

**PROFESSIONAL SERVICES AGREEMENT FOR
ON-CALL AIRPORT FIRE PROTECTION
CONSULTANT SERVICES**

This Agreement is made and entered into by and between the **City of San Antonio** (hereinafter referred to as “City”), a Texas Municipal Corporation acting by and through its City Manager, and **Andrew J. Bores** (hereinafter referred to as “Consultant”), both of which may be referred to herein collectively as the “Parties”.

IN CONSIDERATION of the mutual covenants, terms, conditions, privileges and obligations herein contained, City and Consultant do hereby agree as follows:

I. DEFINITIONS

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

- 1.1 “Airport” means the San Antonio Airport System.
- 1.2 “Director” means the director of the City’s Aviation Department.
- 1.3 “Project” means the performance of Fire Protection Consulting Services at the San Antonio International Airport and Stinson Municipal Airport.

II. PERIOD OF SERVICE

This Agreement shall commence upon execution by both parties, and continue in full force and effect for a period of three (3) years, unless earlier termination shall occur pursuant to any of the provisions hereof. At the sole discretion of the Director, the Agreement may be extended for two, one-year terms.

III. SCOPE OF SERVICES

- 3.1 Consultant, in consideration for the compensation herein provided, as outlined in Article V. Compensation, shall render the required professional services in connection with the Project, as more specifically outlined in Exhibit 1, Scope of Services/Program Overview.
- 3.2 Consultant shall complete all Project work within the Scope of Services in compliance with this Agreement, and agrees to staff the Project with sufficient necessary, qualified personnel to the Project, in order not to delay or disrupt the progress of the Project. Time is of the essence.
- 3.3 All work performed and reports and deliverables required pursuant to this Agreement shall be in compliance with all laws, rules, regulations and FAA Advisory Circulars.

3.4 All services and work performed under this Agreement must be conducted in full conformance with the Texas Occupations Code. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or subcontractors of Consultant.

IV. COORDINATION WITH THE CITY

4.1 Consultant shall hold periodic conferences with Director or his designee, so that the Project, as developed, shall have the full benefit of City's experience, and knowledge of existing needs and facilities, and be consistent with the City's current policies and standards.

4.2 The Director or his designee shall act on behalf of City with respect to the work performed under this Agreement, and 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.

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

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

V. COMPENSATION

5.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed One Hundred and Forty Two Thousand and 00/100 United States Dollars (\$142,000.00) for the primary term of this contract and any renewals thereto.

5.2 Pursuant to the hourly rates and charges shown in **Exhibit 3, Fee Schedule**, Consultant shall submit invoices to City, in a form acceptable to City, which City shall pay within 30 days of receipt and approval by Director. Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, Aviation Department, P.O. Box 839966, San Antonio, Texas 78283-3966.

5.3 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1

above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefor.

5.4 Final acceptance of work products and services require written approval by City. The approving official shall be Director. Payment will be made to Consultant following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

5.5 Consultant shall, within ten (10) days following receipt of compensation from City, pay all bills for services performed and furnished by others, in connection with the Project and the performance of the work, and shall, if requested, provide City with evidence of such payment. Consultant's failure to make payments within such time shall constitute a material breach of this Agreement, unless Consultant is able to demonstrate to City bona fide disputes associated with the unpaid 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.

5.6 Consultant warrants that title to all services covered by an invoice will pass to City no later than the time of payment. Consultant further warrants that, upon submittal of an invoice, all services for which invoices 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.**

VI. OWNERSHIP AND RETENTION OF DOCUMENTS

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

6.2 Upon completion or termination of the Project, or 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. Reuse of any materials by the City on any extensions of this project or any other project without the Consultant's written authorization shall be at the City's sole risk.

6.3 The 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.

6.4 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.

VII. TERMINATION OF AGREEMENT

7.1 Termination Without Cause.

7.1.1 This Agreement may be terminated by City without cause, prior to Director giving Consultant written Notice to Proceed, should Director, in his sole discretion, determine that it is not in City's best interest to proceed with this Agreement. Such notice shall be provided in accordance with the notice provisions contained in this Agreement, and shall be effective immediately upon delivery to the Consultant.

7.1.2 This Agreement may be terminated by the City at any time after issuance of the Director's Notice to Proceed, either for the City's convenience or because of Consultant's failure to fulfill the contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Agreement, whether completed or in progress, delivered to the City.

7.1.3 If the termination is for the convenience of the City, and following inspection and acceptance of Consultant's services properly performed prior to the effective date of termination an equitable adjustment in the contract price shall be made. 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.

- 7.1.4 If the termination is due to Consultant's failure to fulfill its obligations, the City may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Consultant shall be liable to the City for any additional cost occasioned to the City thereby.
- 7.1.5 If, after notice of termination for failure to fulfill contract obligations, it is determined that the Consultant had not so failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, an equitable adjustment in the contract price shall be made as provided in paragraph 7.1.3 of this clause.
- 7.1.6 The rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
- 7.1.7 This Agreement may be terminated by the Consultant, at any time after issuance of the Director's Notice to Proceed, upon thirty (30) calendar days written notice provided in accordance with the Notice provisions contained in this Agreement.

7.2 Defaults With Opportunity for Cure. Should Consultant fail, as determined by the Director, to satisfactorily perform the duties set out in Article III. Scope of Services; or comply with any covenant herein required, such failure shall be considered an Event of Default. In such event, the City shall deliver written notice of said default, in accordance with the notice provisions contained in this Agreement, specifying the specific Events of Default and the action necessary to cure such defaults. Consultant shall have ten (10) calendar days after receipt of the written notice to cure such default. If Consultant fails to cure the default within such cure period, or take steps reasonably calculated to cure such default, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another Consultant to complete the work required by this Agreement. City shall also have the right to offset the cost of said new agreement with a new Consultant against Consultant's future or unpaid invoice(s), subject to any statutory or legal duty, if any, on the part of City to mitigate its losses.

7.3 Termination For Cause. Upon the occurrence of one (1) or more of the following events, and following written notice to Consultant given in accordance with the notice provisions contained in this Agreement, City may immediately terminate this Agreement, in whole or in part, "for cause":

- 7.3.1 Consultant makes, directly or indirectly through its employees or representatives, any material misrepresentation or provides any materially misleading information to City in connection with this Agreement or its performance hereunder; or
- 7.3.2 Consultant violates or materially fails to perform any covenant, provision, obligation,

term or condition of a material nature contained in this Agreement, except those events of default for which an opportunity to cure is provided herein; or

7.3.3 Consultant fails to cure, or initiate steps reasonably calculated to cure, a default, within the time period required for cure; or

7.3.4 Consultant violates any rule, regulation or law to which Consultant is bound or shall be bound under the terms of this Agreement; or

7.3.5 Consultant attempts the sale, transfer, pledge, conveyance or assignment of this Agreement contrary to the terms of the Agreement; or

7.3.6 Consultant ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Agreement shall continue) and such petition is not dismissed within forty- five (45) days of filing; or if a receiver, trustee or liquidator is appointed for it, or its joint venture entity, or any substantial part of Consultant's assets or properties.

7.4 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.5 Orderly Transfer Following Termination. Regardless of how this Agreement is terminated, Consultant shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City. Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant, or any of its subcontractors, pursuant to this Agreement. All completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced, or provided to Consultant, in connection with the services rendered by Consultant under this Agreement, regardless of storage medium, shall be transferred to City. Such record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents.

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

7.7 City, as a public entity, has a duty to document the expenditure of public funds. Consultant acknowledges this duty imposed upon the City. Consultant further acknowledges that 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

7.8 Claims for Outstanding Fees. Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. **Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a Waiver by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.**

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

VIII. SUSPENSION OF WORK UNDER AGREEMENT

8.1 Right of City to Suspend. City may suspend this Agreement for any reason, with or without cause upon the issuance of written Notice of Suspension in accordance with the Notice provisions contained in this Agreement. Such suspension shall take effect upon the date specified in such notice. The Notice of Suspension will set out the reason(s) for the suspension and the anticipated duration of the suspension, but will in no way guarantee the total number of days of suspension.

8.2 Consultant's Right to Terminate In Event of Suspension of Agreement. In the event such suspension exceeds one hundred and twenty (120) calendar days, Consultant shall have the right to terminate this Agreement. Consultant may exercise this right to terminate by issuing a written Notice of Termination to the City, delivered in accordance with the Notice provisions contained in this Agreement after the expiration of one hundred and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by City and such termination shall be subject to all the requirements set out in Paragraphs 7.5 and 7.6 above, related to the Orderly Transfer and Fee Payment.

8.3 Procedures Upon Receipt of Notice of Suspension.

8.3.1 Upon receipt of a notice of suspension and prior to the effective date of the suspension, Consultant shall, unless otherwise directed, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement.

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

8.3.3 Copies of all completed or partially completed studies, plans and other documents

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

- 8.3.4 During the period of Suspension, Consultant shall have the option to at any time submit the above referenced statement to the City for payment of any unpaid portion of the prescribed fee for services which have actually been performed to the benefit of the City under this Agreement, adjusted for any previous payments of the fee in question.
- 8.3.5 In the event Consultant exercises its right to terminate this Agreement at any time after the effective Suspension date, Consultant shall submit, within forty-five (45) calendar days after receipt by City of Consultant's notice of termination (if he has not previously done so) the above referenced statement showing in detail the services performed under this Agreement prior to the effective date of suspension. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a Waiver by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.
- 8.3.6 Any documents prepared in association with this Agreement shall be delivered to City as a pre-condition to final payment.
- 8.3.7 City, as a public entity, has a duty to document the expenditure of public funds. Consultant acknowledges this duty imposed upon the City. Consultant further acknowledges that 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
- 8.3.8 Upon the above conditions being met, the City's review of the submissions and finding the claimed compensation to be appropriate to the terms of this agreement, the City shall pay Consultant that portion of the agreed prescribed fee for those as yet uncompensated services actually performed under this Agreement to the benefit of the City, adjusted for any previous payments of the fee in question.
- 8.3.9 City, as a public entity, has a duty to document the expenditure of public funds. Consultant acknowledges this duty imposed upon the City. Consultant further acknowledges that 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.

IX. INSURANCE REQUIREMENTS

- 9.1 Prior to the commencement of any work under this Agreement, Consultant shall

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

9.2 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.

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

<u>TYPE</u>	<u>AMOUNTS</u>
	-
1. Workers' Compensation*	Statutory
2. Employers' Liability*	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

<p>4. Business Automobile Liability**</p> <p>a. Owned/leased vehicles</p> <p>b. Non-owned vehicles</p> <p>c. Hired Vehicles</p>	<p>Combined <u>S</u>ingle <u>L</u>imit for <u>B</u>odily <u>I</u>njury and <u>P</u>roperty <u>D</u>amage of \$1,000,000 per occurrence</p>
<p>5. Professional Liability (Claims-made basis)</p> <p>To be maintained and in effect for no less than two years subsequent to the completion of the professional service.</p>	<p>\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.</p>

*Required, if applicable, and if on-site presence on City property is necessary

**Required if Consultant utilizes company-owned vehicles in the fulfillment of project activities

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

10.2 Consultant shall be required to submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

10.3

City of San Antonio
 Attn: Aviation
 Department
 9800 Airport
 Boulevard San
 Antonio, Texas
 78216

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

10.4.1 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;

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

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

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

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

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

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

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

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

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

X. INDEMNIFICATION

10.1 **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.**

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

10.3 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.

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

XI. CONSULTANT'S LIABILITY AND STANDARD OF CARE

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

XII. CONSULTANT'S WARRANTY UNDER THE PROFESSIONAL SERVICES PROCUREMENT ACT

12.1 Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for Consultant to solicit or secure this Agreement, and that it has not, for the purpose of soliciting or securing this Agreement, paid, compensated, or agreed to pay or compensate, any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift, for any other consideration contingent upon or resulting from the award or making of this Agreement. For breach of the foregoing warranty, the City shall have the right to terminate the Agreement under the provisions of this Agreement. However, breach of the warranty required in this provision constitutes fraud by operation of law; therefore, any Consultant found in breach of such warranty, by a final judgment of a Court of Competent Jurisdiction, shall take no compensation under this Agreement for any services rendered and such forfeiture shall not bar the City from pursuit and collection of any and all other damages, at law and in equity, to which it may be justly entitled. This Agreement is entered into under competency requirements of the Texas Professional Services Procurement Act governing municipal employment of professional and other professionals. Accordingly, Consultant further pledges and warrants its best and most competent professional efforts to secure to the City the benefits of the agreement.

XIII. ASSIGNMENT OF RIGHTS OR DUTIES

13.1 By entering into this Agreement, City has approved the use of any subcontractors identified in Consultant's Proposal. No further approval shall be needed for Consultant to use such subcontractors as are identified in Consultant's Proposal.

13.2 Except as otherwise required herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the prior written consent of City. Professional services required by law to be performed by a licensed engineer, or services which, by law, require the supervision and approval of a licensed engineer, may only be subcontracted upon the prior written approval of the San Antonio City Council, by approval and passage of an ordinance therefore. Any other services to be performed under this Agreement may be subcontracted upon the written approval of Director. As a condition of consent, if same is given, Consultant shall remain liable for

completion of the services outlined in this Agreement in the event of default by the successor consultant, assignee, transferee or subcontractor. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by City in accordance with this Article.

13.3 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.

13.4 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 VIII, Termination.

XIV. INDEPENDENT CONTRACTOR

14.1 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.

14.2 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.

XVI. EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION

- 16.1 Consultant shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, Consultant agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's office.
- 16.2 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.
- 16.3 Consultant understands and agrees to comply with the Mandatory Federal Contract Provisions attached hereto as **Exhibit 2**.

XVII. AMENDMENTS

17.1 Any alterations, additions, or deletions to the terms of this Agreement shall be effected by amendment, in writing, executed by City and Consultant. Amendments may be executed by the Aviation Director without further City Council Action.

XVIII. NOTICES

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

If intended for City, to:

City of San Antonio Aviation Department
Attn: James Johnston
9800 Airport Boulevard
San Antonio, Texas 78216

If intended for Consultant, to:

Andrew J. Bores

XIX. CONFLICTS OF INTEREST

- 19.1 Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with City or any City agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- 19.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of City. Consultant further warrants and certifies that it has tendered to City's a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

XX. AIRPORT SECURITY

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

ordinances. At all times during the Term, Consultant must have in place and in operation a security program for the Airport Premises utilized by Consultant that complies with all applicable laws and regulations. All employees of Consultant that require regular access to sterile or secure areas of the Airports must be badged in accordance with City and TSA rules and regulations.

- 20.3 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.
- 20.4 In connection with the implementation of its security program, Consultant may receive, gain access to or otherwise obtain certain knowledge and information related to the City's overall Airport security program. Consultant acknowledges that all such knowledge and information is of a highly confidential nature. Consultant covenants that no person will be permitted to gain access to such knowledge and information, unless the person has been approved by the City or the Aviation Director in advance in writing. Consultant further must indemnify, hold harmless and defend the City and other users of the Airport from and against any and all claims, reasonable costs, reasonable expenses, damages and liabilities, including all reasonable attorney's fees and costs, resulting directly or indirectly from the breach of Licensee's covenants and agreements as set forth in this section.

XXI. 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.

XXII. 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.

XXIII. APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

XXIV. VENUE

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

XXV. SEVERABILITY

In the event any one or more paragraphs or portions of this Agreement are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of this Agreement, but such shall be confined to the specific section, sentences, clauses or portions of this Agreement held invalid or unenforceable.

XXVI. FORCE MAJEURE

In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

XXVII. SUCCESSORS

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

XXVIII. NON-WAIVER OF PERFORMANCE

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

such changes must be approved by the San Antonio City Council.

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

XXIX. PARAGRAPH HEADINGS

The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXX. LEGAL AUTHORITY

The signer of this Agreement for City and Consultant each represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of City and Consultant respectively, and to bind City and Consultant to all of the terms, conditions, provisions and obligations herein contained.

XXXI. ATTORNEY FEES

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

XXXII. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

- 32.1 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).

- 32.2 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.
- 32.3 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.

**XXIII. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING
ISRAEL OR ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN
TERRORIST ORGANIZATIONS**

- 33.1 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:
- (1) does not boycott Israel; and
 - (2) will not boycott Israel during the term of the contract.
- 33.2 "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.
- 33.3 "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.
- 33.4 By submitting an offer to or 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 found to be false, City may terminate the contract for material breach.
- 33.5 Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organization Prohibited. 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. Vendor 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 Vendor's certification. If found to be false, or if Vendor is identified on such list during the course of its contract with City, City may terminate the Contract for material breach.

XXXIV. ENTIRE AGREEMENT

34.1 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.

34.2 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.

EXECUTED ON THIS, THE ___ DAY OF _____, 2019.

CITY OF SAN ANTONIO, TEXAS

ANDREW J. BORES

By: _____
Erik J. Walsh
City Manager

By: Andrew J. Bores
Signature

Deputy
Title

Federal Tax ID#: 110308927

APPROVED AS TO FORM
By: _____
City Attorney

EXHIBIT 1
SCOPE OF SERVICES

Consultant shall provide the following services for the SAIA and SSF in accordance with this agreement:

1. Provide technical assistance to fire alarm and detection designers, fire alarm and detection contractors, architects, fire marshals, and engineers regarding City code requirements.
2. Review fire alarm and detection plans and fire sprinkler plans for conformance with International Fire Code (IFC).
3. Perform site visits to assist field inspectors in acceptance testing of fire alarm and detection systems and fire sprinkler systems.
4. Attend preliminary plan review meetings as requested by the City.
5. Provide support and assistance during Building and Fire Inspections, investigations, and reviews.
6. Prepare inspection reports and related correspondence.
7. Consultant shall perform Fire Technician Daily Duties including:
 - Checking fire alarm and fire sprinkler system status for system trouble or alarms and correcting any found deficiencies;
 - Clean smoke and heat detectors and replace as necessary;
 - Check all Automated External Defibrillators (A.E.D.) devices daily;
 - Check and test fire pumps as required by fire code;
 - Check all fire extinguishers, replace any found in non-compliant or defective;
 - Check fire hose and standpipe systems;
 - Check fire alarm monitoring panels along with battery backup devices on all alarm panels;
 - Check fire egress signage both inside and out for any discrepancies;
8. Check code requirements for Egress, Fire Protection Systems, and any other questions or problems that arise per NFPA or IFC.
9. Contact vendors as needed for quotes, to be provided by City, for repair work, yearly

inspections, and/or new or remodeling work to be done. If authorized by the City, City will issue a purchase order. In no event shall the Consultant engage other vendors to provide services to City.

10. Assist with annual fire alarm testing; fire sprinkler, fire standpipe and hose systems; fire extinguisher inspections; and fire pumps flow tests all required by fire code.
11. Inspect tenant space for code compliance; notify Aviation Safety Office and Aviation Maintenance Division of any deficiencies. Make recommendations in writing and assist in corrective actions.
12. Consult with Aviation Safety Division, Aviation Planning and Development, and Aviation Maintenance Division on all projects that may impact Fire Protection or Fire Suppression systems and/or programs.
13. Consult and assist HVAC division with smoke damper locations and alarm monitoring systems while working on heating and ventilation systems.
14. Train and assist employees, as needed who work in areas covered by halogenated extinguishing systems areas on how to control the system as well as how to exist to safety in the event of a discharge.
15. Clear alarms and troubleshoots to minimize evacuations and interruptions to Airport operations.
16. Maintain auditable records of all tests, inspections, and repairs to alarm and sprinkler systems.
17. Assist Aviation to ensure the fire alarm and sprinkler systems are kept operational during all repair and construction projects.
18. Maintain communication with both Aircraft Rescue Fire Fighting (ARFF) and San Antonio Fire Department as well as all other Aviation Divisions, keeping them informed of the status of systems at the Airport at all times.
19. Answer and respond to emergency calls for **fire and/or fire sprinkler alarms and supervisory signals**. Response time shall be no more than one hour to make premise or clear the alarm through instruction via phone call to the Communications Center.
20. Answer and respond to unscheduled service calls according to the following:
 - 15 minutes call back after initial City contact
 - Arrive and commence services no later than 1 hour from notification

Consultant will be required to obtain a security badge with full access to all secured areas of the SAIA and SSF.

EXHIBIT 2

REQUIRED FEDERAL CONTRACT PROVISIONS

As used in this Exhibit, the terms “contractor” or “Contractor” shall refer to “Consultant”.

I. 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 sub-tier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

II. TITLE VI CLAUSES 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:

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.

Non-discrimination: 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.

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.

Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

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

- a. Withholding payments to the contractor under the contract until the contractor complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

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

III. 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 U.S.C. § 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 U.S.C. § 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 U.S.C. § 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 U.S.C. § 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 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;

The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 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 non-discrimination 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 U.S.C. 1681 *et seq.*).

IV. FEDERAL FAIR LABOR STANDARDS ACT

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same

force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

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

V. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text.

Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The contractor retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

**EXHIBIT 3
FEE SCHEDULE**

RFQ ATTACHMENT B

PRICE SCHEDULE

Price to be all inclusive, including, but not limited to, all direct and indirect costs, operating expenses, overhead and profit.

1. Hourly rates for fire protection consultant services.

<u>Description</u> ^[A]	<u>Hourly Rate</u>	<u>Estimated Annual Hours</u> ^[B]	<u>Annual Total</u> (Hourly Rate x [B])
Regular Hours	\$ <u>40.00</u>	700	\$ <u>28000.00</u>
Holiday Hours	\$ <u>50.00</u>	8	\$ <u>400.00</u>

^[A] Hours are defined as follows:

Regular Hours: Hours scheduled and provided on days that are not federally observed holidays.

Holiday Hours: Hours of service that are provided on federally observed holidays.

^[B] Estimated Monthly and Annual Hours are for evaluation purposes only.

