

AN ORDINANCE **2006 - 02 - 02 - 0156**

AUTHORIZING THE NEGOTIATION AND EXECUTION OF A PROFESSIONAL SERVICES CONTRACT WITH THE FIRM OF PROFESSIONAL SERVICE INDUSTRIES, INC. (PSI) TO PROVIDE CONSTRUCTION AND MATERIAL TESTING SERVICES IN CONNECTION WITH THE REMAIN OVER NIGHT (RON) APRON PROJECT AT SAN ANTONIO INTERNATIONAL AIRPORT FOR AN AMOUNT NOT TO EXCEED \$56,012.00; APPROPRIATING FUNDS, AMENDING THE BUDGET AND AUTHORIZING PAYMENT.

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WHEREAS, the City has in its Five Year Capital Program, a project to improve the Remain Over Night Apron at San Antonio International Airport (“the Project”); and

WHEREAS, the Project will be partially funded by Federal Aviation Administration (FAA) grant funds under the Airport Improvement Program (AIP); and

WHEREAS, the FAA Grant assurances require the all AIP Projects with pavement costs in excess of \$25,000.00 have construction and material testing performed by an independent consultant; and

WHEREAS, the City requested Interest Statements from consulting firms desiring to provide construction and material testing for the Project; and

WHEREAS, all proposals received were evaluated by City staff, based on capability, past experience, knowledge familiarity with similar projects; and

WHEREAS, the City Architect/Engineer Selection Committee reviewed the ratings, and recommend that the firm of Professional Service Industries, Inc. (“PSI”) be selected for negotiation of a contract for this Project based upon its demonstrated ability, qualifications and experience; and

WHEREAS, City staff has negotiated an agreement with PSI to provide the construction and material testing services for the Project, for a fee not to exceed \$56,012.00 which is considered fair and reasonable for the work involved; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee is authorized to execute a Professional Services Agreement with Professional Service Industries, Inc. for provision of construction and materials testing services, in and amount not to exceed \$56,012.00. A copy of the proposed contract and associated budget is attached hereto and incorporated herein by reference for all purposes as Attachment 1.

SECTION 2. The budget in Fund 51099000 entitled "Airport Capital Projects" Project Definition 33-00114 entitled "Remain Overnight (RON) Apron" shall be revised by reducing WBS Element 33-00114-05-07 entitled "Unallocated Appropriations" by the amount of \$56,012.00.

SECTION 3. The budget in Fund 51099000 entitled "Airport Capital Projects" Project Definition 33-00114 entitled "Remain Overnight (RON) Apron" shall be revised by increasing WBS Element 33-00114-05-05 entitled "Construction Materials Testing - PSI", GL Account 5201170 entitled "Engineering Fees" by the amount of \$56,012.00.

SECTION 4. The amount of \$56,012.00 appropriated in Fund 51099000 entitled "Airport Capital Projects" Project Definition 33-00114 entitled "Remain Overnight (RON) Apron" WBS Element 33-00114-05-05 is authorized to be encumbered and made payable to Professional Service Industries, Inc. for Construction and Materials Testing.

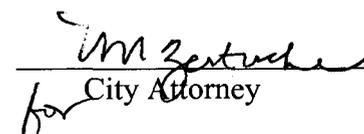
SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance for the City of San Antonio for the City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 6. This Ordinance shall be effective on and after the tenth (10th) day after passage.

PASSED AND APPROVED this 2nd day of February, 2006.


M A Y O R
PHIL HARDBERGER

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
City Attorney

**PROFESSIONAL SERVICES AGREEMENT
FOR
MATERIAL TESTING SERVICES**

STATE OF TEXAS

COUNTY OF BEXAR

**AGREEMENT FOR
CONSTRUCTION AND MATERIAL TESTING SERVICES
FOR RON APRON
AT
SAN ANTONIO INTERNATIONAL AIRPORT**

This AGREEMENT is made and entered into by and between the City of San Antonio (hereinafter referred to as "CITY"), a Texas Municipal Corporation acting by and through its City Manager, pursuant to Ordinance No. _____, passed and approved on the _____ day of _____, 200__ and _____, by and through its _____ (hereinafter referred to as "CONSULTANT"), both of which may be referred to herein collectively as the "PARTIES".

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

I. DEFINITIONS

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

1.1 "Director" means the director of CITY's Public Works Department, or the designated project manager identified by the Notice to Proceed.

1.2 "Project" means the capital improvement/construction development undertaking of CITY for which CONSULTANT's design services, as stated in the Scope of Services, are to be provided pursuant to this AGREEMENT.

1.3 "Ab Initio" means from the beginning; from the first act; from the inception. *See Black's Law Dictionary, 5th Ed., © 1983.*

1.4 "Respondeat Superior" means let the master answer. This maxim means that a master is liable in certain cases for the wrongful acts of his servant, and a principal for those of his agent. *See Black's Law Dictionary, 5th Ed., © 1983.*

II. PERIOD OF SERVICE

This AGREEMENT shall take effect on the eleventh (11th) calendar day after it is approved by the San Antonio City Council or upon execution by both parties, whichever date is later, and continue in full force and effect for the period required for completion of the duties as set forth in the Scope of Services.

III. SCOPE OF SERVICES

3.1 **CONSULTANT** shall not commence work until **CONSULTANT** has been thoroughly briefed on the scope of Project, and has been notified in writing by Director to proceed. **CONSULTANT** shall provide a written summary of the scope meeting, including a description of the Project's scope and **CONSULTANT**'s services required by said scope. Should the scope subsequently change, either party may request a review of the anticipated services, with an appropriate adjustment in fees; however, such adjustment cannot exceed the maximum allowed for additional services in Article V, Compensation, and cannot substantially alter the original scope of this AGREEMENT.

3.2 **CONSULTANT**, in consideration for the compensation herein provided, shall render the professional services necessary to provide the necessary construction and material testing as outlined in Appendix A and in accordance with the construction documents and related ASTM procedures.

3.3 **CONSULTANT** shall be represented by a professional engineer licensed to practice in the State of Texas at meetings of any official nature concerning the Project, including but not limited to scope meetings, review meetings and other meetings as may be required for the Project. All submittals shall carry the signature and seal or, in the case of progress, or incomplete submittals, an appropriate disclaimer with the professional engineer's name and license number, with the date of the submittal adjacent thereto of a licensed professional engineer.

3.4 **CONSULTANT** shall complete the work in a timely fashion consistent with the construction schedule and agrees to provide the necessary, qualified personnel in order not to delay the progress of the project.

3.5 Upon acceptance and approval of the plans, reports or other producibles required for a phase of work, as set forth in the Scope of Services, Director shall authorize **CONSULTANT**, in writing, to proceed with the next phase of work.

3.6 The following is a list of all the documents that comprise the Scope of Services for this Project: Each such document is attached hereto and incorporated herein for all purposes. **CONSULTANT** agrees to perform all work required by this Scope of Services.

3.6.1 ATTACHMENT "A" (Scope of Services)

3.6.2 ATTACHMENT "B" - (Deleted)

3.6.3 ATTACHMENT "C" - (Consultant's Fee Proposal From Consultant's Interest Statement)

3.6.4 ATTACHMENT "D" - (Grant Assurances)

3.6.5 ATTACHMENT "E" - (SBEDA Utilization Plan)

3.6.6 ATTACHMENT "F" - (DBE GFEP and Letters of Intent)

IV. COORDINATION WITH THE CITY

4.1 CONSULTANT shall hold periodic conferences with Director, so that the project, as developed, shall have the full benefit of CITY's experience and knowledge of existing needs and facilities and be consistent with its current policies and standards. No more than two conferences shall be held per phase, unless otherwise agreed to by Parties. CITY shall make available, for CONSULTANT's use, all existing plans, maps, field notes, statistics, computations, and other data in its possession relative to existing facilities and to this Project as may be requested by CONSULTANT at no cost to CONSULTANT.

4.2 Director shall act on behalf of CITY with respect to the work performed under this AGREEMENT. He shall have complete authority to transmit instructions, receive information, and interpret and define CITY's policies and decisions with respect to materials, equipment elements and systems pertinent to CONSULTANT's services.

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

4.4 CONSULTANT shall complete all applications and furnish all required data, as set forth in the Scope of Services, compiled by CONSULTANT for CITY's use in obtaining any permits or approvals from governmental authorities having jurisdiction over the Project as may be necessary for completion of the Project. CONSULTANT shall not be obligated to develop additional data, prepare extensive reports or appear at hearings in order to obtain said permits or approvals, unless compensated therefore as provided in Article V, entitled "Compensation".

V. COMPENSATION

5.1 For and in consideration of the services to be rendered by CONSULTANT, CITY shall pay CONSULTANT the fee set forth in this Article V, Compensation. CITY may request CONSULTANT to perform an engineering study to refine the Project scope. Payment for such a study will be negotiated in accordance with Article V, Section 5.5 herein.

5.2 Nothing contained in this AGREEMENT shall require CITY to pay for any unsatisfactory work, as determined by Director, or for work that is not in compliance with the terms of this AGREEMENT. CITY shall not be required to make any payments to CONSULTANT at any time CONSULTANT is in default under this AGREEMENT.

5.3 BASIS FOR COMPENSATION

A. The total fee for CONSULTANT's base work as defined in the Scope of Services shall not exceed the sum of Fifty-Six Thousand Twelve dollars (\$56,012.00).

B. CONSULTANT may submit invoices monthly for work performed and completed which has not been included on previous invoices. Payments shall be made to the CONSULTANT in accordance with Attachment C.

5.4 MODIFICATIONS - CONSULTANT and CITY acknowledge the fact that the base fee as determined in section 5.3(A) above has been established predicated upon the total estimated costs of services to be rendered under the AGREEMENT. For additional services, compensation shall be subject to renegotiations in accordance with section 5.5 below.

5.5 COMPENSATION FOR ADDITIONAL PROFESSIONAL SERVICES

CONSULTANT may be required to perform the additional services listed in 5.5(B) below, subject to appropriations having been made therefore, in connection with this **AGREEMENT**. Should **CONSULTANT** be directed in writing by Director to perform these services, compensation shall be paid by **CITY** to **CONSULTANT** as authorized in writing by Director, as follows:

A. The basis for compensation for additional services may be in one or more of the following forms:

- (1) Rate for testimony of principals to be negotiated.
- (2) Non-Principal - Salary cost times a multiplier of 2.5 with a stated maximum not to be exceeded.
- (3) Principal - hourly rate set forth in 5.5(D) herein with a stated maximum not to be exceeded.
- (4) Reimbursement of non-labor expenses and **CITY** directed subcontract expenses at invoice cost plus a 15% service charge.
- (5) Lump sum per item of work to be negotiated.
- (6) Lump sum to be negotiated.

B. Additional services include, but are not limited to the following:

- (1) Assistance to **CITY** as an expert witness in any litigation with third parties, arising from the development or construction of the Project including the preparation of engineering data and reports.
- (2) Preparation of plats and field notes for acquisition of property required for the construction of the project.
- (3) Site visits for ROW pin locating and/or setting for utility companies.
- (4) Preparation of applications and supporting documents for governmental grants, loans, or advances in connection with the Project.
- (5) Preparation or review of environmental assessments and impact statements.
- (6) Review and evaluation of the effect on design requirements of the Project of any assessments, statements, or documents prepared by others.
- (7) Assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
- (8) Revising previously accepted studies, reports, design documents or **AGREEMENT** documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes, standards, design criteria or orders enacted subsequent to the preparation of such studies, reports, and documents, or are due to causes beyond **CONSULTANT's** control.
- (9) Preparation of feasibility studies not required in the base **AGREEMENT**.
- (10) Detailed quantity surveys of materials, equipment and labor during or after construction phase.
- (11) Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitutions by **CITY** proposed by the **CONTRACTOR** retained to construct the designed Project; and services after the award of each **CONTRACT** in evaluating and determining the acceptability of an unreasonable and excessive number of substitutions proposed by **CONTRACTOR**.

- (12) Services after the completion of the Construction Phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantee called for in any contract for the Project.
- (13) Additional copies of reports, drawings and specifications over the number specified in the base AGREEMENT.
- (14) Preparation of all documents dealing with 404 permits, highway permits, and railroad agreements.
- (15) Preparation of driveway plats.
- (16) Obtaining Right of Entry Agreements on behalf of CITY for driveway penetrations.
- (17) Detailed measurements and surveys for exploration for utilities, if required.
- (18) Preparation of record drawing after completion of work by CONTRACTOR.
- (19) Actual performance of test borings and other soil or foundation investigations and related analysis.
- (20) Tree surveys.

C. Salary Cost - Salary cost is defined as the cost of salaries of engineers, draftsmen, stenographers, surveyors, clerks, laborers, etc. for time directly chargeable to the Project, plus customary and statutory benefits including but not limited to social security contributions, unemployment, excise and payroll taxes, employment compensation insurance, retirement benefits, medical and insurance benefits, sick leave, vacation and holiday pay applicable thereto.

- a. The amount of customary and statutory benefits of all personnel other than Principals of the Consulting Firm will be considered equal to % of salaries or wages.

D. Principals of the Consulting Firm - For the purpose of this provision, the Principals of the Consulting Firm and their total hourly charge will be as follows, except as stated previously for testimony as expert witnesses:

<u>Principal Name</u>	<u>Hourly Charge</u>
	\$

5.6 MAXIMUM COMPENSATION FOR ADDITIONAL SERVICES – Total cumulative costs for the additional services listed in Section 5.5 or in Article VI below shall not exceed that amount appropriated by CITY as set forth in the ordinance authorizing this AGREEMENT, without prior authorization of the San Antonio City Council by passage of an ordinance therefore.

VI. REVISIONS TO DRAWINGS AND SPECIFICATIONS

(DELETED)

VII. OWNERSHIP OF DOCUMENTS

7.1 **CONSULTANT** acknowledges and agrees that **CITY** shall own exclusively any and all information in whatsoever form and character produced and/or maintained in accordance with, pursuant to, or as a result of this AGREEMENT and shall be used as **CITY** desires and shall be delivered to **CITY** at no additional cost to **CITY** upon request or completion or termination of this AGREEMENT without restriction on future use.

7.2 **CONSULTANT** agrees and covenants to protect any and all proprietary rights of **CITY** in any materials provided to **CONSULTANT**. Such protection of proprietary rights by **CONSULTANT** shall include, but not be limited to, the inclusion in any copy intended for publication of copyright mark reserving

8.3 Defaults With Opportunity for Cure.

Should **CONSULTANT** fail to provide the required designs and/or documents required by Article III, Scope of Services by the due dates establish in Article III, Attachment B, Production Schedule, in acceptable form, as indicated in said Scope of Services as approved by Director, same shall be considered a default. However, Parties agree that no default shall be considered to occur where **CONSULTANT**'s failure to provide the designs and/or documents is directly caused by the actions of **CITY**. **CITY** shall deliver written notice of said default specifying such matter(s) in default. **CONSULTANT** shall have ten (10) days after receipt of the written notice, in accordance with Article XVIII, Notice, to cure such default. If **CONSULTANT** fails to cure the default within such ten-day cure period, **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 contractor to complete the work required in this **AGREEMENT**. **CITY** shall also have the right to offset the cost of said new **CONTRACT** with a new contractor against **CONSULTANT**'s future or unpaid invoice(s), subject to the duty on the part of **CITY** to mitigate its losses to the extent required by law.

8.4 **Termination For Cause.** Upon written notice, **CITY** may terminate this **AGREEMENT** upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this **AGREEMENT**:

8.4.1 **CONSULTANT** makes or allows to be made any material misrepresentation or provides any materially misleading information in connection with this **AGREEMENT**, including, but not limited to, **CONSULTANT**'s Interest Statement, or any covenant, obligation, term or condition contained in this **AGREEMENT**; or

8.4.2 **CONSULTANT** violates or 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; however, if such default as provided in Section 8.3, Defaults with Opportunity for Cure, exceeds the following, same shall be considered an Event for Cause, subject to the remedies as provided herein:

(A) **CONSULTANT** fails to cure a default listed in Section 8.3 within the time period required for cure; or

(B) **CONSULTANT** is in default as provided in Section 8.3 on more than one occasion in any consecutive twelve (12) month period.

8.4.3 **CONSULTANT** attempts to assign this **AGREEMENT** contrary to the terms hereof; or experiences a change in ownership interest greater than thirty percent (30%), or control of its business entity; or

8.4.4 **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); or if a receiver, trustee or liquidator is appointed for it or any substantial part of **CONSULTANT**'s assets or properties; or

8.4.5 **CONSULTANT** fails to comply materially with the insurance requirements set forth in this AGREEMENT; or

8.4.6 **CONSULTANT** violates any rule, regulation or law by which **CONSULTANT** is bound or shall be bound while and in performing the services required under this AGREEMENT.

8.5 **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.

8.6 **Effect of Termination.** Notwithstanding Section 8.3, Defaults with Opportunity for Cure, upon a decision to terminate by **CITY**, written notice of such shall be immediately provided to **CONSULTANT** specifying the effective date of termination, notice of which shall be given in accordance with Article XVIII, NOTICES.

8.6.1 Regardless of how this AGREEMENT is terminated, and subject to 8.6.2, **CONSULTANT** shall affect an orderly transfer to **CITY** or to such person(s) or firm(s) as the **CITY** may designate, at no additional cost to **CITY**, all completed or partially completed specifications and reproducibles of all completed or partially completed designs and plans prepared pursuant to this AGREEMENT, documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by **CONSULTANT**, or provided to **CONSULTANT**, hereunder in accordance with Article VII, Ownership of Documents. Any 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.

8.6.2 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.

8.6.3 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.

8.6.4 **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.

8.7 Right of **CITY** to Suspend Giving Rise to Right of **CONSULTANT** to Terminate.

8.7.1 **CITY** may suspend this AGREEMENT at the end of any phase for the convenience of **CITY** by issuing a signed, written notice of suspension (citing this paragraph) as provided in

8.4.5 **CONSULTANT** fails to comply materially with the insurance requirements set forth in this AGREEMENT; or

8.4.6 **CONSULTANT** violates any rule, regulation or law by which **CONSULTANT** is bound or shall be bound while and in performing the services required under this AGREEMENT.

8.5 **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.

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8.6.1 Regardless of how this AGREEMENT is terminated, and subject to 8.6.2, **CONSULTANT** shall affect an orderly transfer to **CITY** or to such person(s) or firm(s) as the **CITY** may designate, at no additional cost to **CITY**, all completed or partially completed specifications and reproducibles of all completed or partially completed designs and plans prepared pursuant to this AGREEMENT, documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by **CONSULTANT**, or provided to **CONSULTANT**, hereunder in accordance with Article VII, Ownership of Documents. Any 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.

8.6.2 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.

8.6.3 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.

8.6.4 **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.

8.7 Right of **CITY** to Suspend Giving Rise to Right of **CONSULTANT** to Terminate.

8.7.1 **CITY** may suspend this AGREEMENT at the end of any phase for the convenience of **CITY** by issuing a signed, written notice of suspension (citing this paragraph) as provided in

Article XVIII, NOTICES, which shall outline the reasons for the suspension and the duration of the suspension. However, it is understood and agreed by the Parties that the total number of days of suspension as reflected in said notice is not guaranteed, and in fact, may be shorter or longer. Such suspension shall take effect upon the date set forth in the notice, or if no date is set forth, immediately upon **CONSULTANT's** receipt of said notice.

8.7.2 **CONSULTANT** may terminate this AGREEMENT in the event such suspension exceeds one hundred and twenty (120) calendar days. **CONSULTANT** may exercise this right to terminate by issuing a signed, written notice of termination, in accordance with Article XVIII, NOTICES, (citing this paragraph) to **CITY** 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**.

8.8 Procedures for **CONSULTANT** to follow upon Receipt of Notice of Suspension.

- 8.8.1 Upon receipt of written notice of suspension, **CONSULTANT** shall, unless the notice otherwise directs, immediately discontinue all services in connection with the performance of this agreement and cancel all existing orders and contracts.
- 8.8.2 **CONSULTANT** shall prepare a statement showing in detail the services performed under this agreement prior to the effective date of suspension except as otherwise required by 8.8.3.
- 8.8.3 All completed or partially completed designs, plans and specifications prepared under this agreement prior to the effective date of suspension shall be prepared for possible delivery to **CITY** but shall be retained by **CONSULTANT** until such time as **CONSULTANT** may exercise the right to terminate.
- 8.8.4 In the event that **CONSULTANT** exercises the right to terminate after the suspension date as provided by this Article, within thirty (30) calendar days after receipt by **CITY** of **CONSULTANT's** notice of termination, **CONSULTANT** shall submit the above referenced statement showing in detail the services performed under this agreement prior to the effective date of suspension. Nothing in this section 8.8.4 shall prevent **CONSULTANT** from submitting invoices for partial payments for work performed prior to the termination date as provided by Article V, Compensation.
- 8.8.5 Additionally, any documents prepared in association with this AGREEMENT shall be delivered to **CITY** by **CONSULTANT**, as a pre-condition to final payment, within thirty (30) calendar days after receipt by **CITY** of **CONSULTANT's** notice of termination.
- 8.8.6 Upon the above conditions being met, **CITY** shall pay **CONSULTANT** that proportion of the prescribed fee which the services actually performed under this agreement bear to the total services called for under this agreement, less previous payments of the fee.
- 8.8.7 **CITY**, as a public entity, has a duty to document the expenditure of public funds. **CONSULTANT** acknowledges this duty on the part of **CITY**. To this end, **CONSULTANT** understands that failure of **CONSULTANT** to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by **CONSULTANT** of any portion of the fee for which **CONSULTANT** did not supply such necessary statements and/or documents.

IX. INSURANCE REQUIREMENTS

9.1 Prior to the commencement of any work under this AGREEMENT, CONSULTANT shall furnish an original completed Certificate of Insurance to CITY's Public Works Department and CITY's Risk Management Division, and shall be clearly labeled "MATERIAL TESTING SERVICES FOR RON APRON AT SAN ANTONIO INTERNATIONAL AIRPORT", which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to CITY. CITY shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to CITY's Public Works Department and CITY's Risk Management Office, and no officer or employee shall have authority to waive this requirement.

9.2 CONSULTANT's financial integrity is of interest to CITY, therefore, subject to CONSULTANT's right to maintain reasonable deductibles in such amounts as are approved by 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, except for professional liability, by companies authorized, approved or admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to CITY, in the following types and amounts:

<u>TYPE</u>	<u>MINIMUM 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. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual liability *f. Explosion, collapse, underground g. Broad form property damage, to include fire legal liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$5,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage \$50,000*
4. Business Automobile Liability a. Owned/Leased Vehicles b. Non-Owned Vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$5,000,000 per occurrence
5. Professional Liability (Claims made form)	\$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 negligent act, malpractice, error or omission in professional services.

9.3 Upon the presentation to CONSULTANT of a written claim against the CITY, which claim is alleged on its face to have arisen from the negligent acts or omissions of CONSULTANT and a written request by the CITY for the same, CONSULTANT shall, without expense to the CITY, make available to the CITY copies of the policies and all endorsements thereto as they apply to the limits required by the CITY solely for the purpose of an *in camera* inspection at CONSULTANT's offices in San Antonio during normal business hours. CITY shall not be entitled to keep copies or images of such policies or endorsements, nor shall CITY be entitled to make written notes memorializing the text or substance of such policies or endorsements.

9.4 CONSULTANT agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- Name CITY and its officers, employees, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with 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 CITY is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of CITY.

9.5 When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by CITY, CONSULTANT shall notify CITY of such and shall give such notices not less than thirty (30) days prior to the change, if CONSULTANT knows of said change in advance, or ten (10) days notice after the change, if the CONSULTANT did not know of the change in advance. In the event of cancellation or non-renewal, such notice must be accompanied by a replacement Certificate of Insurance. All notices under this Article shall be given to CITY at the following addresses:

City of San Antonio	City of San Antonio
Aviation Department – Planning & Eng	Risk Management
9800 Airport Blvd.	111 Soledad, Suite 1000
San Antonio, Texas 78216	San Antonio, Texas 78205

9.6 If CONSULTANT fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the AGREEMENT; however, procuring of said insurance by CITY is an alternative to other remedies CITY may have, and is not the exclusive remedy for failure of CONSULTANT to maintain said insurance or secure such endorsement. In addition to any other remedies 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, 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. A stop work order given to CONSULTANT by CITY in accordance with this Article shall not constitute a Suspension of Work pursuant to Article VIII, Section 8.7.

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

9.8 It is agreed that CONSULTANT's insurance shall be deemed primary with respect to any insurance or self insurance carried by CITY of San Antonio for liability arising out of operations under this AGREEMENT.

X. INDEMNIFICATION

10.1 REGISTERED ENGINEER whose work product is the subject of this contract for material testing services agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES, HARMLESS against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that my ARISE OUT OF OR BE OCCASIONED OR CAUSED BY REGISTERED ENGINEER'S NEGLIGENT ACT, ERROR, OR OMISSION OF REGISTERED ENGINEER, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF REGISTERED ENGINEER, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the rights or duties under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT REGISTERED ENGINEER 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.

Pursuant to Section 271.904 of the Texas Local Government Code, or its successor provision, REGISTERED ENGINEER whose work product is the subject of this contract for testing services, EXPRESSLY AGREES TO INDEMNIFY AND HOLD CITY, ITS AGENT AND EMPLOYEE, HARMLESS against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, for the personal injury, death, or property injury of REGISTERED ENGINEER or the employees of REGISTERED ENGINEER for which recovery of damages is sought that may arise while in the exercise in the performance of the rights or duties under this Contract.

It is the EXPRESS INTENT of the parties to this CONTRACT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by REGISTERED ENGINEER to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY, ITS AGENT AND EMPLOYEE from the consequences of the NEGLIGENCE of the CITY, ITS AGENT OR EMPLOYEE in instances where such negligence causes personal injury, death or property injury to REGISTERED ENGINEER or employees of REGISTERED ENGINEER; or any other expense that arises from personal injury, death, or property injury to REGISTERED ENGINEER or employees of REGISTERED ENGINEER. REGISTERED ENGINEER further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation

brought against the CITY in connection with any such injury, death or property injury for which this INDEMNITY shall apply, as set forth above.

REGISTERED ENGINEER shall promptly advise the CITY, in writing, of any claim or demand against the CITY or REGISTERED ENGINEER known to REGISTERED ENGINEER related to or arising out of REGISTERED ENGINEER's activities under this contract.

The provisions of this section 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.

10.2 CONSULTANT shall advise CITY in writing within 24 hours of any claim or demand against CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT.

10.3 The provisions of this section 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.

XI. ENGINEER'S LIABILITY

11.1 Acceptance of the final plans by CITY shall not constitute nor be deemed a release of the responsibility and liability of CONSULTANT, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, working drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by CITY for any defect in the designs, working drawings, specifications or other documents and work prepared by said CONSULTANT, its employees, subcontractors, and agents.

11.2 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.

XII. LICENSING

CONSULTANT shall utilize qualified personnel to complete the work to be performed under this AGREEMENT, and all work performed under this AGREEMENT is to be executed under the direct supervision of a licensed professional engineer as required by state law. Persons retained to perform work pursuant to this AGREEMENT shall be the employees or subcontractors of CONSULTANT. CONSULTANT or its subcontractors shall perform all necessary work.

XIII. ASSIGNMENT OF RIGHTS OR DUTIES

13.1 By entering into this AGREEMENT, CITY has approved the use of any subcontractors identified in CONSULTANT's Interest Statement. No further approval shall be needed for CONSULTANT to use such subcontractors as are identified in CONSULTANT's Interest Statement.

13.2 Except as otherwise required herein, CONSULTANT may not sell, assign, pledge, transfer or convey any interest in this AGREEMENT nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of CITY. Actual engineering services, those required by law to be performed by a licensed engineer, or services to be performed which, by law, require the supervision and approval of a licensed engineer, may only be subcontracted upon the 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.

13.3 As a condition of consent, if same is given, **CONSULTANT** shall remain liable for completion of the services outlined in this AGREEMENT in the event of default by the successor consultant, assignee, transferee or subcontractor. Any references in this AGREEMENT to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by **CITY** in accordance with this Article.

13.4 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 ab initio 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 in accordance with Article VIII, Termination, and all rights, titles and interest of **CONSULTANT** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this AGREEMENT. The violation of this provision by **CONSULTANT** shall in no event release **CONSULTANT** from any obligation under the terms of this AGREEMENT, nor shall it relieve or release **CONSULTANT** from the payment of any damages to **CITY**, which **CITY** sustains as a result of such violation.

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

XIV. INDEPENDENT CONTRACTOR

14.1 **CONSULTANT** covenants and agrees that (s)he is an independent contractor and not an officer, agent, servant, or employee of **CITY**; that **CONSULTANT** shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of respondeat superior shall not apply as between **CITY** and **CONSULTANT**, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **CITY** and **CONSULTANT**.

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

XV. EQUAL EMPLOYMENT OPPORTUNITY

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. In the event noncompliance occurs, **CONSULTANT**, upon written notification by City, will commence compliance procedures within thirty (30) days.

XVI. SBEDA REQUIREMENTS

16.1 **CONSULTANT** hereby acknowledges that it is the policy of the **CITY** of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), African-American ("AABE"), handicapped and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by **CITY**. This policy and its implementation is known as the Small Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

16.2 **CONSULTANT** agrees to implement the plan submitted in **CONSULTANT**'s response to **CITY**'s Request for Interest Statement under the SBEDA Program for Small, Minority and Women-owned Business Participation in this **AGREEMENT**, thereby meeting the percentages for participation of those groups as submitted therein. **CONSULTANT** agrees to be in full compliance with this article by meeting the percentages listed in **CONSULTANT**'s Interest Statement no later than 60 days from the date of execution of this **AGREEMENT**, and to remain in compliance throughout the term of this **AGREEMENT**. **CONSULTANT** further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this **AGREEMENT**, as may be approved pursuant to this **AGREEMENT**, that will meet the percentages submitted in **CONSULTANT**'s Interest Statement. Changes in contract value by changes in work orders, **AGREEMENT** amendments, or use of contract alternatives, which result in an increase in the value of the **AGREEMENT** by 10% or greater require the **CONSULTANT** to increase its use of business enterprises described in this section, if such is necessary to maintain the same percentages as exist in **CONSULTANT**'s Interest Statement. However, the delegation of any duties hereunder by any means must be approved by **CITY** as stated herein.

16.3 **CONSULTANT** shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/WBE/AABE's. **CONSULTANT** shall submit annual reports to **CITY**'s Department of Economic Development, identifying the above activity and other efforts at increasing SBE/MBE/WBE participation in the **AGREEMENT**. Further, such records shall be open to inspection by **CITY** or its authorized agent at all reasonable times. Should **CITY** find that **CONSULTANT** is not in compliance with this article, **CITY** shall give notice of non-compliance to **CONSULTANT**. **CONSULTANT** shall have 30 calendar days to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a material breach of this **AGREEMENT** and may subject **CONSULTANT** to any of the penalties listed in **CITY** of San Antonio Ordinance No. 77758, at **CITY**'s option. Further, such failure may be considered a default for which **CITY** may terminate this **AGREEMENT** in accordance with Article VIII, Termination.

16.4 **CONSULTANT** shall appoint a representative of its company to administer and coordinate its efforts to carry out these requirements.

16.5 In all events, **CONSULTANT** shall comply with the **CITY**'s Small, Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 96754, and the amendments thereto. Said ordinances are incorporated herein for all purposes, as if fully set forth herein.

16.6 It is CITY's understanding, and this AGREEMENT is made in reliance thereon, that CONSULTANT, in the performance of services required hereunder, will use the subcontractor(s) listed in its response to CITY's Request for Interest Statement.

16.7 Any work or services subcontracted by CONSULTANT shall be by written contract, and unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of this AGREEMENT. Compliance by subcontractor with the provisions of said contract shall be the responsibility of CONSULTANT.

16.8 CITY shall in no event be obligated to any third party, including any subcontractor of CONSULTANT, for performance or services or payment of fees.

16.9 The CONSULTANT is hereby further advised that it is the policy of the City that Small, Minority or Woman-owned Business Enterprises shall have the maximum practical opportunity to participate in the performance of public contracts. The CONSULTANT agrees not to discriminate against any individual or group on account of race, gender, age, religion, national origin or physically challenged condition in the execution of this Agreement and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, religion, national origin, gender, age or physically challenged condition. The CONSULTANT further agrees to abide by all applicable terms and provisions of the City's Non-Discrimination Policy, City's Small, Minority or Woman-owned Business Advocacy Policy and City's Equal Opportunity Affirmative Action Policy, these policies being available in City's Economic Development Department, Division of Internal Review and the City Clerk's Office.

16.10 The CONSULTANT agrees that if material deficiencies in any aspect of its Small, Minority and Woman-owned Business Enterprises utilization plan as set out in Exhibit "E" are found as a result of a review or investigation conducted by City's Economic Development Department, CONSULTANT may be required to submit a written report to City's Economic Development Department. The CONSULTANT will also be required to submit a supplemental Good Faith Effort Plan (GFEP) indicating efforts to resolve any deficiencies. A denied GFEP, by the City's Economic Development Department will constitute failure to satisfactorily resolve any deficiencies by the CONSULTANT. Any denied plan will include a detailed deficiency report. Failure to cure all deficiencies within one hundred twenty (120) calendar days of the date a plan is denied constitutes a breach by the CONSULTANT and which can, at the option of the Director, result in termination of this Agreement pursuant to Article VIII.

XVII. DBE REQUIREMENTS

17.1 Policy. It is the Policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole, or in part, with Federal funds. Consequently, the DBE requirements of 49 CFR Part 26 shall apply to this Agreement should federal funds be expended hereunder.

17.2 DBE Obligation. CONSULTANT agrees not to 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, gender, age, physically challenged condition, or political belief or affiliation. In the event noncompliance occurs, CONSULTANT, upon written notification by City, will commence compliance procedures within thirty (30) days.

17.3 Title VI Assurances. During the performance of the Agreement CONSULTANT agrees as follows:

17.3.1 Compliance with Regulations. **CONSULTANT** shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations") which are herein incorporated by this reference and made a part of this Agreement.

17.3.2 Nondiscrimination. **CONSULTANT**, with regard to the services performed by it during this Agreement term, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of employees, subconsultants and construction contractors.

17.3.3 Solicitations for Subconsultants and Construction Contractors. In solicitations and negotiations made by **CONSULTANT** for subconsultant services and construction services, each potential subconsultant and construction contractor shall be notified by **CONSULTANT** of **CONSULTANT'S** obligations under this Agreement, and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

17.3.4 Information and Reports. **CONSULTANT** shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts and other sources of information as may be determined to be pertinent, to ascertain compliance with such Regulations, orders, and instructions. Where any information required of **CONSULTANT** is in the exclusive possession of another who fails or refuses to furnish this information, **CONSULTANT** shall co certify to City or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

17.3.5 Sanctions for noncompliance. In the event of **CONSULTANT'S** noncompliance with the nondiscrimination provisions of this Agreement, such noncompliance shall constitute a breach of this Agreement and after notification by City of said noncompliance, which is not cured within sixty (60) calendar days following receipt of such notice by **CONSULTANT**, City may impose such Agreement sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

17.3.5.1 Withholding of payments to **CONSULTANT** under this Agreement until **CONSULTANT** complies; and/or cancellation or termination of this Agreement, in whole or in part.

17.3.6 Incorporation of Provisions. **CONSULTANT** shall include the provisions of Sections 17.3.1 through 17.3.5 above in every subcontract and construction contract issued pursuant hereto. **CONSULTANT** shall take reasonable action with respect to any subcontract and construction contract as City or the FAA may direct as means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event **CONSULTANT** becomes involved in, or is threatened with, litigation with a subconsultant, contractor or supplier as a result of such direction, **CONSULTANT** may request City to enter into such litigation to protect the interests of City, and in addition, **CONSULTANT** may request the United States to enter into such litigation to protect the interest of the United States.

17.4 Disadvantaged Business Enterprise (DBE) Assurances.

17.4.1. Policy. It is the Policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole, or in part, with Federal funds. Consequently, the DBE requirements of 49 CFR Part 26 shall apply to this Agreement should federal funds be expended hereunder.

17.4.2. The **CONSULTANT**, recipient, contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

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

17.4.4. DBE Obligation. **CONSULTANT** agrees to ensure that disadvantaged business enterprises, as defined in 49 CFR Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole, or in part, with Federal funds. Should Federal funds be provided under this Agreement, **CONSULTANT** shall take all necessary and reasonable steps in accordance with 49 CFR part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete regardless of race, color, national origin, gender, physically challenged condition or veteran status in the award and performance of DOT-assisted contracts.

17.4.5. The **CONSULTANT** agrees that if material deficiencies in any aspect of its APPROVED DBE GFEP and Letters of Intent, and any approved changes thereto, as set out in Exhibit "F" (**NEED TO INCLUDE DBE GFEP and LOIs AS PART OF THE CONTRACT**) are found as a result of a review or investigation conducted by Airport's DBE Liaison, **CONSULTANT** may be required to submit a written report explaining said deficiencies. Failure to cure all deficiencies within one hundred twenty (120) calendar days constitutes a breach by the **CONSULTANT** and which can, at the option of the Director, result in termination of this Agreement pursuant to Article VIII.

17.4.6. Sanctions for Noncompliance. **CONSULTANT** is hereby advised that failure of **CONSULTANT**, or any subconsultant or construction contractor performing Work under this Agreement, to carry out the requirements set forth above, shall constitute a breach of this Agreement and after the notification by City of said noncompliance, may result in termination of this Agreement by City if not cured within sixty (60) calendar days following receipt of such notice by **CONSULTANT** or such other remedy as City deems necessary.

17.5. Prompt Payments For Subconsultants, Subcontractors/Supplies.

17.5.1 **CONSULTANT** shall pay all subconsultants, subcontractors/suppliers for satisfactory performance of their contracts no later than thirty (30) days from **CONSULTANT'S** receipt of City's payment to **CONSULTANT** for satisfactory performance of work by subconsultants, subcontractors/suppliers.

17.5.2 In the event Contractor holds retainage from progress payments to subconsultants, subcontractors/suppliers, then and in such event, consultant shall must make full payment of such retainage to subconsultants, subcontractors/suppliers within thirty (30) days of the satisfactory completion of the subconsultant's, subcontractor's or supplier's work.

17.5.3 Any delay or postponement of payment to subconsultants, subcontractors/suppliers may take place only for good cause and only with City's prior written approval.

17.5.4 Sanctions for noncompliance. In the event of **CONSULTANT'S** noncompliance with the nondiscrimination provisions of this Agreement, such noncompliance shall constitute a breach of this Agreement and after notification by City of said noncompliance, which is not cured within sixty (60) calendar days following receipt of such notice by **CONSULTANT**, City may impose such Agreement sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

17.5.4.1 Withholding of payments to **CONSULTANT** under this Agreement until **CONSULTANT** complies; and/or cancellation or termination of this Agreement, in whole or in part.

17.5.5 Inclusion in Subcontracts. **CONSULTANT** shall physically insert in each of its subcontracts and construction contracts, City's SBEDA and DBE Policies and also a clause requiring its subconsultants and construction contractors to include this same policy in any lower tier subcontracts which they may enter into, together with the clause requiring the inclusion of this policy in any further subcontract that may in turn be made. These policies shall not be incorporated by reference.

XVIII. ESTIMATES OF COST

(DELETED)

XIX. 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 – Planning & Engineering
Attn: Mr. Leslie A. Heinen Jr.
9800 Airport Blvd.
San Antonio, Texas 78216

If intended for CONSULTANT, to:

Professional Services Industries, Inc. (PSI)
Three Burwood Lane
San Antonio, Texas 78216

XX. INTEREST IN CITY CONTRACTS PROHIBITED

19.1 **CONSULTANT** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with **CITY** or any **CITY** agency such as **CITY** owned utilities. An officer or employee has a "prohibited financial interest" in a contract with **CITY** or in the sale to **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or

employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

19.2 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 a Discretionary Contracts Disclosure Statement in compliance with CITY's Ethics Code.

XXI. SOLICITATION

CONSULTANT warrants and represents that he 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, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. This representation constitutes a substantial part of the consideration for the making of this AGREEMENT.

XXII. 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.

XXIII. 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, and all of the terms and conditions of this AGREEMENT.

XXIV. APPLICABLE LAW

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

XXV. 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.

XXVI. 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.

XXVII. 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.

XXVIII. 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.

XXIX. NON-WAIVER OF PERFORMANCE

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

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

XXX. 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.

XXXI. 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.

XXXII. INCORPORATION OF ATTACHMENTS

CONSULTANT understands and agrees that all attachments, including appendices thereto, referred to in this AGREEMENT are intended to be and hereby are incorporated herein and specifically made a part of this AGREEMENT for all purposes. Said attachments are as follows:

ATTACHMENT "A"- (Scope of Services)

ATTACHMENT "B" – ("Deleted")

ATTACHMENT "C" – (CONSULTANT's Fee Proposal from CONSULTANT's Interest Statement)

ATTACHMENT "D" – (Grant Assurances)

ATTACHMENT "E" – (SBEDA Utilization Plan)

ATTACHMENT "F" – (DBE GFEP & Letters of Intent)

In the event of a conflict or inconsistency between any attachment and the terms of this AGREEMENT, the terms of this AGREEMENT shall govern and prevail. In the event of a conflict or inconsistency between Attachment "A" and Attachments "B" and/or Attachment "C", the terms of Attachment "A" shall control over the terms of Attachment "B" and Attachment "C". In the event of a conflict or inconsistency between Attachment "B" and Attachment "C", the terms of Attachment "B" shall control over the terms of Attachment "C".

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

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

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

_____ shall provide immediate written notice to City, in accordance with Article XVIII, NOTICES, if, at any time during the term of this contract, including any renewals hereof, _____ learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

_____ 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 with Article VIII Termination.

XXXIV. ENTIRE AGREEMENT

34.1 This AGREEMENT, together with its authorizing ordinance and Attachments, as listed in Article XXXI, Incorporation of Attachments, embodies the complete AGREEMENT of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written consent of the parties and approved by ordinance passed by the San Antonio City Council.

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

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

CITY:

CONSULTANT:

CITY OF SAN ANTONIO



CITY MANAGER DATE

APPROVED AS TO FORM:

CITY ATTORNEY DATE

ATTEST:

CITY CLERK DATE

ATTACHMENT "A"
SCOPE OF SERVICES

ATTACHMENT "C"

SECTION 1 – Basis of Compensation

The total fee for all basic services defined by this contract is not to exceed the amount of \$56,012.00 and it is agreed and understood that this amount will constitute full compensation to the Consultant for these services. This amount has been approved and appropriated by the San Antonio City Council for expenditure under this contract. Unless and until the City sees fit to make further appropriations, the obligation of the City to the Consultant for a Total Fee for all basic services in connection with this Agreement cannot and will not exceed the sum of \$56,012.00 without further amendment to this contract.

For the purpose of establishing fees for separate tasks, the following allocations of the scheduled fees apply:

SECTION 2 – Changes

The consultant and the City acknowledge the fact that the Total Fee amount contained in Section 1 above has been established, predicated upon the total estimated costs of basic services to be rendered under this contract. For additional services, if the scope of services is changed materially, compensation shall be subject to renegotiation.

SECTION 3 – Methods of Payment

The consultant and the City agree and acknowledge the fact that payment will be made on approved invoices reflecting the work completed and accepted for the various tasks.

ATTACHMENT "D"

TITLE VI GRANT ASSURANCES

During the performance of this CONTRACT, CONSULTANT, for itself, its assignees and successors in interest (hereinafter, collectively, "CONSULTANT") agrees as follows:

- A. Compliance with Regulations. CONSULTANT shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT"), Title 49, Code of Federal Regulations ("CFR") Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations") which are herein incorporated by this reference and made a part of this Agreement.
- B. Nondiscrimination. The CONSULTANT, with regard to the work hereunder, shall not discriminate on the grounds of race, color or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONSULTANT shall not participate, directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the CONTRACT covers a program set forth in "Appendix B" of the Regulations.
- C. Solicitations for subcontractors, including procurements of materials and equipment. CONSULTANT'S solicitations, either by competitive bidding or negotiation, made for work to be performed under a subcontract, including procurements of materials or leases of equipment, shall include a notification, to each potential subcontractor or supplier, of CONSULTANT'S obligations hereunder, and the Regulations regarding nondiscrimination on the grounds of race, color or national origin.
- D. Information and Reports. CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit reasonable access to its books, records, accounts and other sources of information as may be determined to be pertinent, to ascertain compliance with such Regulations, orders, and instructions. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to City or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance. In the event of the CONSULTANT'S material noncompliance with the nondiscrimination provisions of this CONTRACT, such noncompliance shall constitute a breach of this CONTRACT and after notification by City of said noncompliance, which is not cured within sixty (60) calendar days following receipt of such notice by CONSULTANT, City may impose such CONTRACT sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
 - 1. Withholding of payments to the CONSULTANT under the CONTRACT until the CONSULTANT complies; and/or
 - 2. Cancellation, termination, or suspension of the CONTRACT, in whole or in part.
- F. Incorporation of Provisions. CONSULTANT shall include the provisions of Paragraphs A through E above, in every subcontract pertaining to this Agreement, including procurements of materials and leases of equipment issued pursuant thereto. CONSULTANT shall take such action with respect to any subcontract or procurement, as the sponsor or the FAA may direct as means of enforcing such

provisions, including sanctions for noncompliance; provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, a subcontractor or supplier as a result of such direction, CONSULTANT may request the CITY to enter into such litigation to protect the interests of the CITY. Additionally, CONSULTANT may request the U.S. to enter into such litigation to protect the interests of same.

ATTACHMENT "E"
SBEDA Utilization Plan

LIST OF SUBCONTRACTORS/SUPPLIERS

The Bidder/Proposer, PROFESSIONAL SERVICE INDUSTRIES, INC., as part of the procedure for the submission of bid/submittals on a project known as CMT @ SA AIRPORT, submits the following list of subcontractors or proposed subcontracting areas (use additional sheets if necessary) to be used in the performance of work to be done on said project.

NAME OF SUBCONTRACTOR	MBE-WBE-AABE CERTIFICATION NUMBER	SBE (Y/N)	PERCENT AND DOLLAR AMOUNT OF SUBCONTRACT
BAIN MEDINA BAIN, INC.	201011320	YES	5% + \$5,000.00
ALAMO ANALYTICAL LABORATORIES, LTD	203-10-0353	YES	5% + \$5,000.00

The following section is to be completed if the contract (Project) is for less than \$200,000. Please list subcontracting solicitations to all MBE-WBE-AABE contractors for participation on project. If none, explain (exclude successful bidders listed above). Use additional sheets if necessary. **The contractor is expected to solicit participation on subcontracts from available MBE-WBE-AABE-SBEs under this contract.**

NAME OF COMPANY PERFORMING WORK	MBE-WBE-AABE CERTIFICATION NUMBER	SBE (Y/N)	REASON FOR REJECTION
POZNECKI-CAMARILLO & ASSOCIATES		YES	INSURANCE REQUIREMENTS

Only companies certified as MBE, WBE, AABE or SBE by the City of San Antonio or its certifying organization can be applied towards the contracting goals. All MBE-WBE-AABE-SBE subcontractors must submit a copy of certification certificate through the Prime Contractor. Proof of certification must be attached to this form. If a subcontractor is not certified, please call the Small Business Outreach Division at (210) 207-3900 for information and details and how subcontractors can obtain certification.

It is understood and agreed that, if awarded a contract by the City of San Antonio, the Contractor will not make additions, deletions, or substitutions to this certified list without consent of the Director of Economic Development and Director of the appropriate contracting department (through the submittal of the Request for Approval of Change to Original Certified List of Subcontractors form).

AFFIRMATION

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

NAME AND TITLE OF AUTHORIZED OFFICIAL: ED PRUSKE, BUSINESS DEVELOPMENT MANAGER

SIGNATURE:  DATE: JANUARY 19, 2005

ATTACHMENT "F"
DBE GFEP and Letters of Intent

**SAN ANTONIO INTERNATIONAL AIRPORT (SAIA)
DBE GOOD FAITH EFFORT PLAN FOR FEDERALLY FUNDED CONTRACTS
(DBE FORM 1)**

NAME OF PROJECT: MATERIAL TESTING SERVICES FOR VARIOUS FEDERALLY FUNDED PROJECTS
AT SAN ANTONIO INTERNATIONAL AIRPORT

PROPOSER INFORMATION:

Name of Proposer: Professional Service Industries, Inc.

Address: Three Burwood Lane

City: San Antonio State: Texas Zip Code: 78216

Telephone: (210) 342-9377 E-mail Address: ed.pruske@psiusa.com

Is your firm certified? Yes No Type of Certification: DBE MBE WBE AABE SBE

Age of Firm (Number of Years in Business): 33 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 Form 2) for all firms to be utilized on this contract to the Aviation Department's DBE Liaison Officer within seven 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 Certified, Provide Certification Number	Date Written Notice Was Sent and Method (Letter, Fax, E-mail)
1. Bain Medina Bain, Inc. 7073 San Pedro San Antonio, TX 78216	Engineering & CAD If required	5%	201011320	01/13/05 E-Mail
2. Alamo Analytical 10526 Gulfdale San Antonio, TX 78216	Testing	5%	203100353	01/17/05 E-Mail
3.				
4.				
5.				

(Use Additional Sheets if Necessary)

2. List all firms you contacted with subcontracting/supply opportunities for this project that will not be utilized for this contact 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/submittal due date.* The following information is required for all firms that were contacted of 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 Certified, Provide Certification Number	Date Written Notice Was Sent and Method (Letter, Fax, E-mail)	Reason Agreement Was Not Reached
1. POZNECKI-CAMARILLO & ASSOCIATES 1603 BABCOCK, #260 SAN ANTONIO, TX	ENGINEERING	5%	NOT AVAILABLE	TELEPHONE	INSURANCE REQUIREMENTS
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 Liaison, copies of said notices must be provided to the DBE 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-submittal conference scheduled by the City for this project? _____ Yes No

4. List all DBE listings or directories, contractor associations, and/or any other associations utilized to solicit DBE subcontractors/suppliers:
South Central Texas Regional Certification Agency

5. Discuss efforts made to define additional elements of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the goal:
None

6. Indicate advertisement mediums used for soliciting bids from DBEs. (Please attach a copy of the advertisement(s):

None.

7. Discuss efforts made to assist interested DBEs in obtaining bonding, lines of credit, or insurance:

None.

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

None.

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

Name: Ed Pruske Title: Business Development Manager

Phone Number: (210) 342-9377

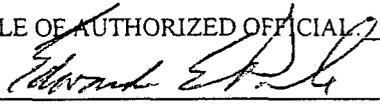
10. The Good Faith Effort Plan for Federally Funded Contracts must be approved by the Aviation Department's DBE Liaison Officer prior to award of contract.

11. The Federal DBE Good Faith Efforts Plan is subject to the review by the Aviation Department's DBE 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: Ed Pruske, Business Development Manager

SIGNATURE:  DATE: 01/19/05

FOR SAN ANTONIO INTERNATIONAL AIRPORT USE ONLY:

Plan Reviewed by _____ Date: _____
Signature of DBE Liaison

Recommendation: Approval: _____ Denial: _____

Action Taken: Approved: _____ Denied: _____

REMAIN OVERNIGHT APRON AT SAN ANTONIO INTERNATIONAL
NAME OF PROJECT: AIRPORT

DECLARATION OF PRIME CONSULTANT:

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

and a duly authorized representative of Professional Service Industries, Inc. (PSI)
(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.

Preston Parker
(Name of Declarant)

[Signature]
(Signature)

1/17/06
(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)

**SAN ANTONIO INTERNATIONAL AIRPORT (SAIA)
LETTER OF INTENT
FOR FEDERALLY FUNDED CONTRACTS**

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 (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)

CONSTRUCTION & MATERIAL TESTING SERVICES
NAME OF PROJECT: AT SAN ANTONIO INTERNATIONAL AIRPORT

Name of bidder/proposer's firm: Professional Service Industries, Inc. (PSI)

Address: Three Burwood Lane Phone No.: (210) 342-9377

City: San Antonio State: Texas Zip: 78216

Contact Person: Edward Pruske Telephone: (210) 342-9377

Name of Subconsultant/Supplier: Alamo Analytical Laboratories, Ltd.

Address: 10526 Gulfdale

City: San Antonio State: Texas Zip: 78216

Telephone: 210-340-8121 Contact Person: Don Williams

Is the above firm Certified: Yes No If certified, Certification No: 203100353

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: 25 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:
541380

The bidder/proposer is committed to utilizing the above-named firm for the work described above. The estimated dollar value of this work is \$ 2,800.00

Affirmation

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

By:  01/17/2006
Signature of Firm's Representative Date

Title: Laboratory Director

REMAIN OVERNIGHT APRON AT SAN ANTONIO INTERNATIONAL AIRPORT
NAME OF PROJECT: _____

DECLARATION OF PRIME CONSULTANT:

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

and a duly authorized representative of Professional Service Industries, Inc. (PSI)
(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.

Preston Parker
(Name of Declarant)
[Signature]
(Signature)

1/17/06
(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]