

AN ORDINANCE 2017-11-02-0851

**AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH
PAVLOV ADVERTISING, LLC, IN AN AMOUNT NOT TO EXCEED
\$4,000,000.00, FOR ON-CALL ADVERTISING AND MARKETING
SERVICES FOR THE SAN ANTONIO AIRPORT SYSTEM (SAAS).**

* * * * *

WHEREAS, the City requires a full-service agency to manage marketing and advertising campaigns in support of the Air Service Incentive Program, Concessions Marketing Campaign for the San Antonio International Airport (SAT), SAT Meet Me advertising campaign, and miscellaneous on-call airport advertising, graphic design, print production, and video photography projects; and

WHEREAS, the City received five responses to a Request for Proposals (RFP) for on-call advertising and marketing services for the San Antonio Airport System, released in June 2017, and based on the criteria established in the RFP, an evaluation committee comprised of representatives from the Aviation Department and Airport Advisory Commission evaluated the proposals, and recommends entering into a Professional Services Agreement with PAVLOV Advertising, LLC (PAVLOV); and

WHEREAS, it is necessary to authorize the execution of the Professional Services Agreement in an amount not to exceed \$4,000,000.00 with this firm for a term of three (3) years, with the option to extend for two, one-year periods; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of a Professional Services Agreement with PAVLOV Advertising LLC, in an amount not to exceed \$4,000,000.00, for Advertising and Marketing Services for the San Antonio Airport System, are approved. The City Manager, or her designee, is authorized to execute the Agreement, a copy of which, in substantially final form, is set out in **Exhibit 1**.

SECTION 2. Funding for this is available in Fund 51001000, Cost Center 3305010002 and General Ledger 5201040 as part of the Fiscal Year 2018 Budget. Additional funding for this ordinance is contingent upon City Council approval of the City's operating budget and the availability of funds for subsequent Fiscal Years.

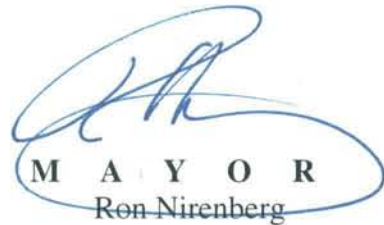
SECTION 3. Payment not to exceed the budgeted amount is authorized to be made payable to PAVLOV Advertising, LLC (PAVLOV) and should be encumbered with a purchase order.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers,

SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

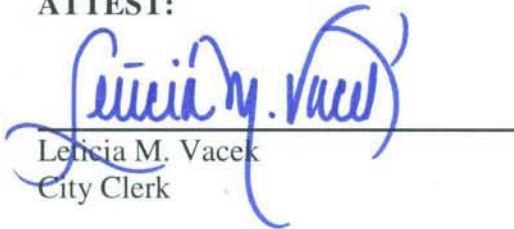
SECTION 5. This Ordinance shall be effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED and APPROVED this 2nd day of November, 2017.



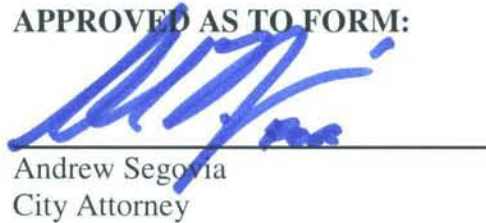
M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:



Andrew Segovia
City Attorney

Agenda Item:	I6						
Date:	11/02/2017						
Time:	10:04:00 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizes a professional services agreement with PAVLOV Advertising, LLC for on-call advertising and marketing services for the San Antonio Airport System in the amount not to exceed \$4,000,000.00 for a three-year term with the option to extend for two, one-year periods. [Carlos Contreras, Assistant City Manager; Russell Handy, Director, Aviation]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				x
William Cruz Shaw	District 2	x					
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x			x	
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

MK
11/02/17
Item 16

Exhibit 1

**PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL ADVERTISING AND MARKETING SERVICES
FOR
THE SAN ANTONIO AIRPORT SYSTEM**

This Professional Services Agreement for On-Call Advertising and Marketing Services for the San Antonio Airport System (hereinafter referred to as "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 PAVLOV Advertising, LLC (hereinafter referred to as "Consultant") by and through its designated officer(s) pursuant to its by-laws or a resolution of its Board of Directors, 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 "Director" means the director of the City's Aviation Department
- 1.2 "Project" means the provision of advertising and marketing services on an on-call basis as more fully set out in Article V. Scope of Services and set out in individual Finalized Task Orders.
- 1.3 "SAT" means San Antonio International Airport

II. PERIOD OF SERVICE

2.1 This Agreement shall commence upon execution by both parties, and continue in full force and effect for a period of three years, unless earlier termination shall occur pursuant to any of the provisions hereof. At City's option, this Agreement may be extended under the same terms and conditions for two (2) one-year periods. Renewals shall be in writing and signed by Director, without further action by the San Antonio City Council, subject to and contingent upon appropriation of funding therefore.

2.2 In the event that a Finalized Task Order is executed by both parties prior to the expiration of the Agreement and performance of the services extends past the expiration date of Agreement, City has the option to terminate the Finalized Task Order or allow continued performance past the expiration date. If the City delivers to Consultant a notice to stop work, Consultant shall stop any work immediately upon receiving notice to stop work and shall invoice City for all services performed up to the date of said notice to stop work. If the City does not terminate a Finalized Task Order which performance would extend past the expiration date of the Agreement, Consultant shall perform all services set out in the applicable Finalized Task Order and all terms of the Agreement shall continue to apply to such services until all services have been completed and accepted by City.

III. COMPENSATION

3.1 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 four million and 00/100 U.S. dollars (\$4,000,000.00). 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.

3.2 Consultant shall submit a Proposal, in accordance with hourly rates, credits, commissions and/or markups, as applicable, set out in Exhibit 2, Fee Schedule for each Project that City requests to be performed under this Agreement. If Consultant proposes to use a subcontractor not listed on Exhibit 2, Consultant must disclose, in the Proposal, the name of the proposed subcontractor and all associated hourly rates as well as all credits, commissions, and/or markups. City either will approve or disapprove each Proposal. City's approval shall be evidenced by the Finalized Task Order executed by both parties. Finalized Task Orders shall be numbered sequentially starting with number one (1) and must reference this Agreement. Each Finalized Task Order will become a part of this Agreement.

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

3.4 Consultant shall adhere to the Aviation Department Consultant and Contractor Reimbursable Expense Policy, attached hereto as Exhibit 3, governing expenditures.

3.5 All expenses must be included in a Finalized Task Order to be compensable. City will not reimburse Consultant for any fees and/or expenses not included in a Finalized Task Order.

3.6 Consultant shall bill all services in accordance with the hourly rates, credits, commissions and/or markups, set out in Exhibit 2, Fee Schedule and the appropriate Finalized Task Order. Such invoices must be for services actually performed and actual travel and other expenses incurred and not previously invoiced and must show: a) the hours being billed delineated by task performed, employee name and labor category, b) a summary of the services performed and media purchased during the period covered by the invoice including disclosure of the credits, commissions and mark-ups taken and/or given between Consultant and any subcontractors, markups on media buys and other sourced or purchased media related items, to include commissions and credits received by Consultant from subcontractors and/or vendors, shall be limited to fifteen percent, c) travel and other expenses with supporting documentation attached; and d) the total amount due for services, travel and expenses. Allowable travel and other expenses shall not exceed the amount provided for in the appropriate Finalized Task Order and 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 to be eligible for reimbursement. City reserves the right to request such additional information as the City deems necessary to support the invoiced charges. City shall pay all undisputed amounts due under this Agreement within 30 days of receipt of a properly addressed invoice. Payment is deemed to be made on the date of mailing of the check or electronic fund transfer.

3.7 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.

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

3.8.1 delays in the performance of Consultant's work;

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

3.8.3 failure of Consultant to make payments properly to sub-consultants or vendors for services performed, materials or equipment;

3.8.5 damage to City;

3.8.6 persistent failure by Consultant to carry out the performance of its services in accordance with this Agreement; or

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

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

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

3.10 Right to Audit. The Consultant will provide supporting evidence necessary to substantiate charges related to the Agreement and allow the City to access Consultant's Records (as defined below) associated with this Agreement. Consultant's Records shall be made available within two weeks of the written request for open inspection, audit, and/or reproduction during normal business working hours. Such audits may be performed by a City's representative or an outside representative engaged by City. The City or its designee may conduct such audits or inspections throughout the term of this Agreement and for a period of three years after final payment or longer if required by law. The City's representatives may (without limitation) conduct verifications such as verifying information and amounts through interviews and written confirmations with Consultant's employees, field and agency labor, subcontractors, and vendors.

3.10.1 Consultant's Records as referred to in this Agreement shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, reports, drawings, receipts, vouchers

and memoranda, and any and all other agreements, sources of information and matters that may in the City's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by this Agreement. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; invoices and related payment documentation; general ledger, and any other Consultant records which may have a bearing on matters of interest to the City in connection with the Consultant's dealings with the City.

3.10.2 Consultant shall require all payees (examples of payees include subcontractors, material suppliers, insurance carriers, etc.) to comply with the provisions of this article by ensuring that the City's right to audit requirements set forth herein are contained in a written contract between Consultant and payee. Consultant will ensure that the City has the same right to audit all payees that it has to audit Consultant under the terms of this Agreement.

3.10.3 City's authorized representative or designee shall have reasonable access to the Consultant's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement, in order to conduct audits in compliance with this article.

IV. METHOD OF PAYMENT

4.1 Consultant shall submit invoices upon final completion of all services to be provided under a particular Finalized Task Order. Payments to Consultant shall be in the amount shown on the invoices consistent with the hourly rates set out in Exhibit 2, Fee Schedule, and the Finalized Task Order and its supporting documentation submitted and shall be subject to City's approval. All services shall be performed 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/or which have not been previously approved by the Director. The final payment due hereunder will not be paid until all reports, data and documents have been submitted, received, accepted and approved by City.

4.2 City shall pay all undisputed amounts due under this Agreement within 30 days of receipt of a properly addressed invoice. Payment is deemed to be made on the date of mailing of the check or electronic fund transfer.

V. SCOPE OF SERVICES

5.1 Consultant shall provide advertising and marketing services as more fully set out in Exhibit 1, Scope of Services, on an on-call basis in accordance with individual Finalized Task Orders.

5.2 This Agreement is an On-Call Agreement, Task Order, or indefinite delivery agreement for on-call advertising and marketing services and other such services, as set out in Exhibit 1, that are required for Consultant to provide or are associated with such on-call consulting. Specific requirements as to location, conditions, procedures and associated services pertaining to a Project, shall be negotiated and set out in individual Finalized Task Orders for each request, which Finalized Task Orders shall be incorporated into and shall become a part of this Agreement.

5.3 Consultant shall provide all labor, equipment and transportation necessary to complete all services, agreed to by Task by Consultant pursuant to this Agreement, in a timely manner throughout the term of this Agreement. Consultant shall bill all services in accordance with the Finalized Task Order and the hourly rates set out in Exhibit 2, Fee Schedule. Additionally, Consultant shall provide staff for regular, overtime, night, weekend and holiday service, as requested or required by City. Persons retained by Consultant to perform work pursuant to this Agreement shall be employees or subcontractors of Consultant.

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

5.5 Consultant, in consideration for the compensation herein provided, shall render the professional services necessary for the advancement of the Project to completion. 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.

5.6 Consultant shall complete all services provided hereunder 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.

5.7 Consultant shall perform its obligations under this Agreement in accordance with the Scope of Services set out in each Finalized Task Order. Consultant shall be responsible for and ensure all services and work performed and reports and deliverables required pursuant to this Agreement shall be in compliance with all federal, state and local laws, rules, and regulations, to include any Aviation Department rules and regulations, Federal Aviation Administration Advisory Circulars and Orders, and other airport and regulatory guidance documents.

VI. PROJECT SERVICES REQUEST PROCESS

6.1 Necessary advertising and marketing services shall be established with each Project-specific Finalized Task Order.

6.2 When City has a Project for which it desires to procure advertising and marketing services, City shall notify Consultant by issuing a Task Order Request, which may be in email format. Each Task Order Request shall include, at a minimum: name of Project, consulting services desired, Project schedule and any specific deadlines for performance services, and a deadline for providing City with a Proposal based on the above.

6.3 Consultant shall prepare and submit to City, within the timeline stated in a Task Order Request, a Proposal for the requested services which will include, at minimum: Scope of Services; specific staffing; an estimate of task cost. Consultant shall submit the Proposal in editable electronic format to the City. By submitting a Proposal, Consultant agrees to perform the requested service(s) within the time stated in the Task Order Request unless otherwise specifically states in the Proposal.

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

6.5 The Director or his/her designee has the authority to execute a Finalized Task Order on behalf of City, so long as such finalized Task Order does not exceed the total Agreement value and funds are provided for in the Project budget as allocated by City Council.

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

6.7 Actual amounts billed for individual tasks shall not exceed the total amount set out in the Finalized Task Order for that task.

6.8 Each Finalized Task Order shall be incorporated herein for all purposes. Each Finalized Task Order shall be numbered sequentially, starting with number one (1) and must reference this Agreement.

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

VII. COORDINATION WITH THE CITY

7.1 Consultant shall hold periodic conferences with Director or his designee, so that each 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.

7.2 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.

7.3 Consultant shall interact and coordinate with the City, airport tenants, other stakeholders, external agencies, and local and regional Federal Aviation Administration ("FAA") offices as required.

7.4 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.

7.5 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.

VIII. OWNERSHIP AND RETENTION OF DOCUMENTS

8.1 Any and all documents, papers, records, maps, photographs, sounds, video recordings, electric or digital medium, writings, data, webpage content, computer programs or executables, media or information in whatever form and character created by Consultant pursuant to the provisions of this Agreement and pertinent to the services rendered hereunder, (hereinafter "Documents") 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. Notwithstanding the foregoing and for purposes of clarification, Consultant may from time to time incorporate third party materials, including, without limitation, stock photographs, illustrations, music, fonts, software and source code ("Third Party Materials") into work created pursuant to this Agreement. City acknowledges and understands that Third Party Materials will remain the property of their respective owners and not become owned by City.

8.2 Consultant agrees and covenants to protect any and all proprietary rights of City in any materials provided to Consultant by City. 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 but shall not include pursuing infringement claims on behalf of 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.

8.3 Consultant hereby assigns to City Consultant's right in and to all statutory and common law copyrights to any copyrightable work, if any, that, in part or in whole, was produced from this Agreement and owned by Consultant, including all equitable rights. Notwithstanding the foregoing, in the event Third Party Materials are incorporated into work produced from this Agreement, to the extent permissible, Consultant will assign to the City the right to use the Third Party Materials and ownership shall remain with the respective owners of the Third Party Materials. No reports, maps, documents or other copyrightable works, produced in whole or in part by this Agreement, shall be subject of an application for copyright by Consultant. All reports, maps, project logos, computer programs or executables, drawings or other copyrightable work produced under this Agreement shall become the property of City, excluding any Third Party Materials (and further excluding any instrument of services, unless otherwise specified herein). Consultant shall, at its own expense, defend all suits or proceedings instituted against City and pay any award of damages or loss resulting from an injunction against City, insofar as the same are based on any claim that materials or work provided under this Agreement and developed exclusively for City by Consultant constitute an infringement of any patent, trade secret, trademark, copyright or other intellectual property rights to the extent such infringement arises with respect to the City using such materials or work provided under this Agreement as intended (and, for purposes of clarification, excluding any claims related to Third Party Materials or Requested Materials (defined below)).

8.4 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. For purposes of clarification, Third Party Materials are not Consultant's documentary work product reports and correspondence to City. The above notwithstanding, the Consultant shall retain all rights previously held 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.

8.5 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; provided, however, that the foregoing shall not apply to Third Party Materials. 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.

8.6 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, 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.

8.7 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.

IX. TERMINATION OF AGREEMENT

9.1 Termination Without Cause.

9.1.1 This Agreement may be terminated by the City at any time, 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.

9.1.2 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.

9.1.3 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.

9.1.4 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 9.1.2 of this clause.

9.1.5 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.

9.1.6 This Agreement may be terminated by the Consultant, at any time after issuance of the Director's Notice to Proceed, upon ninety (90) calendar days written notice provided in accordance with the Notice provisions contained in this Agreement.

9.2 Defaults With Opportunity for Cure. Should Consultant fail, as determined by the Director, to satisfactorily perform the duties set out in Article V. 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.

9.3 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":

9.3.1 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

9.3.2 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

9.3.3 Consultant fails to cure, or initiate steps reasonably calculated to cure, a default listed in Section 9.3 below, within the time period required for cure; or

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

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

9.3.6 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.

9.4 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.

9.5 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.

9.6 Any documents prepared in association with this Agreement shall be delivered to City as a precondition to final payment.

9.7 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

9.8 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.**

9.9 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.

X. SUSPENSION OF WORK UNDER AGREEMENT

10.1 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.

10.2 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.

10.3 Procedures Upon Receipt of Notice of Suspension.

10.3.1 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.

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

10.3.3 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.

10.3.4 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.

10.3.5 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.

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

10.3.7 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

10.3.8 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.

10.3.9 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

XI. INSURANCE REQUIREMENTS

11.1 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 "On Call Advertising and Marketing 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 be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Aviation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

11.2 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.

11.3 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
4. Business Automobile Liability a. Owned/leased vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per

b. Non-owned vehicles c. Hired Vehicles	occurrence
5. Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional services.	\$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.

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

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

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

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

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

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

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

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

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

XII. INDEMNIFICATION

12.1 **CONSULTANT** covenants and agrees to **FULLY INDEMNIFY, DEFEND and HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to Consultant's activities under this Agreement, including any acts or omissions of Consultant, any agent, officer, director, representative, employee, consultant or subcontractor of Consultant, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this

Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. For purposes of clarification, the matters addressed in this Article 12 do not relate to Consultant's indemnity, defense or hold harmless obligations in any manner related to the following, which are exclusively addressed in Articles 8 and 22 hereof, respectively and as set forth in such Articles: infringement of patent, trade secret, copyright or other intellectual property right; infringement of copyrights, patents, materials and methods used in the Project; royalties, damages, losses or expenses resulting from infringement (the "Article 8/22 Matters"). The parties agree that in no event shall this Article 12 be interpreted as though it has bearing on Consultant's obligations with respect to the Article 8/22 Matters.

12.2 The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

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

12.5 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.

XIII. CONSULTANT'S LIABILITY AND STANDARD OF CARE

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.

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

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.

XV. ASSIGNMENT OF RIGHTS OR DUTIES

15.1 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.

15.2 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.

15.3 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.

15.4 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 IX, Termination.

XVI. INDEPENDENT CONSULTANT

16.1 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, consultants, and subcontractors; that the doctrine of *respondeat superior* shall not apply as between City and Consultant, its officers, agents, employees, consultants, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Consultant.

16.2 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.

XVII. AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PROGRAM

17.1 This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. Consultant agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of this concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

17.2 The consultant agrees to include the above statements in any subsequent sub-consultant agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

17.3 Consultant shall comply with City's approved Airport Concessions Disadvantaged Business Enterprise (ACDBE) program submitted in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Office of the Secretary, Part 23, Participation by Disadvantaged Business Enterprise programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

17.4 Consultant shall make a good faith effort to adhere to the ACDBE program submitted with Consultant's Proposal, which assures that **fifteen percent (15%)** of the gross receipts derived from the operation of its business at the Airport be attributed to certified ACDBEs throughout the concession term.

(e) Consultant has advised the City that it will use the ACDBEs listed on attached Exhibit "5" in providing the services described thereon. Consultant agrees that within 30 days after the expiration of each calendar quarter during the term of this Agreement, it will provide a an expenditure report to the City, in a form

acceptable to the City, describing the goods and services utilized by Consultant in fulfilling the obligations prescribed by this Agreement. Such expenditure report shall also include goods and services for each ACDBE described on attached Exhibit "C" (and each substitute ACDBE obtained pursuant to paragraph 7.03(h), calculated in accordance with the requirements of 49 CFR Part 23.

(f) Should this Agreement be considered for any term renewals or extensions, the extent of Consultant's ACDBE participation will be reviewed prior to any recommendation for renewal of the term of this Agreement to Council, to consider whether an increase or decrease in ACDBE participation is warranted. Consultant agrees to make good faith efforts at that time to find additional ACDBE participants as required should the City deem an increase in ACDBE participation warranted.

(g) Consultant agrees that it will also submit within the same period described in the Section 7.03, a report to the City, in a form acceptable to the City, describing the Consultant's total gross receipts for the entire contract, and a breakdown of such gross receipts by location.

(h) Consultant will have no right to terminate an ACDBE for convenience without the City's prior written consent. If an ACDBE is terminated by the Consultant with the City's consent or because of the ACDBE's default, then the Consultant must make a good faith effort, in accordance with the requirements of 49 CFR part 23.25(e)(iii) and (iv), and 49 CFR part 26.53, to find another ACDBE to substitute for the original ACDBE to perform the tasks or provide services, if feasible, for the remaining term of this Agreement attributable to the same estimated gross receipts under the Agreement as the ACDBE that was terminated. In the event such action is not feasible the Consultant shall make good faith efforts during the remaining term of the Agreement to encourage ACDBEs to compete for purchases and or leases of goods and services to be made by the Consultant. Should City notify Consultant that Consultant has not attained the ACDBE participation required under this Agreement, Consultant shall submit a corrective action plan to City to remedy such non-attainment within 30 days of the non-attainment notice.

(i) The Consultant's breach of its obligations under this Section 7.03 shall constitute an event of default by Consultant and shall entitle the City to exercise any and all of its contractual and legal remedies, including termination of this Agreement.

(j) The City reserves the right to apply any and all legal and contract remedies available under federal, state and local law, including but not limited to, responsibility determinations in future contracts, suspension/debarment procedures, and forfeiture of profits as provided elsewhere.

(k) Pursuant to 49 CFR 26.107, any person or entity that makes a false or fraudulent statement in connection with participation of an ACDBE in any DOT-assisted program or otherwise violates applicable federal statutes, may be referred to the Department of Transportation, and possibly the Department of Justice for prosecution.

XVIII. EQUAL EMPLOYMENT OPPORTUNITY

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.

XIX. 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.

XX. NOTICES

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

If intended for CITY, to:

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

If intended for Consultant, to:

PAVLOV Advertising, LLC
Attn: Allen Wallach
3017 W. 7th Street
Fort Worth, Texas 76107

XXI. CONFLICTS OF INTEREST

21.1 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.

21.2 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.

XXII. PATENT FEES AND ROYALTIES

22.1 Consultant shall pay all license fees and royalties and assume all costs incident to the use of the performance of the services performed hereto or the incorporation in any invention, design, process, product or device which is the subject of patent rights or copyrights held by others, except that City shall be responsible for the same to the extent that it requests the incorporation in any invention, design, process, product or device which is the subject of patent rights or copyrights held by others (the foregoing, "Requested Materials").

22.2 Consultant shall hold the City harmless, defend and indemnify the City from the payment of any royalties, damages, losses or expenses for suits, claims or otherwise, for actual infringement or alleged infringement by Consultant of copyrights, patents, materials and methods used in the Project (but with Consultant's obligations in this sentence excluding any Third Party Materials, Requested Materials and/or uses by City of copyrights, patents, materials and/or methods used in the Project inconsistent with the intended use thereof (collectively and individually, the "Exclusions")). With respect to any such alleged infringement, in the event that it is determined by settlement or found by a final, non-appealable judgment, that there was no actual infringement, City shall reimburse Consultant for all attorneys' fees and expenses and court costs incurred on City's behalf by Consultant in relation thereto. Further, if Consultant becomes aware that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.

22.3 Other than with respect to the Exclusions, upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, Consultant will immediately: 1) either: a) obtain, at Consultant's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be, or, b) alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and 2) reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

22.4 Other than with respect to the Exclusions, Consultant further agrees to: 1) assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright with respect to work developed by Consultant and delivered to City under this Agreement, 2) assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and 3) indemnify the City against any monetary damages and/or costs awarded in such suit; provided that: 1) Consultant is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Consultant agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City, 2) the Software or the equipment is used by the City in the form, state, or condition as delivered by Consultant or as modified without the permission of

Consultant, so long as such modification is not the source of the infringement claim, 3) the liability claimed shall not have arisen out of the City's negligent act or omission, and the City promptly provide Consultant with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that Consultant assumes responsibility under this section.

XXIII. AIRPORT SECURITY

23.1 To the extent Consultant will be responsible for work which necessitates entrance to the Air Operations Area or other secure area of the SAT, 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.

23.2 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 SAT, 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 SAT 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 SAT 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 SAT must be badged in accordance with City and TSA rules and regulations.

23.3 Gates and doors located in and around SAT premises utilized by Consultant that permit entry into sterile or secured areas at SAT, 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.

23.4 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 SAT 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.

XXIV. 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.

XXV. 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.

XXVI. APPLICABLE LAW

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

XXVII. 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.

XXVIII. 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.

XXIX. 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.

XXX. 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.

XXXI. NON-WAIVER OF PERFORMANCE

31.1 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.

31.2 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.

XXXII. 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.

XXXIII. 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.

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

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

34.1.1 "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.

XXXV. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

- 35.1 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.
- 35.2 "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.
- 35.3 "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.
- 35.4 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.

XXXVI. ENTIRE AGREEMENT

36.1 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.

36.2 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.

The remainder of this page left intentionally blank.

EXECUTED ON THIS, THE _____ DAY OF _____, 2017.

CITY OF SAN ANTONIO, TEXAS

PAVLOV Advertising, LLC

Sheryl Sculley
City Manager

By: Allen Wallach
Allen Wallach
CEO/manager

Title

Federal Tax ID#: 75-2925094

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT 1

SCOPE OF SERVICES

Consultant shall perform activities under the contract in conformance with generally accepted industry standards that are usual and customary between a client and an advertising agency in such relationships.

No work shall be undertaken and no expenditure made unless the concept and program have been approved in writing by the City. Upon request from the City, Consultant will provide the City with proposal for specific projects. Any and all work performed shall be pursuant to a Task Order developed in accordance with the process outlined below and signed by both parties:

1. When City desires services, City shall notify Consultant by issuing a request for proposal. Each request for proposal shall include, at a minimum: the name of the Project, a proposed budget for the Project, any deadlines for performance, and a deadline for providing City with a proposal based on the above.
2. Consultant shall prepare and submit to City, within the timeline stated in request for proposal, a proposal for the requested services which will include, at minimum: a listing of the specific services to be provided and an estimate of cost.
3. Consultant and City shall negotiate the proposal. Once Consultant and City reach mutual agreement as to scope, scheduling and cost, City shall issue a Task Order to be executed by both parties evidencing the agreed to scope, schedule and costs.
4. The Director or his/her designee has the authority to execute a Task Order on behalf of City.
5. Consultant shall not proceed with services until a Task Order has been executed and Consultant receives a written notice to proceed by City. Any services provided or expenses incurred, prior to receiving a written notice to proceed from City, on a particular Task Order will be at Consultant's sole risk and expenses and may not be reimbursable by City.
6. Actual amounts billed shall not exceed the total amount set out in the executed Task Order.
7. Each Task Order shall be incorporated herein for all purposes. Each Task Order shall be numbered sequentially, starting with number one (1).
8. Consultant shall not invoice for any work associated with the development of Proposal and the associated Task Order negotiation.
9. In the event that a Task Order is executed by both parties prior to the expiration of the Contract and performance of the services extends past the expiration date of Contract, City has the option to terminate the Task Order or allow continued performance past the expiration date. If the City delivers to Consultant a notice to stop work, Consultant shall stop any work immediately upon receiving notice to stop work and shall invoice City for all services performed up to the date of said notice to stop work. If the City does not terminate a Task Order which performance would extend past the expiration date of the Contract, Consultant shall perform all services set out in the applicable Task Order and all terms of the Contract shall continue to apply to such services until all services have been completed and accepted by City.

The Consultant shall perform and/or manage marketing tasks which include, but are not limited to, the following:

1. Strategic planning
2. Project management
3. Media program evaluation and purchases across all channels in U.S. and international markets (including but not limited to print, TV, radio, digital, online)
4. Research
5. Creative concept development
6. Design/Production (execution)
7. Online, website, and social media marketing strategies
8. Trafficking and scheduling
9. All related accounting and report requirements.

More specifically, Consultant's performance may be applied to the following programs and requirements:

1. Airline Incentive Program (Exhibit 4) – Goal is to Create Awareness of New Flights/Airlines from SAT
 - a. The Consultant will coordinate with the City and airlines to develop, manage, procure and/or administer marketing, advertising and promotion of SAT, the new non-stop route and/or new entrant air carrier.
 - b. When approved by City, the Consultant will be responsible to execute the air carrier's cooperative marketing plan which may include: graphic designs, development and purchase of print production, scripting and production of radio voice overs, as well as the production and purchase of radio and television spots, newspaper and magazine ads, web banners, signage and billboards, website page, banner or links to landing pages.
2. Airport Concession Marketing Campaigns – Goal is to Increase Concession Sales
 - a. The Consultant shall develop a sales and marketing program and budget for each fiscal year (October 1 through September 30) in cooperation, advice and written consent of the Aviation Director, or through his/her staff, and voted upon by the SAT Concession Committee during the September meeting. Approved marketing program will be acted upon during upcoming fiscal year.
 - b. The Consultant will attend monthly or quarterly Concession Committee meetings
 - c. With approval by the Airport, the Consultant will perform all requested marketing, strategic planning, creative concept and production, media planning, buying and evaluation, traffic and scheduling, website development, hosting and maintenance, sales and discount campaigns and all related accounting requirements.
 - d. The Consultant will develop and administer a Mystery Shopper Program, meet with each Concession Manager to advise them of the outcome, and provide sales technique training to concession employees.

3. San Antonio International Airport Meet Me Campaign – Goal is to create awareness of available flights from SAT to various international destinations
 - a. As needed, the Consultant shall develop an advertising campaign and budgets to promote SAT's air service.
 - b. Campaign may require development of a brand/logo, advertising design and print production, as well as purchase of advertising space at various venues.
4. Miscellaneous: At City's request, Consultant will provide services for various on-call advertising, graphic design, video photography, and print production and installation projects to include, but not limited to, the following:
 - a. Branding various programs, e.g., facility renovation, construction projects, etc. to include design, layout, printed signs
 - b. Design, production, procurement and/or installation and removal of advertising signage and banners
 - c. Video photography to include full production services (scripting, production and editing) and looping services.
 - d. Layout, design and/or print production of Airport System's annual report, e-newsletters, brochures, etc.

**EXHIBIT 2
FEE SCHEDULE**

1. Hourly Rates for personnel to include subcontractors:

Note: The rates specified below include profits, labor, and all direct and indirect overhead costs such as transportation, general and administrative costs, etc.

1. **Hourly Rates:** Using the table below, provide Hourly Rates for all personnel, including subcontractors, to be assigned. (Note: The rates specified below shall include profits, labor, and all direct and indirect overhead costs such as transportation, general and administrative costs, etc.)

T I	NAME	PRIME OR SUBCONTRACTOR	HOURLY RATE
Account Manager	Amanda Gibson / Lorene Ran	gePrime / Sub	\$110
Creative Director	Khris Kesling / Ron Landret	Prime / Sub	\$125
Copywriter	Dan Joyce / Beverly Ingle	Prime / Sub	\$110
Graphic Designer	Margot Albert / Eli Flores	Prime / Sub	\$95
Media Planner	Mallory Ellis / Liz Gonzalez	Prime / Sub	\$110
Media Buyer	Diana Stebner / Melinda Torr es	Prime / Sub	\$100
Radio/Broadcast	DeLaine Kruzel / T Gueco	Prime / Sub	\$115
TV Ad Production	DeLaine Kruzel / T Gueco	Prime / Sub	\$115
Print Production	Delaine Kruzel / T Gueco	Prime / Sub	\$95
Video Editor	Letty Romero	Sub-contractor	\$100
Videographer	Letty Romero	Sub-contractor	\$150
Secret Shopper	Jessica Massay	Sub-contractor	\$135
Data Analyst	Kristy Grieder	Sub-contractor	\$75

2. **Credits, Commissions and/or Mark Ups:** Using the table below, list each subcontractor Respondent proposes to use for services or media buys. Respondents must disclose any percent credits, commissions and/or mark-ups taken and/or given between Consultant and any subcontractors. Add as many lines as needed.

Subcontractor Name	Type of Service or Media Buy	Type of Credit, Commission or Markup	% of Credit	% of Commission	% of Mark Up
Prime – PAVLOV Advertising, LLC Sub – KGBTexas Marketing / Public Relations Inc. Sub – Aquillon & Associates, LLC	Media	Commission	—	10%	—
Prime – PAVLOV Advertising, LLC Sub – KGBTexas Marketing / Public Relations Inc. Sub – Aquillon & Associates, LLC	Production (Printing, Broadcast, Photography, Talent)	Markup			10%

2. Subcontractors, Credits, Commissions and/or Mark Ups:

Markups on media buys and other sourced or purchased media related items shall be ten percent (10%). The aforementioned 10% mark up shall be offset by any commission or credits received by Consultant from any vendor and/or subcontractors on media buys and other sourced or purchased media related items. In no event shall the total compensation to Consultant for media buys and other sourced or purchased media related items, to include commissions and credits from vendors and/or subcontractors, exceed 10%.

Consultant shall not markup postage, shipping or expenses related to travel and expenses incurred on the client's behalf.

EXHIBIT 3

**Consultant
And
Consultant
Reimbursable Expense Policy**



City of San Antonio

As of 02/23/12

Reimbursable Expense Policy

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Consultant & Consultant Reimbursable Expense Policy

1. GENERAL

1.1 Introduction

This Consultant & Consultant Reimbursable Expense Policy (the "Policy") contains the guidelines for reimbursement of reasonable expenses incurred by Consultants and consultants (both of which shall hereinafter be referred to as "Consultant") 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 Consultants 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 Consultant shall be responsible for ensuring that all subconsultant or sub-consultants adhere to this Policy.

The Consultant 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. Consultant is expected to exercise good judgment in the type and amount of expense incurred.

For travel expenses, Consultant is expected to plan in advance of the departure date to obtain lowest cost fares, rates and accommodations. In addition, Consultant 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:

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 Consultant employee leaves their home, office, or other authorized point and ends on the day and time the Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant while engaged in activities outside the scope of the Consultant 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 Consultant 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

Consultant 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. Consultant 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), Consultant 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 Consultant's expense will not require advance approval. However, Consultant 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 Consultant had not extended the trip.

In determining if an extended stay will result in any cost savings, Consultant 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 Consultant. 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 Consultant, reimbursement of transportation costs by private automobile shall not exceed the documented amount of airfare Consultant would have paid had the Consultant traveled by air.

Reimbursement for Travel To or From a Common Carrier Terminal

When a Consultant 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. Consultant 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 Consultant, 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 Consultant 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 Consultant 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 Consultant would be limited to \$500 (2 consultant 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. Consultants 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 Consultant 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. Consultants 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.

Consultant 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 Consultant employee, reimbursement is limited to the cost that would have been incurred had the Consultant been traveling alone.

3.2 Non-Commercial Lodging

Consultant 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 expenses for travel are reimbursed at actual cost, up to the maximum rate established in the U. S. General Services Administration (GSA) Federal Travel Regulation Domestic or International 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:

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 Consultant 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 Consultant 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 Consultant'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 and the U.S. Department of State Foreign Per Diem Rates in U.S. Dollars.

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

4. Relocation Assistance

4.1 Requirements

Relocation assistance is generally not provided to Consultants. However, in rare Aviation Department agreements, relocation of key personnel may be allowed for long term capital projects. The expenses related to the Consultant 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 Consultant 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 Consultant 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:

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 Consultant 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 Consultant's employee and the employee leaves the Consultant's employment before six (6) months of relocation, the City will be entitled to recovery the full amount of the relocation assistance paid from Consultant.

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-Consultants.
- 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 Consultant 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 Consultant being reimbursed.
- Name of Consultant 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 4

FAA REQUIRED CONTRACT PROVISIONS **Compliance with Nondiscrimination Requirements**

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

1. **Compliance with Regulations:** Consultant (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 Professional Services Agreement.
2. **Non-discrimination:** Consultant, with regard to the work performed by it during the Professional Services Agreement, 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. Consultant 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 C.F.R. Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subconsultant or supplier will be notified by Consultant of Consultant's obligations under this Professional Services Agreement and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** Consultant 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 City or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish the information, Consultant will so certify to the City 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 Consultant's noncompliance with the Non-discrimination provisions of this Professional Services Agreement, City 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 Consultant under the Professional Services Agreement until Consultant complies; and/or
 - b. Cancelling, terminating, or suspending the Professional Services Agreement, in whole or in part.
6. **Incorporation of Provisions:** Consultant 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. Consultant will take action with respect to any subcontract or procurement as the City or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Consultant becomes involved in, or is threatened with litigation by a subconsultant, or supplier because of such direction, Consultant may request the City to enter into any litigation to protect the interests of the City. In addition, Consultant may request the United States to enter into the litigation to protect the interests of the United States.

Federal Fair Labor Standard Act (Federal Minimum Wage)

All contracts and subcontracts that result from this solicitation shall incorporate by reference the provisions of 29 C.F.R. Part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and affect 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.

Occupational Safety and Health Act of 1970

All contracts and subcontracts that result from this solicitation shall incorporate by reference the requirements of 29 C.F.R. 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 C.F.R. 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.

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "consultant") 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 consultants, 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.).

VI. DRUG-FREE WORKPLACE

(a) Definitions. As used in this clause—

“Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

“Conviction” means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

“Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

“Drug-free workplace” means the site(s) for the performance of work done by the Consultant in connection with a specific contract where employees of the Consultant are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

“Employee” means an employee of a Consultant directly engaged in the performance of work under a Government contract. “Directly engaged” is defined to include all direct cost employees and any other Consultant employee who has other than a minimal impact or involvement in contract performance.

“Individual” means an offeror/consultant that has no more than one employee including the offeror/consultant.

(b) The Consultant, if other than an individual, shall—within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration—

- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Consultant’s workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- (2) Establish an ongoing drug-free awareness program to inform such employees about—
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The Consultant’s policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs;and

- (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b)(1) of this clause;
- (4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will—
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;
- (5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- (6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
 - (i) Taking appropriate personnel action against such employee, up to and including termination; or
 - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
- (7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this clause.
- (c) The Consultant, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.
- (d) In addition to other remedies available to the Government, the Consultant's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Consultant subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

EXHIBIT 5

ACDBE PROGRAM REQUIREMENTS



Airport Concessions Disadvantaged Business Enterprise (ACDBE) Program Requirements – Complete, sign and submit the required ACDBE Good Faith Effort Plan for Federally Funded Contracts (DBE Form 1), found in this RFP as RFP attachment E. If proposed sub-contractor/s/suppliers are certified, attach a copy of their Certification Affidavit to DBE Form 1. If respondent is a joint venture, submit the required joint venture documentation described in RFP attachment E.

Respondents must submit a narrative statement which describes their:

- Business Diversity Plan which should include the following types of info: commitment in addressing diversity, activities to be taken to assure equal employment opportunity for all persons, regardless of race, color, religion, age, national origin, citizenship status or disability, and institutional strategies to ensure diversity.*
- Historical DBE/ACDBE utilization on previous contracts*
- Efforts to achieve significant and meaningful diversity on this project team compilation.*

PAVLOV's Business Diversity Plan:

Our company strives for diversity and seeks to provide opportunity for all. Some of our current and past activities include attending job fairs and seminars, advertising opportunities on our company website and in diverse publications, on-campus recruiting, internships and others.

It is the policy and practice of PAVLOV Advertising, LLC to assure that no person will be discriminated against, or be denied the benefit of any activity, program or employment process, in the areas of recruiting, advertising, hiring, upgrading, promotion, transfer, demotion, lay off, termination, rehiring, employment, rates of pay and/or other compensation.

PAVLOV Advertising, LLC is an Affirmative Action/Equal Opportunity Employer and is strongly committed to all policies which will afford equal opportunity employment to all qualified persons without regard to age, ancestry, color, marital status (including civil union status), national origin, race, religious creed, sex, sexual orientation, mental retardation, learning disability, present or past history of mental disorder, or physical disability including, but not limited to, blindness, unless it is shown that such disability prevents performance of the work involved.

PAVLOV is committed to ACDBE subcontractors as it related to this contract. This will be achieved through San Antonio-based sub-contractor, **Aguillon & Associates, LLC**, a certified ACDBE.



Historical DBE/ACDBE utilization on previous contracts:

PAVLOV currently works many governmental entities with varying DBE/ACDBE/SBE, etc. goals. PAVLOV has a track record of proven success on attaining and far surpassing these goals. On PAVLOV's Business to Consumer Marketing and Advertising contract for DFW Airport, PAVLOV is well ahead of goal performing at 35% of a 25% goal across the four-year life of the contract. We've worked with VIA Metropolitan Transit in San Antonio since October 2015 and have maintained more than 50% DBE participation with a 26% goal. And for the Fort Worth Transportation Authority, we have met our 20% DBE goal for ten years straight.

Efforts to achieve significant and meaningful diversity on this project team compilation:

There are very few certified ACDBE companies -- and few opportunities/contracts for such -- especially in the San Antonio region. However, our sub-contractor partner, Aguillon & Associates, LLC is one of them. For this contract, we commit 15% (instead of the 12% requirement) of the contract value to ensure extraordinary opportunity for an ACDBE-certified company. In addition, along with our other sub-contractor, KGB Texas (a certified SBE company), we will seek additional opportunities to engage ACDBEs as they become available.

RFP ATTACHMENT E

DBE/ACDBE FORMS

SAN ANTONIO INTERNATIONAL AIRPORT

DBE/ACDBE GOOD FAITH EFFORT PLAN
FOR FEDERALLY FUNDED CONTRACTS

(DBE/ACDBE FORM 1)

NAME OF PROJECT: Advertising and Marketing Services

PROPOSER INFORMATION:

Name of Proposer: PAVLOV Advertising LLC

Address: 3107 W. 7th Street, Ste. 400

City: Fort Worth

State: Texas

Zip Code: 76107

Telephone: 817-336-6824

E-mail Address: aw@pavlovaagency.com

Is your firm certified? Yes ☒ NoType of Certification: ☐ DBE/ACDBE ☐ MBE ☐ WBE ☐ AABE ☐ SBE

Age of Firm (Number of Years in Business): 16 years

Annual Gross Receipts of the Firm: ☐ Less than \$500,000 ☐ \$500,000 to \$1 million
☐ \$1 million to \$2 million ☐ \$2 million to \$5 million
☒ Over \$5 million

1. List ALL SUBCONTRACTORS/SUPPLIERS that will be utilized on this contract. The apparent successful proposer for professional services contracts shall submit a Letter of Intent (DBE/ACDBE Form 2) for all firms to be utilized on this contract to the Aviation Department's DBE/ACDBE Liaison Officer within seven (7) business days from the date a contract is negotiated. If the Aviation Department does not receive completed copies from the apparent successful proposer within seven (7) business days from the date a contract is negotiated, then apparent successful proposer's Good Faith Effort Plan will not be approved. An approved Good Faith Effort Plan is required prior to award of any contract.

Name & Address of Company	Scope of Work/Supplies to be Performed/ Provided by Firm	Estimated Contract or % Level of Participation	If Firm is DBE/ACDBE Certified, Provide Certification Number	Date Written Notice Was Sent and Method (Letter, Fax, E-mail)
1. Aguillon & Associates LLC	event management/ and execution, translation and managing meetings	15%	216065675	6/15/17 - Letter and Email
2. KGBTexas Marketing / Public Relations Inc.	Account management, strategy, creative, PR, public affairs, media planning and buying, social media and mystery shopping	42%	N/A	6/16/17 - Email
3.				
4.				
5.				

(Use Additional Sheets if Necessary)

If goal was met, skip to Item 9

Goal met - skipped to #9

2. List all firms you contacted with subcontracting/supply opportunities for this project that will not be utilized for this contract by choice of either the proposer, subcontractor, or supplier. *Written notices to firms contacted by the proposer for specific scopes of work identified for subcontracting/supply opportunities must be provided to subcontractor/supplier not less than five (5) business days prior to bid/proposal due date.* The following information is required for all firms that were contacted for subcontracting/supply opportunities:

Name & Address of Company	Scope of Work/Supplies to be Performed/ Provided by Firm	Estimated Contract Amount or % Level of Participation	If Firm is DBE/ACDBE Certified, Provide Certification Number	Date Written Notice Was Sent and Method (Letter, Fax, E-mail)	Reason Agreement Was Not Reached
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

(Use additional sheets as needed)

In order to verify a proposer's good faith efforts, it may be necessary to provide the City with copies of the written notices to all firms contacted by the proposer for specific scopes of work identified in relation to the subcontracting/supply opportunities in the above named project. If requested by the DBE/ACDBE Liaison, copies of said notices must be provided to the DBE/ACDBE Liaison within five (5) business days of such request. Such notices shall include information on the plans, specifications and scope of work.

3. Did you attend the pre-proposal conference scheduled by the City for this project? _____ Yes _____ No
4. List all DBE/ACDBE listings or directories, contractor associations, and/or any other associations utilized to solicit DBE/ACDBE subcontractors/suppliers:
- _____
- _____
5. Discuss efforts made to define additional elements of the work proposed to be performed by DBE/ACDBEs in order to increase the likelihood of achieving the goal:
- _____
- _____

6. Indicate advertisement mediums used for soliciting bids from DBE/ACDBEs. (Please attach a copy of advertisement(s)).

7. Discuss efforts made to assist interested DBE/ACDBEs in obtaining bonding, letters of credit, or insurance:

8. Discuss efforts made to assist interested DBE/ACDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services:

9. Name and phone number of person appointed to coordinate and administer the Federal DBE/ACDBE Good Faith Efforts of your company on this project.

Name: Ali Baer Title: Account Executive

Phone Number: 817-546-8337

10. The Good Faith Effort Plan for Federally Funded Contracts must be approved by the Aviation Department's DBE/ACDBE Liaison Officer prior to award of contract.

11. The Federal DBE/ACDBE Good Faith Efforts Plan is subject to review by the Aviation Department's DBE/ACDBE Liaison, and final approval in determining whether Good Faith Efforts have been made rests with the Aviation Director.

AFFIRMATION

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

NAME AND TITLE OF AUTHORIZED OFFICIAL: Allen Wallach

SIGNATURE: allen wallach DATE: July 11, 2017

FOR SAN ANTONIO INTERNATIONAL AIRPORT USE ONLY:

Plan Reviewed by _____ Date: _____
Signature of DBE/ACDBE Liaison

Recommendation: Approval: _____ Denial: _____

Action Taken: Approved: _____ Denied: _____



South Central Texas Regional Certification Agency

"Increasing economic prosperity by creating opportunities and eliminating barriers"

www.sctrca.org



May 3, 2017

Katie Harvey
KGB Texas Marketing / Public Relations, Inc.
200 E. Grayson, Suite 210
San Antonio, TX 78215

Dear Katie Harvey:

We are pleased to inform you that your application for certification in our Small, Minority, Woman, African American, Veteran, and Disabled Individual Business Enterprise (S/M/W/AA/V/DI) Program has been approved. Your firm met the requirements of SCTRCA Standards and is currently certified as a:

***SBE WBE**

Certification Number: **217059026**
Certification Renewal: **May 31, 2019**
Certification Expiration: **May 31, 2019**

Providing the following products or services:
NAICS 541613: MARKETING CONSULTING SERVICES
NAICS 541820: PUBLIC RELATIONS AGENCIES
NAICS 541830: MEDIA BUYING SERVICES

On the two year anniversary date of your certification, you are required to provide a renewal application affirming that no changes have occurred affecting your certification status. The SCTRCA will send you a Certification Renewal reminder **sixty (60) days** prior to your expiration date. The SCTRCA will no longer include a certificate upon certification renewals. **Your expiration date is May 31, 2019.**

Please notify this office within **thirty (30) days** of any changes affecting the size, ownership, control requirements, or any material change in the information provided in the submission of the certification application. Thank you in advance.

Sincerely,

Charles Johnson,
Interim Executive Director

**SAN ANTONIO INTERNATIONAL AIRPORT (SAIA)
LETTER OF INTENT
FOR FEDERALLY FUNDED CONTRACTS
(DBE/ACDBE FORM 3)**

The requirements of 49 CFR Part 26 (Section 26.53), of the U.S. Department of Transportation, requires that all bidders/proposers comply with good faith efforts requirements as a matter of responsiveness. Each solicitation for which a contract goal has been established will require the bidders/proposers to submit the following information from each Subcontractor/Supplier for this contract, and/or change or addition of subcontractors/suppliers on federally funded contracts (ACDBE Form 3)

NAME OF PROJECT: Advertising and Marketing Service

Name of bidder/proposer's firm: PAVLOV Advertising, LLC

Address: 3107 W. 7th Street, Ste. 400 Phone No.: 817-336-6824

City: Fort Worth State: Texas Zip: 76107

Contact Person: Allen Wallach Telephone: 817-336-6824

Name of Sub consultant/Supplier: KGBTexas Communications

Address: 200 East Grayson, Ste. 210

City: San Antonio State: Texas Zip: 78209

Telephone: 210-826-8899 Contact Person: Katie Harvey

Is the above firm Certified: Yes ☒ No ☐ If certified, Certification No: 21059026

Type of Certification: ☐ DBE ☒ MBE ☒ WBE ☐ AABE ☐ SBE

If firm is certified, please attach a copy of the Certification Affidavit with this form.

Age of Firm (Number of Years in Business): 24 Years

Annual Gross Receipts of the Firm: ☐ Less than \$500,000 ☐ \$500,000 to \$1 million
☐ \$1 million to \$2 million ☐ \$2 million to \$5 million
☒ Over \$5 million

NAICS Code and/or Description of work to be performed by firm:
541613, 541820, 541830

The bidder/proposer is committed to utilizing the above-named firm for the work described above. The estimated dollar value of this work is \$ 1,680,000.00*

* This price is based on PAVLOV Advertising, LLC's commitment of 42% contract value and may change based on final contract amount.

Affirmation

The above named firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: Katie Harvey
Signature of Firm's Representative

07/07/2017

Date

Title: CEO

NAME OF PROJECT: Advertising and Marketing Services

DECLARATION OF PRIME CONSULTANT:

I hereby declare and affirm that I am the CEO / Manager
(Title of Declarant)

and a duly authorized representative of PAVLOV Advertising, LLC
(Name of Prime Consultant)

to make this declaration and that I have personally reviewed the material and facts set forth in this Intent to Perform form. To the best of my knowledge, information and belief, the facts and representations contained in this form are true, the owner or authorized agent of the firm signed this form in the place indicated, and no material facts have been omitted.

The undersigned intends to enter into a formal agreement with the listed firm for work as indicated by this form and will, if requested, provide the Airport's DBE Liaison with a copy of that agreement within three (3) business days of execution.

Allen Wallach

(Name of Declarant)

Allen Wallach

(Signature)

07 / 07 / 2017

(Date)

SUBMIT THIS PAGE FOR EACH SUBCONSULTANT/SUPPLIER FOR THIS CONTRACT, AS LISTED ON ITEM 1 OF DBE GOOD FAITH EFFORT PLAN FOR FEDERALLY FUNDED CONTRACTS (DBE FORM 1) AND/OR CHANGE OR ADDITION OF SUBCONTRACTORS/SUPPLIERS ON FEDERALLY FUNDED CONTRACTS (DBE FORM 3)

IF THE BIDDER/OFFEROR DOES NOT RECEIVE AWARD OF THE PRIME CONTRACT, ANY AND ALL REPRESENTATIONS IN THIS LETTER OF INTENT AND AFFIRMATION SHALL BE NULL AND VOID.



South Central Texas Regional Certification Agency

Your unified certification source
www.sctrca.org

June 10, 2016

Melissa Aguillon
Aguillon & Associates LLC
315 E. Euclid Ave.
San Antonio, TX 78212



Dear Melissa Aguillon:

We are pleased to inform you that your application for certification in our Disadvantaged Business Enterprise Program has been approved. Your firm met the requirements of 49 CFR Part 26 and/or 23 and the SCTRCA Policies and Procedures and is currently certified as a:

***ACDBE DBE**

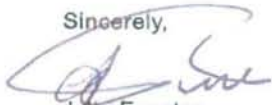
Certification Number: **216065675**
Certification Expiration: **May 31, 2018**

Providing the following products or services:
NAICS-541430: GRAPHIC DESIGN SERVICES
NAICS-541613: MARKETING CONSULTING SERVICES
NAICS-541613: MARKETING MANAGEMENT CONSULTING SERVICES
NAICS-541820: PUBLIC RELATIONS CONSULTING SERVICES
NAICS-541840: ADVERTISING MEDIA REPRESENTATIVES (I.E., INDEPENDENT OF MEDIA OWNERS)
NAICS-561920: CONVENTION AND TRADE SHOW ORGANIZERS

It is your obligation to provide an annual update to maintain your eligibility in our DBE program. The SCTRCA will send a reminder notice **sixty (60) days** prior to your expiration. You must complete and submit to this office, on or before your anniversary date, an Annual Update Affidavit along with all additional information (as noted on the Annual Update Affidavit application). Please realize that the SCTRCA reserves the right to request any other documentation that may be necessary to make a certification determination.

Please notify this office immediately of any changes affecting the size, ownership, control requirements, or any material change in the information provided in the submission of the certification application. Failure to comply with this requirement may result in decertification. Thank you in advance.

Sincerely,


Julio Fuentes,
Executive Director

**SAN ANTONIO INTERNATIONAL AIRPORT (SALA)
LETTER OF INTENT
FOR FEDERALLY FUNDED CONTRACTS
(DBE/ACDBE FORM 3)**

The requirements of 49 CFR Part 26 (Section 26.53), of the U.S. Department of Transportation, requires that all bidders/proposers comply with good faith efforts requirements as a matter of responsiveness. Each solicitation for which a contract goal has been established will require the bidders/proposers to submit the following information from each Subcontractor/Supplier for this contract, and/or change or addition of subcontractors/suppliers on federally funded contracts (ACDBE Form 3)

NAME OF PROJECT: Advertising and Marketing Service

Name of bidder/proposer's firm: PAVLOV Advertising, LLC

Address: 3107 W. 7th Street, Ste. 400 Phone No.: 817-336-6824

City: Fort Worth State: Texas Zip: 76107

Contact Person: Allen Wallach Telephone: 817-336-6824

Name of Sub consultant/Supplier: Aguillon & Associates

Address: 3230 Hillcrest Dr., Suite 2

City: San Antonio State: TX Zip: 78201

Telephone: 210 254-9160 Contact Person: Melissa P. Aguillon

Is the above firm Certified: Yes ☒ No ☐ If certified, Certification No: 216065675

Type of Certification: ☒ DBE ☒ MBE ☒ WBE ☐ AABE ☒ SBE

If firm is certified, please attach a copy of the Certification Affidavit with this form.

Age of Firm (Number of Years in Business): 7 Years

Annual Gross Receipts of the Firm: ☒ Less than \$500,000 ☐ \$500,000 to \$1 million
☐ \$1 million to \$2 million ☐ \$2 million to \$5 million
☐ Over \$5 million

NAICS Code and/or Description of work to be performed by firm:

541613 - Marketing & Consulting
541840 - Advertising & Media
541430 - Graphic Design

The bidder/proposer is committed to utilizing the above-named firm for the work described above. The estimated dollar value of this work is \$ 600,000.00.*

* This price is based on PAVLOV Advertising, LLC's commitment of 15% contract value and may change based on final contract amount.

Affirmation

The above named firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: Melissa P. Aguillon
Signature of Firm's Representative

July 7, 2017
Date

Title: President & CEO

NAME OF PROJECT: Advertising and Marketing Services

DECLARATION OF PRIME CONSULTANT:

I hereby declare and affirm that I am the CEO / Manager
(Title of Declarant)

and a duly authorized representative of PAVLOV Advertising, LLC
(Name of Prime Consultant)

to make this declaration and that I have personally reviewed the material and facts set forth in this Intent to Perform form. To the best of my knowledge, information and belief, the facts and representations contained in this form are true, the owner or authorized agent of the firm signed this form in the place indicated, and no material facts have been omitted.

The undersigned intends to enter into a formal agreement with the listed firm for work as indicated by this form and will, if requested, provide the Airport's DBE Liaison with a copy of that agreement within three (3) business days of execution.

Allen Wallach

(Name of Declarant)

Allen Wallach
(Signature)

07 / 07 / 2017

(Date)

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