided* that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding.

The Federal Aviation Administration or the airport sponsor 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 the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Federal Aviation Administration may, after written notice to the Contractor, airport sponsor, Applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and Basic Records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and that show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, airport sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.* the last four digits of the employee's social security number). The required weekly payroll information may

be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at *www.dol.gov/whd/forms/wh347instr.htm* or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Federal Aviation Administration if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, airport sponsor, or Owner, as the case may be, for transmission to the Federal Aviation Administration, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, airport sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) The payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;

(2) Each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;

(3) Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the airport sponsor, the Federal Aviation Administration, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, airport sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of

Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act Requirements.
The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

6. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Federal Aviation Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of Eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

XXV. AFFIRMATIVE ACTION

1. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables

Goals for minority participation for each trade:	47.8%
Goals for female participation in each trade:	6.9%

These goals are applicable to all of the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a) and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects.

The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

2. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs (OFCCP) within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

3. As used in this notice and in the contract resulting from this solicitation, the "covered area" is the State of Texas, County of Bexar and City of San Antonio.

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).

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.