KRH
09/29/2022
Item No. 43

ORDINANCE 2022-09-29-0757

APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH ANSER ADVISORY CONSULTING, LLC IN AN AMOUNT NOT TO EXCEED $6,000,000 FOR THE EXECUTIVE PROGRAM MANAGER FOR THE TERMINAL DEVELOPMENT PROGRAM FOR THE SAN ANTONIO INTERNATIONAL AIRPORT.

* * * * * *

WHEREAS, City Council approved the Strategic Development Plan for construction of a new terminal facility (Terminal C) at San Antonio International Airport; and

WHEREAS, in order to ensure the successful completion and commissioning of complex capital programs such as the design and construction of new terminals in compliance with the approved scope, schedule, budget and level of quality expected, airports utilize executive program management services; and

WHEREAS, this ordinance approves an agreement for an Executive Program Manager to assist the City in developing an implementation plan for the Terminal Development Program which services include initiation and process analysis in coordination with the City to help set up the foundational framework for the TDP, establishment of a program delivery framework, and continued program management oversight through completion of the TDP; and

WHEREAS, City released a Request for Qualifications (RFQ) for an Executive Program Manager on June 1, 2022, and received four responsive; and

WHEREAS, an evaluation committee consisting of representatives from the City Manager's Office, Aviation Department, Transportation Department and Airport Advisory Commission met and interviewed all four firms on July 15, 2022, and based on the published criteria, the committee recommends awarding the contract to Anser; and

WHEREAS, this Ordinance authorizes the execution of professional services agreement in an amount not to exceed $6,000,000.00 with Anser Advisory Consulting, LLC for the Executive Program Manager for the Terminal Development Program; **NOW THEREFORE,**

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

SECTION 1. The City Manager or designee is authorized to execute a professional services agreement with Anser Advisory Consulting, LLC in an amount not to exceed $6,000,000.00 for the Executive Program Manager for the Terminal Development Program, a copy of which is attached hereto as **Attachment A.**

SECTION 2. The following appropriations are contingent upon the availability of funds and the approval of the Operating and or Capital Budgets for Fiscal Year 2023 and future years.

SECTION 3. Payment is authorized to be encumbered and made payable to Anser Advisory Consulting, LLC in an amount not to exceed $6,000,000.00. Payment is in support of the Executive Program Manager Project using WBS Element 33-00344-01-02 with GL 5201040. Funding for this project is part of the Fiscal Year 2023-Fiscal Year 2028 CIP Budget in Fund 51099000.

Payment is limited to the amounts budgeted in the Operating and/or Capital Budget funding sources identified. All expenditures will comply with approved operating and/or capital budgets for current and future fiscal years.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Fund Numbers, Project Definitions, WBS Elements, Internal Orders, Fund Centers, Cost Centers, Functional Areas, Funds Reservation Document Numbers, and GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance shall be effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED and APPROVED *this 29th day of September 2022.*

M A Y O R
Ron Nirenberg

ATTEST:

Debbie Racca-Sittre, City Clerk

APPROVED AS TO FORM:

Katinka Howell for
Andrew Segovia, City Attorney

City of San Antonio

City Council Meeting
September 29, 2022

43. **2022-09-29-0757**

Ordinance approving a professional services agreement with Anser Advisory Consulting, LLC for the Executive Program Manager for the Terminal Development Program for the San Antonio International Airport in an amount not to exceed $6 million funded by Interim Airport Financing in the amount of $5,092,000 and Airport Infrastructure Grant funds in the amount of $908,000. Funding is from the FY 2023 FY 2028 Capital Improvement Program. [Jeff Coyle, Assistant City Manager; Jesus Saenz, Director, Aviation]

Councilmember Rocha Garcia moved to Approve on the Consent Agenda. Councilmember Courage seconded the motion. The motion carried by the following vote:

Aye:	Nirenberg, Bravo, McKeeRodriguez, Viagran, Rocha Garcia, Cabello Havrda, Sandoval, Pelaez, Courage, Perry
Absent:	Castillo

ATTACHMENT A

PROFESSIONAL SERVICES AGREEMENT
FOR
EXECUTIVE PROGRAM MANAGER

This Agreement is made and entered into in San Antonio, Bexar County, Texas, between **City of San Antonio**, a Municipal Corporation in the State of Texas (hereafter referred to as "City") and

ANSER ADVISORY CONSULTING, LLC
280 Wekiva Springs Road
Longwood, FL 32779

a consultant firm providing advisory services duly licensed and practicing under the laws of the State of Texas (hereafter referred to as "Consultant") (City and Consultant hereafter individually referred to as "a Party" and collectively referred to as "the Parties"), said Agreement being executed by City pursuant to City Charter, Ordinances and Resolutions of the San Antonio City Council, and by Consultant for **EXECUTIVE PROGRAM MANAGER** set forth herein in.

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ARTICLE I. DEFINITIONS

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

1.1 "Agreement" is this written document signed by City and Consultant, including any other document itemized and expressly referenced in, or attached to, and expressly made part of this Agreement, to include Consultant's proposal, to the extent accepted by City and not in conflict with the **Articles** of this Agreement:

Exhibit A	Scope of Services
Exhibit B	Fee Schedule
Exhibit C	Federal Contract Provisions
Exhibit D	Travel & Expense Policy
Exhibit E	DBE Compliance and Enforcement

1.2 "Airport" means the San Antonio International Airport.

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

1.4 "City" means City of San Antonio, Texas.

1.5 "Claim" is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of this Agreement terms, payment of money and/or 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.

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

1.7 "Consultant" means *Anser Advisory Consulting LLC* and its officers, partners, employees, agents and representatives, and all Sub-Consultants, if any, as well as all other persons or entities for which Consultant legally is responsible.

1.8 "Director" means the Director of City's Aviation Department (hereafter referred to as "Aviation") or his/her designee.

1.9 "FAA" means Federal Aviation Administration.

1.10 "Project" means services to recommend, plan and coordinate the administrative resources to provide timely support to efficiently deliver Terminal Development Program

1.11 "Project Management Team" means the assigned City staff overseeing the management of the Project. The Project Management Team typically includes a Project Manager and his or her staff.

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

ARTICLE II. COMPENSATION

2.1 The total compensation for all work to be performed by Consultant as fully defined in the Scope of Services, to include all travel and other expenses, shall not exceed **SIX MILLION AND 00/100 DOLLARS ($6,000,000.00)**. Consultant acknowledges that such not to exceed fee shall be sufficient compensation for all services and other expense to be performed pursuant to or associated with the Scope of Services. The obligation of City to Consultant for compensation in connection with this Agreement cannot and will not exceed such sum of SIX MILLION AND 00/100 DOLLARS ($6,000,000.00) without further amendment(s) to this Agreement. Nothing contained in this Agreement shall require City to pay for any unsatisfactory work, as determined solely by Director, or for work that is not in compliance with the terms of this Agreement. City shall not be required to make any payments to Consultant at any time Consultant is in default under this Agreement.

2.2 **Reimbursable Expenses**

When authorized by City in writing, the Consultant shall be entitled to reimbursement at actual incurred cost for services and related expenses for the following items:

6.9.1.1 Any travel, to include mileage reimbursement for travel by vehicle, will be reimbursed only if such travel was approved in writing by the City prior to such travel and must be in compliance with **Exhibit D** Aviation Department Consultant Travel and Expense Policy. No travel within the SAMSA is reimbursable.

6.9.1.2 Mailing, courier services and copies of documents requested by City in writing in excess of the copies to be provided under the Agreement. These costs shall not exceed the amount noted, if any, in Consultant's attached Scope without further approval of City.

6.9.1.3 Graphics, physical models, and presentation boards requested by City in writing in excess of the copies to be provided under Consultant's Agreement. These costs shall not exceed the amount noted, if any, in Consultant's attached Scope without further approval of City.

City does not allow a markup on any of the above reimbursable items and shall only reimburse approved hard costs incurred.

2.3 **Sub-Consultant Work**

City shall not pay a markup to Consultant for Sub-Consultant work. However, for additional services performed by Sub-Consultants as a direct pass through, Consultants are permitted up to a 5% markup for Sub-Consultant management costs subject to approval by the City.

ARTICLE III. METHOD OF PAYMENT

3.1 Consultant shall bill all services in accordance with the hourly rates set out in **Exhibit B,** Fee Schedule. Any travel must be approved in writing by the City prior to such travel. Consultant may submit invoices no more than once monthly. Such invoices must be for services completed and approved by the Director and actual travel, if previously approved in writing, and other expenses incurred 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 expenses with supporting documentation attached; and d) the total amount due for services, travel and expenses. Allowable travel, preapproved in writing by the City, and other expenses shall be invoiced at the actual cost incurred without markup and must be in compliance with the Aviation Department Consultant and Contractor Reimbursable Expense Policy, **Exhibit C** hereto, to be eligible for reimbursement. City reserves the right to request such additional information as the City deems necessary to support the invoiced charges.

3.2 Included in **Exhibit B,** Fee Schedule, is a Fee Breakdown by work phase. Consultant shall adhere to and be limited to the not to exceed amount for each work phase as set out in the Fee Breakdown by work phase. The Director, or his designee, has authority to reallocate funds between the phases set out in the aforementioned Fee Breakdown.

3.3 Payments to Consultant shall be in the amount shown on the invoices and its supporting documentation submitted and shall be subject to City's approval. All services shall be performed in accordance with the professional standard of care set forth in **Article 20** and to City's satisfaction, which satisfaction shall be judged by the Director in his/her sole discretion, and City shall not be liable for any payment under this Agreement for services which are unsatisfactory and which previously have not been approved by the Director. The final payment due hereunder shall not be paid until all reports, data and documents have been submitted, received, accepted and approved by City.

3.3.1 Payment may be made based solely on the units of services completed and approved by City and the associated unit price for such service, as set out in **Exhibit A**.

3.4 Consultant shall, within ten (10) calendar days following receipt of Compensation from City, pay all bills for services performed and furnished by Sub-Consultants, in connection with the Project and the performance of the work, and shall provide City with evidence of such payment. Consultant's failure to make payments within such time shall constitute a material breach of this Agreement, unless Consultant is able to demonstrate to City bona

fide disputes associated with the unpaid sub-consultant and its services. Consultant shall include a provision in each of its sub-agreements imposing the same payment obligations on the sub-consultants as are applicable to Consultant hereunder, and if City so requests, shall provide copies of such payments by Consultant to City. If Consultant has failed to make payment promptly to the sub-consultant for the services for which City has made payment to Consultant, City shall be entitled to withhold payment to Consultant to the extent necessary to protect City.

3.5 Consultant warrants title to all services covered by an Application for Payment shall pass to City no later than the time of payment. Consultant further warrants, upon submittal of an Application for Compensation, all services for which Applications for Compensation have been previously 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.**

3.6 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, to include Sub-Consultants and any other persons or entities for which Consultant is legally responsible, is directly responsible, because of:

3.6.1 Delays in the performance of Consultant's work;

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

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

3.6.4 Reasonable evidence Consultant's work cannot be completed for the amount unpaid under this Agreement;

3.6.5 Damage to City; or

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

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

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

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

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

3.8 The final payment due hereunder will not be paid until all designs, plans, specifications, exhibits, reports, data, and documents have been submitted, received, accepted and approved by the City.

3.9 The final payment due hereunder will not be paid until all designs, plans, specifications, exhibits, reports, data, and documents have been submitted, received, accepted and approved by the City.

ARTICLE IV. SCOPE OF SERVICES

4.1 Consultant shall provide services in connection with the Project, including all associated services required for Consultant to provide such services pursuant to this Agreement, along with all services which normally would be required by law or common due diligent practice as more specifically outlined in **Exhibit A,** Scope of Services. The services to be provided by Consultant hereunder shall be performed in phases. Each phase of work shall have a distinct scope of services and not to exceed amount which shall be negotiated by the Parties. Under no circumstances shall the total cumulative cost of the various phases of work exceed the not to exceed mount set out in Article II Compensation, as such amount may be amended in accordance with this Agreement. Individual phases of work and associated compensation limits shall be incorporated into this Agreement by an amendment executed by both Parties. The Director shall have the authority to execute such amendments adding or modifying the phases of work without further Council action, so long as, the amendment does not cause the total compensation amount set out in Article II, as such amount may be amended in accordance with the terms of this Agreement, to be exceeded.

4.2 Consultant shall comply with all laws, rules and regulations to include the standards of FAA's Advisory Circulars, FAA orders and other regulatory guidance throughout the duration of the subject Project and this Agreement.

4.3 All services and work performed under this Agreement must be conducted in full conformance with all reasonable professional skill and care. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or subconsultants of Consultant.

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

4.5 Consultant shall not commence services authorized under this Agreement until being thoroughly briefed on the scope of the project and being notified in writing to proceed.

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

4.7 Acceptance of any deliverables by City shall not constitute nor be deemed a release of the responsibility and liability of Consultant, its employees, associates, agents or subconsultants for the accuracy and competency of their deliverables or associated services; nor shall such acceptance be deemed an assumption of responsibility or liability by City for any defect in the deliverables prepared by said Consultant, its employees, subconsultants, and agents.

4.8 Consultant shall make, without expense to City, such revisions to the drawings, reports or other documents, as may be required to meet the needs of City and which are within its Scope of Services. After the approval of reports or other documents by City, any revisions, additions or other modifications made at City's request, which involve extra services and expenses incurred by Consultant, only shall be requested through an additional Amendment for services.

4.9 Revisions to the drawings, reports, or other documents, including additional submittals, that result from the Consultant not complying with the requirements of the standards set out in the FAA's Advisory Circulars, FAA orders or other such regulatory guides or not adhering to a level of quality consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances shall be made at no additional expense to the City.

ARTICLE V. TIME AND PERIOD OF SERVICE

5.1 The term of this Agreement shall commence upon its approval by the San Antonio City Council and its execution by both Parties.

5.2 Time is of the essence for this Agreement. Consultant shall perform and complete its obligations for the services under this Agreement in a prompt and continuous manner, so as to not delay the Project. City shall perform its obligations of review and approval in a prompt and continuous manner so as to not delay the Project.

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

5.4 This Agreement shall remain in force for a period which may reasonably be required for the design phase, award of the construction contract and the completion of the Project, including any extra work and any required extensions thereto, unless terminated, as provided for elsewhere in this Agreement.

ARTICLE VI. COORDINATION WITH CITY

6.1 Consultant shall hold periodic conferences with City through the end of the Project. The Project shall have the full benefit of City's experience and knowledge of existing needs and facilities and be consistent with City's current policies and standards. To assist Consultant in this coordination, City shall make available, for Consultant's use in planning and designing the Project, all existing plans, maps, statistics, computations and other data in City's possession, relative to 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 to City upon termination or the completion of the Project or if instructed to do so by the Director.

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

6.3 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 affecting the scope or timing of Consultant's services.

6.4 Unless otherwise required by City, City shall furnish approvals and permits from all governmental authorities having jurisdiction over the Project and other such approvals and consents from others, as may be necessary, for the completion of the Project. 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 the Agreement, 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.

ARTICLE VII. AMENDMENTS

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

ARTICLE VIII. OWNERSHIP OF DOCUMENTS

8.1 All documents, including. but not limited to, drawings, estimates, specifications and all other documents and data (hereinafter "*Documents*"), previously owned by Consultant, shall remain the property of Consultant as instruments of service. However, it is to be understood City shall have free access to all such information and hold the right to make and retain copies of drawings, estimates, specifications and all other documents and data. Any reuse, without specific written verification or adaptation by Consultant, shall be at City's sole risk and without liability or legal exposure to Consultant.

8.2 Any and all Documents in whatever form and character created by Consultant pursuant to the provisions of this Agreement and pertinent to the services rendered hereunder shall be the exclusive property of City; and such Documents shall not be the subject of any copyright or proprietary claim by Consultant. Consultant understands and acknowledges that as the exclusive owner of any and all Documents, City has the right to use all Documents as City desires, without restriction and that City will be providing reports developed pursuant to this Agreement to the FAA. Any reuse outside of the scope of this Agreement without specific written verification or adaptation by Consultant will be at City's sole risk and without liability or legal exposure to Consultant

8.3 All of the Consultant's documentary work product reports and correspondence to City under this Agreement shall be the property of the City and, upon completion of this Agreement; such documentary work product shall be promptly delivered to City in a reasonably organized form, without restriction on its future use by City. The above notwithstanding, the Consultant shall retain all rights held prior to the effective date of this Agreement in any standard drawing details, designs, specifications, databases, computer

software and any other proprietary information it may provide pursuant to this Agreement, whether or not such proprietary information was modified during the course of providing the services hereunder. The Consultant may retain for its files any copies of documents it chooses to retain and may use Consultant's work product as it deems fit. Any materially significant work product lost or destroyed by the Consultant shall be replaced or reproduced at the Consultant's non-reimbursable, sole cost.

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

8.5 Consultant hereby assigns all statutory and common law copyrights to any copyrightable work that in part or in whole was produced from this Agreement to the City, including all equitable rights. No reports, maps, documents or other copyrightable works produced in whole or in part by this Agreement shall be subject of an application for copyright by the Consultant. All reports, maps, project logos, drawings or other copyrightable work produced under this Agreement shall become the property of the City (excluding any prior owned instrument of services, unless otherwise specified herein). **THE CONSULTANT SHALL, AT ITS EXPENSE, INDEMNIFY CITY AND DEFEND ALL SUITS OR PROCEEDINGS INSTITUTED AGAINST THE CITY AND PAY ANY AWARD OF DAMAGES OR LOSS RESULTING FROM AN INJUNCTION, AGAINST THE CITY, INSOFAR AS THE SAME ARE BASED ON ANY CLAIM THAT WORK PROVIDED UNDER THIS AGREEMENT CONSTITUTE AN INFRINGEMENT OF ANY PATENT, TRADE SECRET, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS.**

8.6 Upon request by the City, all documents and information, in whatever form, given to, prepared or assembled by the Consultant in connection with its performance of its duties under this Agreement shall become the sole property of the City and shall be delivered at no cost to the City without restriction on future use. The City shall have free and immediate access to all such information at all times during the term of this Agreement with the right to make and retain copies documents, notes and data, whether or not the Project has been completed. Prior to surrender of the documents and information, Consultant may make copies of any and all documents for its files, at its sole cost and expense.

8.7 Consultant agrees to maintain all books, records and reports required under this Agreement for a period of not less than four (4) years after final payment is made and all pending matters are closed. In addition, the Consultant shall maintain an acceptable cost accounting system during the term of this Agreement. The Consultant agrees to provide the City, 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 Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions.

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

8.9 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

ARTICLE IX. TERMINATION AND/OR SUSPENSION OF SERVICES

9.1 Right of Either Party to Terminate for Default

9.1.1 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 9**.

9.1.2 The Party not in default must issue a written and signed Notice of Termination, citing this **Article 9.1.2**, 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 said ten-day 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.

9.2 Right of City to Terminate

City reserves the right to terminate this Agreement, for reasons other than substantial failure by Consultant to perform, by issuing a signed Notice of Termination, citing this **Article 9.2**, which shall take effect on the twentieth (20^{th}) calendar day following receipt of said notice or upon the scheduled completion date of the performance phase in which Consultant then currently is working, whichever effective termination date occurs first. Consultant shall not, however, be entitled to lost or anticipated profit on unperformed services, should City choose to exercise its option to terminate, nor shall Consultant be entitled to

compensation for any unnecessary or unapproved work, performed during time between the issuance of the City's notice of termination and the actual termination date.

9.3 **Right of City to Suspend Giving Rise to Right of Consultant to Terminate**

9.3.1 City reserves the right to suspend this Agreement at any time with or without cause for the convenience of City by issuing a written and signed notice of suspension, citing this **Article 9.3.1**, which shall outline the reasons for the suspension and the expected duration of the suspension, but such expected duration shall, in no way, guarantee what the total number of calendar days of suspension shall occur. Such suspension shall take effect immediately upon receipt of said notice of suspension by the Consultant.

9.3.2 Consultant hereby is given the right to terminate this Agreement in the event such suspension extends for a period in excess of one hundred twenty (120) calendar days. Consultant may exercise this right to terminate by issuing a signed, written Notice of Termination, citing this **Article 9.3.2**, to City after the expiration of one hundred twenty (120) calendar days from the effective date of the suspension. Termination, pursuant to this **Article 9.3.2**, shall become effective immediately upon receipt of said written notice by City.

9.4 **Procedures Consultant shall follow upon Receipt of Notice of Termination**

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

9.4.2 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 final payment. These documents shall be subject to the restrictions and conditions set forth in this **Article 9.**

9.4.3 Upon the above conditions being met, absent any reason why City may be compelled to withhold fees, City shall promptly pay Consultant.

9.4.4 City, as a public entity, has a duty to document the expenditure of public funds. Consultant acknowledges this duty imposed upon City. Consultant further acknowledges the failure of Consultant to comply with the submittal of the statement and documents, as required above, shall constitute a waiver by Consultant of any and all rights or claims to payment for services performed under this Agreement by Consultant.

9.4.5 Failure of Consultant to comply with the submittal of the statement and documents, as required above, shall constitute a waiver by Consultant of any and all rights or claims to collect monies Consultant otherwise may be entitled to for services performed under this Agreement.

9.4.6 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.

9.5 **Procedures Consultant to Follow upon Receipt of Notice of Suspension**

9.5.1 Upon receipt of written notice of suspension, which date shall also be the effective date of the suspension, Consultant shall, unless the notice of suspension otherwise directs, cease all services being performed by Consultant, or any of its subcontractors, pursuant to this Agreement and shall promptly proceed to suspend all existing orders and contracts, insofar as such orders and contracts are chargeable to this Agreement.

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

9.5.3 Copies of all completed or partially completed designs, plans and specifications, 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 Consultant may exercise the right to terminate.

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

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

9.5.6 Upon the above conditions being met, absent any reason why City may be compelled to withhold fees, City promptly shall pay 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 any previous payments of the fee.

9.5.7 City, as a public entity, has a duty to document the expenditure of public funds.

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

ARTICLE X. CONSULTANT'S WARRANTY

Consultant warrants the services required under this Agreement shall be performed with the same degree of professional skill and care typically exercised by similar consulting professionals performing similar services 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 a 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 10**.

ARTICLE XI. NON-DISCRIMINATION POLICY

Non-Discrimination. As a Party to a contract with City, Consultant understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein. Consultant represents and warrants it has complied with City's *Non-Discrimination Policy* throughout the course of this solicitation and Agreement award process and shall continue to comply with said *Non-Discrimination Policy*. As part of said compliance, Consultant shall adhere to City's *Non-Discrimination Policy* in the solicitation, selection, hiring or commercial treatment of Sub-Consultants, vendors, suppliers or commercial customers, nor shall Consultant retaliate against any person for reporting instances of such discrimination. Consultant shall provide equal opportunity for Sub-Consultants, vendors and suppliers to participate in all of its public sector and private sector sub-consulting and supply opportunities, provided nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination which have

occurred or are occurring in City's Relevant Marketplace. Consultant acknowledges it understands and agrees a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Consultant from participating in City contracts, or other sanctions. This **Article 11** is not enforceable by or for the benefit of, nor creates any obligation to, any third party. Consultant's certification of its compliance with City's *Non-Discrimination Policy*, as submitted to City pursuant to the solicitation for this Agreement, is hereby incorporated into the material terms of this Agreement. Consultant shall incorporate this clause into each of its Sub-Consultant and supplier agreements entered into, pursuant to City agreements/contracts.

ARTICLE XII. ASSIGNMENT OR TRANSFER OF INTEREST

12.1 Consultant shall not sell, assign, pledge, convey or transfer Consultant's interest in this Agreement without the prior written consent of City.

12.2 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 or duties to or under this Agreement, City may, at its option, terminate this Agreement as provided herein, and all rights, titles and interest of Consultant shall thereupon cease and terminate, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

12.3 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 XIII. INSURANCE REQUIREMENTS

13.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Aviation Department, which shall be clearly labeled "*Executive Program Manager*" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized bythat insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binderas proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier andlist 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 dutyto 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.

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

13.3 A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor'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 ofno less than A- (VII), in the following types and for an amount not less than the amount listed below:

INSURANCE TYPE	***LIMITS***
1. Workers' Compensation 2. Employers' Liability	Statutory $1,000,000/$1,000,000/$1,000,000
3. Commercial General Liability Insurance toinclude coverage for the following: a) Premises/Operations b) Products/Completed Operations c) Personal/Advertising Injury d) Contractual Liability e) Independent Contractors	For Bodily Injury and Property Damage $1,000,000 per occurrence; $2,000,000 general aggregate, or its equivalent inUmbrella or Excess Liability Coverage.
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence.If AOA access required $5,000,000 CSL
5. Professional Liability(Claims-made Coverage)	$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in theprofessional service.
7. Umbrella or Excess Liability Coverage	$2,000,000 per occurrence combined limit BodilyInjury (including death) and Property Damage. (per occurrence limit depends on scope of operation)

13.4 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. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

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

13.5 Contractor 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 ofSan Antonio where the City is an additional insured shown on the policy;

- Workers' compensation, employers' liability, general liability and automobile liability policieswill 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.

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

13.7 In addition to any other remedies the City may have upon Contractor'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 Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

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

13.9 It is agreed that Contractor'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.

13.10 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

ARTICLE XIV. INDEMNIFICATION

14.1 **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 CAUSED BY OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT OR ITS AGENT, CONSULTANT UNDER CONTRACT OR ANOTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL WHILE IN THE EXERCISE OF RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. THIS INDEMNIFICATION SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM INDEMNITEE'S NEGLIGENCE OR WILLFUL MISCONDUCT IN INSTANCES WHERE THE NEGLIGENCE OR WILLFUL MISCONDUCT CAUSES PERSONAL INJURY, BODILY INJURY, DEATH OR PROPERTY DAMAGE. IF A COURT OF COMPETENT JURISDICTION FINDS CONSULTANT AND CITY JOINTLY LIABLE, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

14.2 The provisions of this article 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.

14.3 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.

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

ARTICLE XV. CLAIMS AND DISPUTES

15.1 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 Consultant is not a corporation, then an official of the company authorized to bind Consultant by his/her signature) of Consultant, verifying the truth and accuracy of the Claim. The responsibility to substantiate Claims shall rest with the party making the Claim.

15.2 **Time Limit on Claims**

Claims by Consultant must be initiated in writing to City within twenty-one (21) calendar days after the occurrence of the event giving rise to such Claim.

15.3 **Continuing Contract Performance**

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

15.4 **Claims for Additional Time**

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

15.5 **Claims for Consequential Damages**

Except as otherwise provided in this Agreement, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination

following such breach), the following standards shall apply both to claims by Consultant and to claims by City:

15.5.1 No consequential damages shall be allowed; and

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

15.5.3 No profit shall be allowed on any damage claim.

15.6 **No Waiver of Governmental Immunity**

NOTHING IN THIS ARTICLE 15 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.

15.7 **Alternative Dispute Resolution**

15.7.1 **Continuation of Services Pending Dispute Resolution**

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

15.7.2 **Requirement for Senior Level Negotiations**

Before invoking mediation or any other alternative dispute process set forth herein, the Parties 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, then the Parties shall proceed with the 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.

15.7.3 **Mediation**

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

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

c. 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 15** shall be deemed to have occurred.

d. 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 shall be deemed consent to suit.

15.8 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 XVI. SEVERABILITY

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

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

17.2 Consultant acknowledges it is informed 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 City-owned utilities. Consultant's officer or employee has a "prohibited financial

interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

17.2.1 A City officer or employee;

17.2.2 A City officer or employee's parent, child or spouse;

17.2.3 A business entity in which 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

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

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

ARTICLE XIII. TEXAS GOVERNMENT CODE §2270.002

18.1 **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:

18.1.1 does not boycott Israel; and
18.1.2 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.

By executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of

the contract. City's hereby relies on Company's verification. If affirmation is found to be false, City may terminate the contract for material breach.

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

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

ARTICLE XIX. CONFLICTS OF INTEREST DISCLOSURE

Consultant must disclose if it is associated in any manner with a City officer or employee in a business venture or business dealings. Failure to do so shall constitute a violation of City's Ethics Code. To be "associated" in a business venture or business dealings includes: a) being in a partnership or joint venture with a City officer or employee; b) having a contract with a City officer or employee; c) being joint owners of a business with a City officer or employee; d) owning at least ten percent (10%) of the stock in a corporation in which a City officer or employee also owns at least ten percent (10%); or e) having an established business relationship with a City Officer or employee as a client or customer.

ARTICLE XX. STANDARD OF CARE/LICENSING

20.1 Services provided by Consultant under this Agreement shall be performed in a manner consistent with the degree of care and skill ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license.

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

ARTICLE XXI. RIGHT OF REVIEW AND AUDIT

21.1 Consultant grants City and its designees the right to audit, examine or inspect, at City's election, all of Consultant's Records relating to the performance of Work under this Agreement, during the term of the Agreement and any retention period herein. City's audit, examination or inspection of Consultant's Records may be performed by a City designee, which may include its internal auditors, or an outside representative engaged by City. Consultant agrees to retain Consultant's Records for a minimum of four (4) years

following termination of the Agreement, unless there is an ongoing dispute under the contract; then, such retention period shall extend until final resolution of the dispute.

21.2 "Consultant's Records" shall include any and all information, materials and data of every kind and character generated as a result of the Work under any Task Order and 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 sole judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Agreement Documents.

21.3 City agrees that it will exercise its right to audit, examine or inspect Consultant's Records only during regular business hours. Consultant agrees to allow City and City's designee access to all of Consultant's Records, Consultant's facilities and the 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 workspace necessary to City or its designees to conduct such audits, inspections or examinations.

21.4 Consultant shall include this audit clause in any Sub-Consultant and Subcontractor, Supplier or vendor contract.

XXII. AIRPORT SECURITY

22.1 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.

22.2 Consultant must comply with, and require compliance by its Subcontractors, with all present and future laws, rules, regulations, or ordinances promulgated by the City, the

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

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

22.4 In connection with the implementation of its security program, Consultant may receive, gain access to or otherwise obtain certain knowledge and information related to the City's overall Airport security program. Consultant acknowledges that all such knowledge and information is of a highly confidential nature. Consultant covenants that no person will be permitted to gain access to such knowledge and information, unless the person has been approved by the City or the Aviation Director in advance in writing.

ARTICLE XXIII. ENTIRE AGREEMENT

23.1 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.

23.2 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 XXIV. VENUE

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

ARTICLE XXV. NOTICES

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

If intended for City, to:

City of San Antonio
Attn.: Director of Airports
9800 Airport Blvd., Mezzanine
San Antonio, TX 78216

If intended for Consultant, to:

Anser Advisory Consulting, LLC
Attn: Adam Shaw, Chief Delivery Officer,
280 Wekiva Springs Road,
Longwood, FL 32779

ARTICLE XXVI. INDEPENDENT CONTRACTOR

27.1 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.

27.2 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 XXVII. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

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

28.2 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.

28.3 A DBE contract specific goal has been established on this RFQ. The applicable DBE goal for Executive Program Manager is 14% of the total amount of the contract.

28.4 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).

28.5 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.

28.6 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.

28.7 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". Consultants are required to satisfy applicable DBE program requirements prior to the award of the Aviation Department contract. Consultants must submit a DBE Good-Faith Effort Plan (DBE Form 1) or they will be considered non-responsive.

28.8 The City and Aviation Department encourage the Consultant/Contractor to utilize currently approved and certified DBE firms on the contract for DBE goal achievement and credit purposes. The Aviation Department utilizes the services of the South-Central Texas Regional Certification Agency (SCTRCA) to certify DBE eligibility status. Please contact the SCTRCA at 3201 Cherry Ridge St., Building B, Suite-210, San Antonio, TX 78230 (210- 227-4722) for information regarding DBE trade areas or to apply for DBE status. The Aviation Department accepts DBE certification from any one of the six (6) certifying agencies under the Texas Unified Certification Program (TUCP) – Texas Department of Transportation (TxDOT), North Central Texas Regional Certification Agency (NCTRCA), South Central Texas Regional Certification Agency (SCTRCA), City of Houston, City of Austin, and the Corpus Christi Regional Transportation Authority.

28.9 The following DBE-related contractual clause shall be applicable and is specifically included as part of the contract. Consultants/Contractors shall also include this clause in each subcontract the prime contractor signs with a subcontractor.

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

28.10 Additionally, Contractors agree to the following prompt payment and retainage payment clause:

"The prime contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 10 days after the prime contractor has received a partial payment. The City must ensure prompt and full payment of retainage from the prime Contractor to the subcontractor within 10 days after the subcontractor'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 subcontractor covered by that acceptance is deemed to be satisfactorily completed."

28.11 All changes to the list of subcontractors submitted with the bid and approved by the City or Aviation Department, including major vendors, shall be submitted for review and approval by the 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 subcontractors on airport projects. Contractors shall make a good-faith effort to replace DBE subcontractors unable to perform on the contract with another DBE

28.12 Failure or refusal by a Consultant or Contractor to comply with the DBE provisions herein or any applicable provisions of the DBE Program, either during the solicitation 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. Additional compliance and enforcement mechanisms are further described in E**xhibit E.**

28.13 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. Anyamendment affecting the scope of service or value of the contract should be documented on aform acceptable to the City.

28.14 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, bothDBE and non-DBE.

ARTICLE XXVIII. 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 XXIX. 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 XXX. NON-WAIVER OF PERFORMANCE

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

ARTICLE XXXI. FAMILIARITY WITH LAW AND CONTRACT TERMS

Consultant represents that, prior to signing this Agreement; Consultant has become thoroughly acquainted with all matters relating to the performance of this Agreement, all applicable laws, regulations and FAA Advisory Circulars and guidelines, and all of the terms and conditions of this Agreement and will comply therewith.

ARTICLE XXXII. ATTORNEY FEES

The Parties hereto expressly agree neither Party shall be responsible for payment of attorney's fees pursuant to Texas Civil Practice and Remedies Code Chapter 38, Texas Local Government Code §271.153, common law or any other provision for payment of attorney's fees. Both Parties hereto expressly waive any claim to attorney's fees, should litigation result from any dispute in this Agreement.

ARTICLE XXXIII. 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.

Signatures to follow

Executed by City and effective on this _____ day of _____, 2022.

CITY OF SAN ANTONIO

By:_____
(for) Erik Walsh
City Manager

ANSER ADVISORY CONSULTING LLC

DocuSigned by:
By:_____
3C773E443544466...
Adam Shaw
Chief Delivery Officer

Federal Tax ID#: 54-2078311

APPROVED AS TO FORM:

By:_____
(for) City Attorney

EXHIBIT A

SCOPE OF SERVICES

SAN ANTONIO AIRPORT EXECUTIVE PROGRAM MANAGER

Phase 1 Scope:

Consultant shall assist the City and SAAS in developing an implementation plan for the Terminal Development Program (TDP). This Phase includes, but is not limited to, Consultant onboarding activities as well as the developing the work plan (how and what) for the Consultant and TDP and how Consultant will interact and be a part of the work plan. Consultant shall coordinate with the Advanced Planning Team, get up to speed with ongoing initiatives for management, staffing, and oversight of the TDP, and will assist in finalizing the plan. Work will include support for ongoing or new procurements related to the TDP, development of a logistics plan for Program team co-location, reviewing and further development of the Program master schedule to include defining the remaining professional support procurements, development and definition of Program organizational roles and responsibilities, support for developing and ongoing Program governance initiatives and resource requirements , and reviewing existing requirements and processes within SAAS and with shared service providers to identify opportunities to enhance for efficiency in delivery of the TDP.

PHASE 1 includes the following:

- **ACTIVITY A: INITIATION AND PROCESS ANALYSIS**
- **ACTIVITY B: PROGRAM DELIVERY FRAMEWORK**
- **ACTIVITY C: PROGRAM MANAGEMENT OVERSIGHT**

ACTIVITY A: INITIATION AND PROCESS ANALYSIS

1. **On-boarding and Start-up Procedures**
    - Team member security badging and training as required.
    - Team member access and familiarization with existing IT and financial systems as required.
    - Team member introductions, familiarization, and alignment of goals, expectations, and performance requirements with City and SAAS management, SAAS staff and team members, City shared service teams, key stakeholders, Advanced Planning Team, and GEC's/other service providers as appropriate.
        - Participate in a 1- or 2-day offsite kickoff retreat to meet, familiarize, and develop roles and responsibilities between parties integral to TDP success.
        - Develop go-teams with SAT staff and team members with requisite knowledge and experience as well as key process input and management responsibilities.

- Discuss and train on City and SAAS invoicing procedure/processes and other City and SAAS business policies required to successfully perform the work and fulfill business related requirements.
- Assist in developing content for and participate in a series of meetings with internal Aviation team members, City of San Antonio staff and management as well as external entities to provide overview of the TDP and Consultant role within the program.
    - Define Consultant's purpose and function as EPM
    - Consultant's role as extension of SAT Development team
- Additional support for contract and program startup as requested.

ACTIVITY A: INITIATION AND PROCESS ANALYSIS (Con't)

2. Organizational Capacity and Readiness

- Assess impacts of the Capital program on the City and SAAS organization as a whole and on each division within the Aviation Department in terms of key tasks that will be required for successful completion of the TDP.
- Assist SAT management in finalizing a plan for onboarding identified support resources needed to properly staff the TDP to include backup strategies to gain required resources in a tight labor market.
- Support the ongoing assessment of resources needed to fulfill both immediate requirements and anticipated future needs based on a results-oriented organization.
- Assist in the development of an implementation plan that will define "how" the TDP will be delivered,
- Provide additional support as requested.

3. Governance and Decision-Making Framework

- Assist with ongoing development of a governance plan for the TDP including recommendations on design review committees, decision-making and escalation roles, processes and procedures and monitoring/reporting requirements for both SAAS and City.
    - Participate on the established Executive Steering Committee
    - Develop required forms/templates, as requested
- Assist SAAS in finalizing the preferred professional service team organization and procurement/acquisition plan of required entities for the TDP as well as clearly defining roles and responsibilities of each entity.
    - The EPM will work with SAAS to define the reporting structure and reporting requirements of all professional service team members supporting the TDP, including but not limited to, the Master Architect, Advanced Planning Team, and PM/CM.
- Begin developing protocols for coordinating between the TDP and the ongoing CIP [and its Project Management Office (PMO), PM/CM, Master Architect, General Engineering Consultants (GECs), and management team] projects and making programmatic decisions.
- Coordination with Airfield Engineering Design Services, as requested,
- Provide additional support for Governance and Decision-Making Framework as requested.

4. **Policies and Procedures**
    - Assist ongoing efforts to review, refine and recommend policies, procedures, and methodologies for managing the TDP.
    - Provide diagnostic process reviews, as requested by SAAS, to test the adequacy of existing processes to scale up during the TDP.
    - Provide recommendations to enhance current processes while implementing industry best practices.
    - Evaluate, develop, and implement financial and operational controls for managing the TDP in partnership with the City's Finance Department and SAAS.
    - Assess internal and external lines and methods of communication; begin development of new or improved communication protocols to ensure consistent and effective internal and external lines and methods of communication,
        - External communication is expected to include, but not be limited to, the Federal Aviation Administration (FAA), Transportation Security Administration (TSA), Texas Department of Transportation (TxDOT), other City departments and City shared services providers, airlines, and other stakeholders.
    - Provide additional support for policies and procedures as requested.

ACTIVITY B: PROGRAM DELIVERY FRAMEWORK

1. **Project Delivery Methods for the TDP Components**
    - Evaluate project delivery methods available to the Department and the associated risks and benefits of each.
    - Assess the pros and cons, risks, and benefits, and needs and priority of delivering the various component projects that comprise the TDP with available delivery methods to successfully meet the budget and schedule requirements and make recommendations accordingly.
    - Assist with solicitation and selection processes as needed,
    - Provide additional support for project delivery as requested.

2. **Systems and Implementation**
    - Review existing City capital program management tools and systems to support and oversee capital projects, identify deficiencies, and make recommendations for improvements to increase efficiency and effectiveness.
    - Review City financial and accounting systems and their ability to capture costs consistent with requirements of bond indentures, grants, agreements with airlines and rental car companies, and such.
    - Working in concert with City and Aviation finance teams, identify requirements, and make recommendations for TDP coordinated management.
    - Support the Program Management/ Construction Management (PM/CM) team in the development of recommended performance metrics.
    - Manage the development of a plan of execution for the TDP in partnership with the City, SAAS and the selected PM/CM,
    - Provide additional systems and implementation support as requested.

ACTIVITY C: PROGRAM MANAGEMENT OVERSIGHT

1. **Program Management Support**
   - Monitor the progress of the Advanced Planning Team and provide support and recommendations to SAAS as needed.
   - Assist SAAS with development of a logistics plan for Program team co-location.
   - Develop and manage a detailed list of action items to ensure necessary actions are identified, prioritized, tracked, and completed in a timely manner.
   - Coordinate and assist with the on-boarding of the PM/CM team once selected.
   - Coordinate and assist with the on-boarding of the Master Architect once selected.
   - Coordinate and assist with the on-boarding of other teams, as requested by SAAS,
   - Provide support for PM/CM contract development and invoice review/management,
   - Provide support for development of contract(s) as requested,
   - Provide Independent Fee Estimates (IFE) and independent check estimates as requested,
   - Develop and track detailed master program schedule,
   - Additional program management support activities as requested.

2. **Stakeholder Engagement**
   - Develop/support with the production of presentation materials for public meetings/briefings, as requested
   - Support presentations or present on behalf of SAAS to public, government officials, and/or other entities, as directed by SAAS,
   - Additional support activities for stakeholder engagement as requested.

3. **Project Management**
   - Provide project management support for enabling projects as requested,
   - Additional project management support as requested.
4. **Phase 2 Development**
   - Develop scope required for the EPM to assist and support the execution of the TDP as extension of staff/integrated team member through the design and construction phases.

ACTIVITY D: ADDITIONAL SERVICES

1. **Additional Services**
   - This task serves to allow the City to direct the Consultant to undertake additional needed services that are not foreseen and defined herein. Additional services could be required as the program evolves and requirements are defined, and acquisition of other service providers identifies or necessitates services. Additionally, City may require additional technical assistance, extension of staff support, and/or support for enabling projects and issues that could affect the Program in advance of final delivery plans and onboarding of additional support. Also, not all services and requirements needed to either support

or that will be driven by stakeholders have been identified or defined in detail at this time. City direction will be required for each subtask to be undertaken under this Task. Written communication and City approval will be required prior to the start of any contingency work; documentation will include nature of services, associated effort level and cost (including travel), and duration of services.

Phase 1 shall commence immediately following contract execution and extend through the completion of the Advanced Planning team's activities (Corgan) with an expected completion date of April 30, 2023.

EXHIBIT B

FEE SCHEDULE

Labor Category	# Years of Experience	Approved Loaded Rates Min	Max
MANAGEMENT			
Project Executive (Principal)	25+ years	$ 250.00	$ 350.00
Sr Program Manager II	20+ years	$ 245.00	$ 300.00
Sr Program Manager I	15-20 years	$ 210.00	$ 250.00
Sr Project Manager	15+ years	$ 195.00	$ 250.00
Program Manager	10+ years	$ 154.00	$ 200.00
Project Management			
Project Manager I	5-15 years	$ 129.00	$ 165.00
Project Manager II	5+ years	$ 160.00	$ 200.00
Project Manager III	15+ years	$ 244.00	$ 256.00
Project Specialist I	0-5 Years	$ 106.00	$ 145.00
Project Specialist II	5+ years	$ 120.00	$ 160.00
Project Specialist III	10+ years	$ 145.00	$ 175.00
Project Specialist IV	10+ years	$ 165.00	$ 195.00
Program Systems Specialist	10+ years	$ 192.00	$ 210.00
Architecture			
Architect IV	8+ Years	$ 153.00	$ 162.00
Architect V	14+ years	$ 159.00	$ 190.00
Mechanical, Electrical, Plumbing			

Engineer IV	8+ Years	$ 152.00	$ 162.00
Engineer V	14+ years	$ 160.00	$ 190.00
GENERAL, SPECIALTY, & SUPPORT			
Sr Advisor	20+ years	$ 294.00	$ 370.00
Cost Estimator I	0-3+ years	$ 67.00	$ 75.00
Cost Estimator II	3+ years	$ 95.00	$ 120.00
Cost Estimator III	3-5 Years	$ 115.00	$ 130.00
Cost Estimator IV	5 + years	$ 150.00	$ 170.00
Passenger Boarding Bridge Engineer	5-15 years	$ 200.00	$ 235.00
Administration II	5+ years	$ 80.00	$ 110.00
Construction			
Project Coordinator I	0-4 years	$ 82.00	$ 120.00
Field Representative II	5-8 years	$ 160.00	$ 195.00
Field Representative III	8+ years	$ 180.00	$ 210.00
Document Controls Specialist I	1-3 year	$ 82.00	$ 120.00
Document Controls specialist III	7+ Years	$ 125.00	$ 140.00
Contract Administrator I	0-5 years	$ 80.00	$ 135.00

Actual labor rates for individuals within a particular labor category shall be negotiated per phase of work based on the type of work to be performed and the level of expertise needed to perform the work. Labor categories and rates for any individual performing services hereunder must be negotiated and approved by City prior to any individual performing any services under this Agreement. In no event shall Consultant charge a rate for a particular labor category that exceeds the maximum labor rate set out for that labor category above. A list of negotiated and approved labor rates shall be kept on file by City.

Should the Consultant need to replace key personnel, Consultant shall follow Section 4.6 of the Agreement. Consultant's key personnel shall not be replaced without the City's prior written consent, which shall not be unreasonably withheld.

Additions or deletions to the approved classification of labor categories and labor rates require written notification to and approval by Director or his designee. The addition of any new labor category must include category title and labor rate.

At the request of Consultant, labor rates may be adjusted every second year beginning in calendar year 2024 based on the overall percentage increase reflected in the Consumer Price Index (CPI) released each January by the Bureau of Labor Statistics. In those years in which rates are eligible for adjustment (2024, 2026 and 2028), the rate increase shall be limited to the CPI percentage increase for that year and shall not to be compounded to include increases for prior years. Any rate increase resulting from a percentage increase in CPI shall be effective and be submitted by Consultant on invoices in the month following Consultant's request and City's written approval of such rate increase. No adjustments may be made for a decrease in the CPI.

EXHIBIT C

FEDERAL CONTRACT PROVISIONS

AIP FUNDED 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 the Acts, the Regulations and directives issued pursuant thereto.

1. 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.

2. 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.

3. 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.

4. 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).

5. 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.

6. 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.

7. 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*).

8. 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.

9. 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.

10. 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.

11. 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:

- Has been convicted of a Federal felony within the last 24 months; or
- 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:

3) 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.

4) 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.

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

This contract 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.

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.

13. 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.

14. 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.

15. 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.

16. 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:

a) completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;

5) 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;

6) reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and

7) 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.

17. 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.

18. 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.

19. 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.

20. 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.

EXHIBIT D

TRAVEL & EXPENSE POLICY

Consultant
And
Contractor
Travel, Living & Relocation Expense Policy

SAN ANTONIO
AIRPORT SYSTEM

City of San Antonio

As of 06/02/2008

Reimbursable Expense Policy
Table of Contents

1. GENERAL

1.1 Introduction

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

1.2 Scope

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

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

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

1.3 Policy

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

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

1.4 Definitions

The following definitions apply to this Policy:

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

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

Official Travel Time – For the purposes of computing per diem allowances, official travel starts at the day and time the Contractor employee leaves their home, office, or other authorized point and ends on the day and time the Contractor employee returns home, to the office, or other

authorized point. This definition is for computing per diem allowances only and may not be used for billing chargeable Contractor employee hours.

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

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

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

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

1.5 Reimbursements

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

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

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

Entertainment expenses, including alcohol, are not reimbursable.

1.6 Interrupted Itinerary

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

2. Transportation Expenses

2.1 Guideline

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

2.2 Air Travel

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

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

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

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

2.3 Travel by Private Automobile

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

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

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

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

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

2.4 Travel by Private Aircraft

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

Example:

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

2.5 Rental Cars

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

Reimbursement

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

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

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

Insurance

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

2.6 Ground Transportation

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

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

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

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

3. Living Expenses

3.1 Lodging

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

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

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

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

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

3.2 Non-Commercial Lodging

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

3.3 Meals Expense

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

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

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

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

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

3.4 Incidental Expenses

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

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

3.5 Daily Allowance and Lodging Allowance for Extended Travel

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

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

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

4. Relocation Assistance

4.1 Requirements

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

4.2 Limitations

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

Relocation Assistance Limitations

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

4.3 Allowable Expenses In General

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

4.4 Travel Expenses by Car

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

- Actual expenses for gas and oil for the personal vehicle, if accurate records are maintained for these expenses, **or**
- The standard mileage reimbursement rate for moving expenses, as the Internal Revenue Service regulations.

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

4.5 Household Goods and Personal Effect Expenses

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

4.6 Storage Expenses

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

4.7 Travel Expenses

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

4.8 Non-reimbursable Relocation Expenses

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

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

4.9 Relocation Assistance Recovery

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

5. Miscellaneous Expenses

5.1 General

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

- Use of computers, printers, faxing machines, and scanners.

- Postage and delivery.
- Office supplies specific to the project.

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

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

5.2 Telephone Calls

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

Personal phone calls are not reimbursable.

5.3 Local Business Meetings

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

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

6. Travel Expense Settlement

6.1 Reimbursement

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

- Name of Contractor being reimbursed.
- Name of Contractor employee that incurred the expenses.
- Dates covered in the expense report.
- Business reason for incurring expenses on behalf of City.

- Legible format and consistent with business standards.

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

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

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

6.2 Right to Audit

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

EXHIBIT E

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 workand 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 fulfillthe DBE requirements. A change shall not be made before the DBELO's approval is given as tothe 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 thecancellation 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 forrelief 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 allof the following penalties:

a. Withholding of ten percent of all future payments for the Eligible project until it isdetermined the Consultant/Contractor is in compliance.
b. Withholding of all future payments for the Eligible project until it is determined theConsultant/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 tocomply with the terms of the contract and associated default provisions.

The City will actively implement the enforcement actions detailed above.