

28

CITY OF SAN ANTONIO  
AVIATION DEPARTMENT  
CITY COUNCIL AGENDA MEMORANDUM

**TO:** Mayor and City Council

**FROM:** Kevin C. Dolliole, Aviation Director

**SUBJECT:** Professional Services Agreement – Acoustical Treatment Consultant

**DATE:** April 7, 2005

**SUMMARY & RECOMMENDATION**

This ordinance authorizes the execution of a Professional Services Contract with the firm of THC, Inc., as the Acoustical Treatment Consultant (ATC) to provide acoustical treatment consulting services in connection with the Residential Acoustical Treatment Program at San Antonio International Airport (Program) for a fee in an amount not to exceed \$3,308,316.00. Furthermore, this ordinance appropriates \$15,000.00 for legal expenses, \$20,000.00 for administrative expenses and \$8,814,813.00 for construction costs for a total appropriation of \$12,158,129.00.

The contract assigns to the ATC, the work effort, accountability and responsibility for the design, construction, public relations, and legal services to fully implement the Program to include the treatment of potentially 5,100 residences.

Staff recommends approval of this ordinance.

**BACKGROUND INFORMATION**

Within its five-Year Capital Program, the City has a program to acoustically treat qualifying residences proximate to San Antonio International Airport. This Program is a derivative of the 1991 and 2003 Noise Compatibility Studies and is consistent with Federal Guidelines and requirements mandated in our grant assurances.

This Program has been designed around the Single Parcel Method (SPM) of procurement. With this method, construction procurement will be performed through a selection process using a database of approved contractors developed through a series of outreach, training conferences and seminars. Homeowners participate in the selection process and have an opportunity to review contractor's portfolios and conduct interviews before selecting a minimum of three contractors. These selected contractors will prepare and submit bids to the ATC who will award a construction contract to the lowest bidder. It is more efficient to have these contracts held by the ATC who is then directly accountable for the quality of construction and homeowner liaison.

Ordinance No. 99891 passed and approved by City Council on October 14, 2004, selected the firm of THC, Inc. to provide Architectural, Engineering and Construction Services under a modified design/build contract all in connection with the Residential Acoustical Treatment Program at San Antonio International Airport.

City staff together with the law firm of Davidson & Troilo, counsel to the City, negotiated a contract with THC, Inc., to provide design services, construction management, public relations, and legal services to fully implement the Program. The Program will commence with a set-up phase including the establishment of the block prioritization and a product showroom, as well as the development of the public information brochure, homeowner handbook and homeowner orientation material. The ATC will also be required to develop and conduct an outreach and training program for potential construction contractors to explain the Program and encourage participation.

### **POLICY ANALYSIS**

This action is consistent with the City's policy of improving facilities at San Antonio International Airport and the FAA approved Noise Compatibility Program.

### **FISCAL IMPACT**

The FAA participation for this program is 80% with 20% Airport matching share. The current budget for this program is \$ 12,858,129.00 of which \$ 10,286,503.00 is FAA Grant funds and \$ 2,571,626.00 is Airport Funds (PFC).

This action appropriates \$3,308,316.00 for Acoustical Treatment Consultant fees, \$15,000.00 for legal expenses, \$20,000.00 for administrative expenses and \$8,814,813.00 construction. Funding for the total appropriation of \$12,158,129.00 will be from the Federal Aviation Administration Grants 45 and 47 in the amount of \$9,726,503.00 which represents 80% of the costs and the Passenger Facility Charges (PFC) in the amount of \$2,431,626.00 which represents the City's 20% matching share.

Subsequent to this appropriation, there will be \$700,000.00 in total budgeted funds remaining which is reserved for the independent design review and inspection which are required by Texas law and FAA grant assurances respectively. Appropriations for these services will be brought forward through future ordinances, at such time, requirement and funding amount has been determined.

### **COORDINATION**

This request for ordinance has been coordinated with Public Works, Contracts Management, and Finance Departments, the City Attorney's Office, and the Office of Management and Budget.

The ATC will provide services related to:

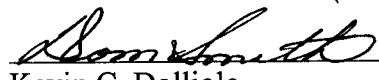
- Community Outreach
- Contractor Qualification & Selection Process
- Meet with Selected Homeowners
- Development of Design Packages
- Execution of Aviation Easements
- Assist Homeowners in Contractor Selection
- Acoustical Treatment Renovations
- Close Out

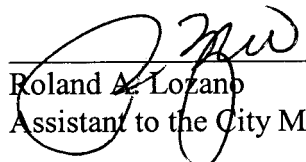
The contract provides for:

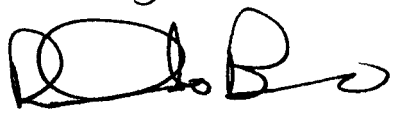
- A two-year initial term
- A City option for one – two year extension with City Council approval
- Termination with and without cause
- No interest by the ATC in or with any construction contractor performing the work
- Performance and Payment bonds in the amount of the estimated total annual construction costs
- Performance and payment bonds by the construction contractors

City staff will monitor and direct the ATC in the overall program, act as liaison for coordination, perform independent exit surveys with each homeowner, and prepare periodic reports for City Council.

The Discretionary Contracts Disclosure Form submitted by THC, Inc. is attached.

  
Kevin C. Dolliole  
Aviation Director

  
Roland A. Lozano  
Assistant to the City Manager

  
J. Rolando Bono  
Interim City Manager

Attachments

28

**City of San Antonio**  
**Discretionary Contracts Disclosure**

*For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)  
Attach additional sheets if space provided is not sufficient.  
State "Not Applicable" for questions that do not apply.*

**Disclosure of Parties, Owners, and Closely Related Persons**

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

Joe A. Carroll/President

and /or

(2) the identity of any **business entity**<sup>1</sup> that would be a party to the discretionary contract:

THC, Inc.

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

N/A

<sup>1</sup> A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

(3) the identity of any *lobbyist* or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

N/A

#### Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an individual or an entity include, but are not limited to, contributions made by the officers, owners, attorneys, or registered lobbyists of the individual or the entity.

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
		N/A	

#### Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), by participating in official action relating to the discretionary contract.

This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature:  Title: President

Date: 3-18-05

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is

## City of San Antonio Discretionary Contracts Disclosure

For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)  
Attach additional sheets if space provided is not sufficient.  
State "Not Applicable" for questions that do not apply.

### Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract:

Joe A. Carroll/President

and/or

(2) the identity of any business entity<sup>1</sup> that would be a party to the discretionary contract:

THC, Inc.

and the name of:

(A) any individual or business entity that would be a subcontractor on the discretionary contract:

Landrum & Brown, Inc.  
11279 Cornell Park Drive  
Cincinnati, OH 45242

and the name of:

(B) any individual or business entity that is known to be a partner, or a parent or subsidiary business entity, of any individual or business entity who would be a party to the discretionary contract:

N/A

<sup>1</sup> A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

(3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

N/A

#### Political Contributions

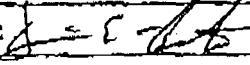
Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an individual or an entity include, but are not limited to, contributions made by the officers, owners, attorneys, or registered lobbyists of the individual or the entity.

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
		N/A	

#### Disclosures In Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), by participating in official action relating to the discretionary contract.

This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature: 	Title: CFO	Date: 3/18/05
--	------------	---------------

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is

## City of San Antonio Discretionary Contracts Disclosure

For use of this form, see Section 2-63 through 2-67 of the City Code (Ethics Code).  
Attach additional sheets if space provided is not sufficient.  
State "Not Applicable" for questions that do not apply.

### Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract:

Joe A. Carroll/President

and/or

(2) the identity of any business entity that would be a party to the discretionary contract:

THC, Inc.

and the name of:

(A) any individual or business entity that would be a subcontractor on the discretionary contract:

PSOMAS

and the name of:

(B) any individual or business entity that is known to be a partner, or a parent or subsidiary business entity, of any individual or business entity who would be a party to the discretionary contract:

N/A

A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.



(3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

N/A

#### Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an individual or an entity include, but are not limited to, contributions made by the officers, owners, attorneys, or registered lobbyists of the individual or the entity.

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
		N/A	

#### Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), by participating in official action relating to the discretionary contract.

This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature: [Signature] Title: Vice President Date: 3/18/05

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require refusal or require careful consideration of whether or not refusal is

## City of San Antonio Discretionary Contracts Disclosure

For use of this form, see Section 2-50 through 2-61 of the City Code (Ethics Code)  
Attach additional sheets if space provided is not sufficient.  
State "Not Applicable" for questions that do not apply.

### Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract:

Joe A. Carroll/President

and/or

(2) the identity of any business entity<sup>1</sup> that would be a party to the discretionary contract:

THC, Inc.

and the name of:

(A) any individual or business entity that would be a *subcontractor* on the discretionary contract:

Jolene Sutton - First American Title Insurance Company

and the name of:

(B) any individual or business entity that is known to be a *partner*, or a *parent* or *subsidiary* business entity, of any individual or business entity who would be a party to the discretionary contract:

N/A

<sup>1</sup> A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

(3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

N/A

#### Political Contributions

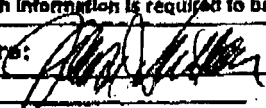
Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an individual or an entity include, but are not limited to, contributions made by the officers, owners, attorneys, or registered lobbyists of the individual or the entity.

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
		N/A	

#### Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), by participating in official action relating to the discretionary contract.

This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature:  Title: Vice President Date: 3-18-05

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is

## City of San Antonio Discretionary Contracts Disclosure

For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)  
Attach additional sheets if space provided is not sufficient.  
State "Not Applicable" for questions that do not apply.

### Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract:

Joe A. Carroll/President

and/or

(2) the identity of any business entity<sup>1</sup> that would be a party to the discretionary contract:

THC, Inc.

and the name of:

(A) any individual or business entity that would be a *subcontractor* on the discretionary contract:

DM Dukes & Associates, Inc. - Dawanna M. Dukes, President

and the name of:

(B) any individual or business entity that is known to be a *partner*, or a *parent* or *subsidiary* business entity, of any individual or business entity who would be a party to the discretionary contract:

N/A

<sup>1</sup> A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

(3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

N/A

#### Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an individual or an entity include, but are not limited to, contributions made by the officers, owners, attorneys, or registered lobbyists of the individual or the entity.

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
		N/A	

#### Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), by participating in official action relating to the discretionary contract.

This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature: [Signature] Title: President

Date: 3/18/05

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is

### City of San Antonio Discretionary Contracts Disclosure

For use of this form, see Section 2-5B through 2-5I of the City Code (Ethics Code)  
Attach additional sheets if space provided is not sufficient.  
State "Not Applicable" for questions that do not apply.

#### Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract:

Joe A. Carroll/President

and/or

(2) the identity of any business entity that would be a party to the discretionary contract:

THC, Inc.

and the name of:

(A) any individual or business entity that would be a subcontractor on the discretionary contract:

AEHS, Inc.

and the name of:

(B) any individual or business entity that is known to be a partner, or a parent or subsidiary business entity, of any individual or business entity who would be a party to the discretionary contract:

N/A

<sup>1</sup> A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

(3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

N/A

#### Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an individual or an entity include, but are not limited to, contributions made by the officers, owners, attorneys, or registered lobbyists of the individual or the entity.

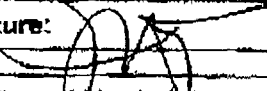
By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
		N/A	

#### Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), by participating in official action relating to the discretionary contract.

N/A

This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature:  Title: President Date: 18 MARCH 2005

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is

## City of San Antonio Discretionary Contracts Disclosure

For use of this form, see Section 2-50 through 2-61 of the City Code (Ethics Code)  
Attach additional sheets if space provided is not sufficient.  
State "Not Applicable" for questions that do not apply.

### Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract:

Joe A. Carroll/President

and/or

(2) the identity of any business entity<sup>1</sup> that would be a party to the discretionary contract:

THC, Inc.

and the name of:

(A) any individual or business entity that would be a subcontractor on the discretionary contract:

Gabriel Durand-Hollis FAIA-Durand-Hollis Rupe Architects, Inc.  
Alicia C. Trevino, AIA - Durand-Hollis Rupe Architects, Inc.  
Greg T. Shue, AIA - Durand-Hollis Rupe Architects, Inc.

and the name of:

(B) any individual or business entity that is known to be a partner, or a parent or subsidiary business entity, of any individual or business entity who would be a party to the discretionary contract:

N/A

<sup>1</sup> A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.



(3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

N/A

#### Political Contributions


Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totalling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an individual or an entity include, but are not limited to, contributions made by the officers, owners, attorneys, or registered lobbyists of the individual or the entity.

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
		N/A	

#### Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), by participating in official action relating to the discretionary contract.

This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature:  Title: President Date: 3-18-05

<sup>2</sup> For purposes of this title, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is

**City of San Antonio**  
**Discretionary Contracts Disclosure**

*For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)  
Attach additional sheets if space provided is not sufficient.  
State "Not Applicable" for questions that do not apply.*

**Disclosure of Parties, Owners, and Closely Related Persons**

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

Joe A. Carroll/President

and /or

(2) the identity of any **business entity**<sup>1</sup> that would be a party to the discretionary contract:

THC, Inc.

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

Center for Energy & Environment  
211 North 1st Street  
Suite 455  
Minneapolis, MN 55401

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

N/A

<sup>1</sup> A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

(3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

N/A

#### Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an individual or an entity include, but are not limited to, contributions made by the officers, owners, attorneys, or registered lobbyists of the individual or the entity.

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
		N/A	

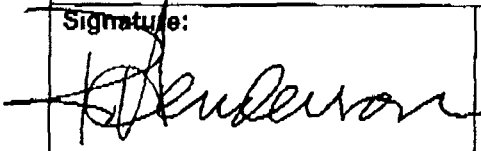
#### Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), by participating in official action relating to the discretionary contract.

This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature:	Title: Executive Director	Date:
------------	---------------------------	-------

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is

Signature: 	Title: Secretary/Treasurer Company: Center for Energy and Environment	Date: MAR 18 2005

## City of San Antonio Discretionary Contracts Disclosure

For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)  
Attach additional sheets if space provided is not sufficient.  
State "Not Applicable" for questions that do not apply.

### Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract:

Charles A. Landry

and /or

(2) the identity of any business entity<sup>1</sup> that would be a party to the discretionary contract:

CALP-THC Partnership

and the name of:

(A) any individual or business entity that would be a *subcontractor* on the discretionary contract;

Charles A. Landry  
C.A. Landry Partners, Ltd.

and the name of:

(B) any individual or business entity that is known to be a *partner*, or a *parent* or *subsidiary* business entity, of any individual or business entity who would be a party to the discretionary contract;

Charles A. Landry  
C.A. Landry Partners, Ltd.

<sup>1</sup> A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

(3) the identity of any *lobbyist* or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

NONE

#### Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an individual or an entity include, but are not limited to, contributions made by the officers, owners, attorneys, or registered lobbyists of the individual or the entity.

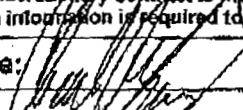
By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
NONE	NONE	NONE	

#### Disclosures in Proposal

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), by participating in official action relating to the discretionary contract.

NONE

This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature:  Title: Managing Partner Date: March 18, 2005

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is

## City of San Antonio Discretionary Contracts Disclosure

For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)

Attach additional sheets if space provided is not sufficient.

State "Not Applicable" for questions that do not apply.

### Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

and /or

(2) the identity of any **business entity**<sup>1</sup> that would be a party to the discretionary contract:

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

Vista Alta Construction, Inc.

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

Raul Lopez, President

<sup>1</sup> A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

(3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

none

#### Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an individual or an entity include, but are not limited to, contributions made by the officers, owners, attorneys, or registered lobbyists of the individual or the entity.

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
none	none	none	none

#### Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), by participating in official action relating to the discretionary contract.

none

This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature: Paul Lopez Title: President Date: March 18, 2005

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is



## City of San Antonio Discretionary Contracts Disclosure\*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2

Attach additional sheets if space provided is not sufficient.

State "Not Applicable" for questions that do not apply.

This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

### Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a response for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract.

Joe A. Carroll / President

(2) the identity of any business entity that would be a party to the discretionary contract.

THC, Inc.

and the name of:

(A) any individual or business entity that would be a subcontractor on the discretionary contract.

Jett Builders, Inc.

and the name of:

(B) any individual or business entity that is known to be a partner, or a parent or subsidiary business entity of any individual or business entity who would be a party to the discretionary contract.

N/A

<sup>1</sup> A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

(3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

N/A

#### Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an individual or an entity include, but are not limited to, contributions made by the officers, owners, attorneys, or registered lobbyists of the individual or the entity.

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
N/A			

#### Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code) by participating in official action relating to the discretionary contract.

This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature: [Signature] Title: President Date: 3/21/05

<sup>2</sup> For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require refusal or require careful consideration of whether or not refusal is

FLM  
04/07/05  
Item No.

## AN ORDINANCE

AUTHORIZING THE EXECUTION OF A PROFESSIONAL DESIGN-BUILD SERVICES AGREEMENT FOR THE RESIDENTIAL ACOUSTICAL TREATMENT PROGRAM AT THE SAN ANTONIO INTERNATIONAL AIRPORT FOR A FEE IN AN AMOUNT NOT TO EXCEED \$3,308,316.00; AUTHORIZING \$8,814,813.00 FOR CONSTRUCTION; AUTHORIZING \$15,000.00 FOR LEGAL EXPENSES; AUTHORIZING \$20,000.00 FOR ADMINISTRATIVE FEES; APPROPRIATING FUNDS; AUTHORIZING PAYMENTS AND ESTABLISHING THE BUDGET

\* \* \* \* \*

WHEREAS, the City has in its Five Year Capital Program, the Residential Acoustical Treatment Program; and

WHEREAS, Ordinance No. 99891, passed and approved on October 14, 2004, selected the firm of THC, Inc. to provide Professional Design-Build Services in conjunction with the Residential Acoustical Treatment Program at San Antonio International Airport and authorized the negotiation of a Professional Services Agreement; and

WHEREAS, members of City staff together with the firm of Davidson Troilo have negotiated a scope of services and a fee for this work in the amount of \$3,308,316.00 which is fair and reasonable for the for the design, legal, public relations and administration; and

WHEREAS, the amount of \$8,814,813.00, payable to THC Inc., has been established for the construction portion of this project; and

WHEREAS, the firm of Davidson & Troilo, as counsel to the City assisted City staff in negotiating the terms and conditions of the contract for an amount not to exceed \$15,000.00 and; NOW THEREFORE:

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

SECTION 1. The Interim City Manager or his designee is hereby authorized to execute a contract the firm of THC, Inc. to provide Professional Design-Build Services in conjunction with the Residential Acoustical Treatment Program at San Antonio International Airport. A copy of said contract is attached hereto and incorporated herein by references for all purposes as Attachment 1.

**SECTION 2. Finance**

**REVENUES**

Grant 45      \$4,220,000.00  
Grant 47      \$5,506,503.00  
PFC (PAYG) \$2,431,626.00

**EXPENDITURES**

\$3,308,316.00 for THC Consultant Fee WBS 33-00170-01-02-01, GL 5201040  
\$15,000.00 for Legal Fees 33-00170-01-03-01, GL 5201050  
\$20,000.00 for Administration 33-00170-05-01, GL 5501090  
\$8,814,813.00 for Construction – THC 33-00170-05-02-01, GL 5201140

***(TO BE RE-WORDED BY FINANCE)***

**SECTION 3.** The financial allocations in this Ordinance are subject to approval by the Director of Finance for the City of San Antonio. The Director of Finance may, subject to concurrence by the Interim City Manager or his designee, correct allocation to specific index codes and fund numbers as necessary to carry out the purpose of this Ordinance.

**SECTION 4.** This Ordinance shall be effective on and after the tenth (10<sup>th</sup>) day after passage hereof.

**PASSED AND APPROVED** this \_\_\_\_\_ day of, \_\_\_\_\_ 2005.

**MAYOR**

**ATTEST:** \_\_\_\_\_  
City Clerk

**APPROVED:** \_\_\_\_\_  
City Attorney

**AGREEMENT FOR ACOUSTICAL TREATMENT  
PROFESSIONAL DESIGN-BUILD SERVICES FOR  
THE SAN ANTONIO INTERNATIONAL AIRPORT**

**March 2005**

*Attachment 1*

## INDEX

ARTICLE 1 - Definitions.....	1
ARTICLE 2 - Requirements and Extent of Agreement.....	3
ARTICLE 3 - Scope of Services: Basic Services.....	4
ARTICLE 4 – Contract Term, Fee, Reimbursable Expenses, and Payments .....	19
ARTICLE 5 - Responsibilities .....	21
ARTICLE 6 - Ownership of Documents.....	23
ARTICLE 7 - Status of Program ATC .....	24
ARTICLE 8 – ATC Construction “Design-Build” Contracts.....	24
ARTICLE 9 - Dispute Resolution .....	24
ARTICLE 10 – Insurance AND INDEMNIFICATION .....	24
ARTICLE 11 –Termination; Default; Cure .....	28
ARTICLE 12 - Remedies .....	32
ARTICLE 13 - Assignment.....	32
ARTICLE 14 - Governing Law .....	33
ARTICLE 15- Venue .....	33
ARTICLE 16 - Notices .....	33
ARTICLE 17 - Compliance with Applicable Laws, Small, Minority and Woman Owned Business Enterprises Policy, Non-discrimination and Equal Employment Opportunity Policy and Federal Funds .....	34
ARTICLE 18 - Financial Interest Prohibited.....	36
ARTICLE 19 -Potential Agreement Extension .....	36
ARTICLE 20 - Survival .....	37
ARTICLE 21 - Cumulative Remedies .....	37
ARTICLE 22 - Incorporation of Provisions Required by Law.....	37
ARTICLE 23 - Waiver .....	37
ARTICLE 24 - Entire Agreement .....	37
ARTICLE 25 - Severability .....	38

## DRAFT

### AGREEMENT FOR ACOUSTICAL TREATMENT PROFESSIONAL DESIGN-BUILD SERVICES FOR THE SAN ANTONIO INTERNATIONAL AIRPORT

THE STATE OF TEXAS     )  
                                  )     KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF BEXAR     )

THIS AGREEMENT (or "Contract"), dated and entered into this \_\_\_\_\_ day of April 2005, is by and between the CITY OF SAN ANTONIO, a municipal corporation of Bexar County, Texas (hereinafter called "City"), and THC, Inc., a Georgia corporation, hereinafter called "Acoustical Treatment Consultant" or "ATC" or "THC." (City and ATC are hereinafter collectively referred to as the "Parties" and individually as a "Party").

#### WITNESSETH:

**WHEREAS**, the City Council of the City of San Antonio by Ordinance No. 99891, approved the selection of the ATC and for the authorized negotiation and execution of this multi-year Agreement, subject to final City Council approval and authorization to execute same for performance in accordance with the terms of this Agreement; and

**WHEREAS**, the City of San Antonio, Aviation Department is implementing the Residential Acoustical Treatment Program (herein referred to as "Program") pursuant to the approved FAR Part 150 NCP Update. The intent of this Program is to acoustically treat qualifying homes to meet or exceed the minimum standards prescribed by the Federal Aviation Administration (FAA) and in accordance with the policies, procedures and guidelines published in the Residential Acoustical Treatment Program Policies and Procedures; and

**WHEREAS**, the City has identified a need for an Acoustical Treatment Consultant (ATC) to work in conjunction with City staff in the implementation of this Program. Pursuant to Texas law (Local Government Code § 271.119(e, f and g)), the City will also enlist the services of an independent Design Review Team (DRT) to review plans prepared by the ATC; to have an independent Inspection and testing Team (IT) for construction verification inspection, materials testing; and an independent Air Quality Consultant (IAQ); and

**WHEREAS**, current projections indicate that the Program will initially support the treatment of approximately 100 to 200 residences annually. This is based on projected funding levels, available City resources, timely procurement of specialty items and availability of local, qualified labor. Variations in any of these factors may affect the actual Project residence count; and

**WHEREAS**, the City has conducted a qualifications-based solicitation for ATC candidates and selected the above-named company to perform ATC services.

**NOW THEREFORE**, City and ATC, in consideration of the foregoing, and the terms and conditions herein contained, do hereby agree as follows:

## ARTICLE 1

### Definitions

- 1.1. Acoustical Treatment Consultant or "ATC" – means the firm of THC, Inc., a Georgia corporation, whose address is Sugarloaf Corporate Center, 2180 Satellite Boulevard, Suite 160, Duluth, Georgia 30097-4074, who will take the lead on Program development and management, while also retaining subconsultants and construction contractors to perform Program Work.
- 1.2. Additional Services – means those services mutually agreed to by the City and ATC to be in addition to the Work as defined in Article 3 "Scope of Services; Basic Services."
- 1.3. Change of Scope – means any mutually agreed to written variations from the "Scope of Services; Basic Services" defined in Article 3.
- 1.4. City – means the CITY OF SAN ANTONIO, a municipal corporation in Bexar County, Texas or the City's authorized and designated representative.
- 1.5. Contractor(s) – means the firm(s), or subcontractor joint venture(s), which enter into subtier construction contracts with the ATC for the construction of specific elements of the Program, either through the use of the contractor's own forces or through general contractor's management of subcontractors and trade contractors.
- 1.6. Construction Implementation Joint Venture Subcontractor – means a joint venture partnership entity created between THC, Inc. (51% controlling interest) and C.A. Landry Partners, Ltd. (49% interest), to be known as the "CALP – THC Partnership, which will subcontract with THC, Inc. for the limited purposes of performing construction phase services for the Program Projects and holding subtier construction and materials supply contracts to facilitate and implement the City's Residential Acoustical Treatment Program.
- 1.7. Day – means calendar day unless specifically referred to otherwise.
- 1.8. Director – means the City's Aviation Director, or his duly authorized representative.
- 1.9. Final Completion – shall mean that date upon which the ATC, in consultation with ATC's subconsultants and construction contractors, certifies to the City that all construction Work on a Project, including construction punch list deficiency items, have been completed in accordance with the construction contract documents package and ATC has signed all ATC's final Applications for Payment.
- 1.10. Master Schedule – means the Master Program Schedule as developed and maintained by the ATC pursuant to this Agreement.
- 1.11. Program means the overall Program for Residential Acoustical Treatment. The multi-year Program initially consists of the following:
- 1.12. Project means an initial or future defined segment of Work of the Program, including single private residences or a grouping of residences scheduled for acoustical renovation.
- 1.13. Proposal – means the ATC's previously submitted written Proposal to the City for the performance of ATC Services.



- 1.14. Requirements Construction Order – means a construction phase document whereby the City agrees to purchase from ATC, through ATC's construction implementation joint venture subcontractor and subtier construction contractors, as many construction phase design, observation, testing and construction services, to include appropriate bonding and insurance, that the City requires to complete a defined portion of the Program Work within a previously appropriated, not-to-exceed, negotiated amount. Requirements Construction Orders executed by the Director, and the ATC will define the scope and funding for construction activities to be implemented by the joint venture subcontractor and subtier construction contractors, jointly forming a construction phase design-build team, will not require additional City Council approval so long as prior-appropriated maximum funding is not exceeded.
- 1.15. Small, Minority, and Women Owned Business (SMW) – means Small, Minority, or Women owned businesses that have been certified by the City of San Antonio.
- 1.16. Substantial Completion – means the date determined by the ATC, in consultation with the City, when construction Work has progressed to the point that it is sufficiently complete in accordance with the construction contract documents package so that the private residential homeowner may occupy and use the Work or designated portion thereof for the use for which it is intended.
- 1.17. Work – means that part of the Program management, architectural, design, or construction services that a particular Program participant is to perform.

## ARTICLE 2

### Requirements and Extent of Agreement

- 2.1. The ATC accepts the relationship of professional trust and confidence established between it and the City by this Agreement. It covenants with the City to furnish its best skill and judgment as an Independent Contractor and to establish cooperation with the ATC subconsultants and construction contractors in the Program to further the interests of the City and all private residential homeowners. The ATC agrees to furnish to the City all services provided for herein. The ATC shall endeavor to promote furtherance of the Program in the most expeditious and economical manner consistent with the interests of the City, private residential homeowners, and the requirements of the Contract Documents. Nothing in this Agreement shall create a special or confidential relationship between City and ATC, or create any fiduciary duties on the part of ATC in favor of City. Further, nothing in this Agreement shall elevate ATC's duty to a level above an ordinary standard of care applicable to a similar consultant providing professional, technical, and design-build construction services with respect to a similar project.
- 2.2. The ATC agrees to work under the general direction of the City with the City's Aviation Department and other City consultants through final Completion of the Program. However, in no event shall City's direction be construed as the City's assumption of ATC's duties to direct, coordinate and manage implementation of the Program, unless specific processes, procedures and systems, if any, are directed by the City in writing. ATC acknowledges that any payment for additional services must be approved by the City Council. ATC's duties are defined in detail in Article 3 "Scope of Services; Basic Services" of this Agreement.
- 2.3. It is understood that time is of the essence, and ATC agrees to undertake all necessary efforts to expedite the performance of the services required herein, so that each phase of the Program can be substantially completed within the time periods that will be outlined in the Master Program Schedule, which will be completed by ATC within ninety (90) calendar days of City's written Notice to Proceed. Notwithstanding any provision of this Agreement to the contrary, the Parties mutually agree that neither Party shall be liable to the other party for any damages in the nature of lost profits, lost opportunities, or consequential damages of any

description, arising directly or indirectly from any respective breach of duty created by this Agreement or applicable law. However, neither City nor ATC shall be deemed to be in breach of this Agreement for delays caused by circumstances beyond their reasonable control. In the event of such delays, the affected Party must give timely notice to the other Party and undertake reasonable efforts to mitigate any delay.

- 2.4. With regard to the Scope of Services; Basic Services performed under this Agreement, ATC shall proceed with sufficient qualified personnel necessary to expedite and fully complete all Services required under this Agreement in a professional manner consistent with the requirements of the Contract Documents and any acoustical treatment design and construction industry standards. The number and identity of ATC's personnel assigned to the Program shall be subject to City's initial and periodic review and approval, and mutual modifications may result in an increase or decrease in personnel. Key personnel set out in Exhibit "A" shall not be replaced or reassigned to another Program without City's written consent. City's consent, however, shall not be unreasonably withheld. Following such City consent, any replacement of ATC's key personnel must receive City's written approval. City retains the right to request replacement, for reasonable cause, of any employee assigned by ATC to the Program. City's decisions in this regard shall not be the basis for any claim for additional compensation by ATC. However, in no event shall City's direction be construed as the City's assumption of ATC's duties to direct, coordinate and manage implementation of the Program, unless specific processes, procedures and systems, if any, are directed by the City in writing.
- 2.5. The City has designated as its representative the Director, and the result of all Work performed hereunder shall be reviewed and approved for the City by the Director and his assigned personnel. From time to time, the City may designate to the ATC, City Staff other than the Director, to represent or act for the City in relation to any part of this Agreement. ATC shall fully comply with any and all directives from said Director or his authorized assigned personnel consistent with the Scope of Services; Basic Services set out later in Article 3 of this Agreement.
- 2.6. A Master Schedule of Program activities shall be mutually agreed upon, in writing, between ATC and the Director, which shall enable each phase of design and construction to proceed continuously to Substantial Completion. Except when caused by events beyond ATC's reasonable control, any continued inexcusable failure of ATC to maintain Program progress in accordance with the agreed Master Schedule may be grounds for City declaring ATC in partial or total Agreement noncompliance. In the event the City issues a written notice to ATC declaring ATC in partial or total Agreement noncompliance, ATC shall promptly respond with a written recovery and mitigation plan for City review.
- 2.7. The ATC understands that the City intends for the Substantial Completion of each design and construction phase to occur within the time and budget limits prescribed for each phase, as may be adjusted. ATC agrees to perform its services consistent with that intention.
- 2.8. In the event City elects to add additional Projects to the initial Program, ATC may be engaged to provide services for such additional projects only by written amendment to this Agreement.

## ARTICLE 3

### **SCOPE OF SERVICES; BASIC SERVICES**

#### General.

The Program will commence with a set-up phase including the establishment of the residential block prioritization and a residential construction materials product showroom, as well as the development of a public information brochure, homeowner handbook and homeowner orientation material. The ATC will also be required to develop and conduct an outreach program for potential construction contractors to explain the Program, the qualifications to participate, and the bidding, contracting, insurance, bonding, and payment process. Contractor Pre-Qualification and Training by the ATC will be an ongoing process throughout the term of the Program.

Once the set-up phase is complete, the Program will be cyclical in nature. The renovation of one group of residences by the ATC "design-build" construction contractor(s) will be in process while the next group is under design by the ATC and its subconsultants. This will roll into construction and the next sequential set of residences will come under design. A typical cycle would consist of the following major elements:

#### Community Outreach

The initial phase of this Program is for the ATC, with input from the City, to conduct Community Outreach, which takes this Program, its purpose and process, into the community in order to fully inform the public and to solicit participation from each targeted group of homeowners.

#### Qualification & Selection Process

The list of potential residences from the signatory homeowners is purged of those which do not qualify according to Program guidelines. Using the established selection process a list of participating residences is established for the next group.

#### Meet with Selected Homeowners

These meeting(s) are to introduce the management team to each of the selected homeowners, to provide Program details and solicit issues and concerns unique to each home.

#### Develop Design Package

Design packages will be developed by the ATC and its subconsultants for each selected home in conformance with the Program policies and procedures. This will entail "As-Built" existing condition surveys and drawings in order to develop the final design. The final design will be jointly reviewed and approved by City staff and the independent Design Review Team "DRT" prior to the start of ATC construction. An Environmental Assessment for at least lead paint and asbestos containing materials shall be performed by the ATC or its subconsultants and an approved abatement plan, if required, shall be prepared.

#### Execute Avigation Easements

The ATC design drawings are reviewed with each homeowner and the scope, limits and intrusiveness of the renovations are disclosed. It is at this time that the homeowner accepts or declines the project and potentially executes the required rights-of-entry licenses and avigation easement.

#### Contractor Selection Process

The homeowner shall select three qualified contractors from the City/ATC pre-qualified contractors list. The ATC shall solicit bids from those three contractors, conduct a pre-bid open-house at the homeowner's residence, and then select the lowest responsive construction contractor from the three selectees to enter a "design-build" contract with. Upon approval from the Director, the ATC enters into a design-build construction contract with the selected contractor

based upon a not-to-exceed Requirements Construction Order document negotiated with the Director.

#### Renovations

The ATC and its construction contractors are responsible to complete the renovations in accordance with the final ATC design documents and any approved field alterations. Environmental abatement shall be performed by the ATC or its subconsultants where identified during the design assessment. The entire renovation process is overseen by the City's independent Inspection Team, "IT", for the benefit of the City and homeowner.

#### Close Out

The ATC performs a Project conformance review, final inspection (with other ATC management team members) and ATC construction contractor performance evaluation with the homeowner. This performance evaluation is then integrated with the contractor profile included in the ATC contractor database for review by subsequent homeowners.

The Program Management Team consists of five elements, each with unique functions:

#### City Staff

##### Program Oversight

Is the lead in all public interface issues through start of construction

Contracts directly with:

Design Review Team (DRT)

Inspection Team (IT)

Acoustical Treatment Consultant (ATC)

Abatement Monitor

#### City's Design Review Team

Jointly performs independent review of ATC designs

#### City's Inspection Team

Provide independent resident inspection services during construction for the benefit of  
City and homeowner

Process field alterations

Process contractor payments

Assist in ATC construction contractor training

#### City's Acoustical and IAQ Testing

Ensure acoustical compliance by ATC

Conduct new product testing

Conduct pre- & post-home modification noise tests as required by FAA

Analyze and report noise tests results to FAA and homeowner

#### Acoustical Treatment Consultant

The ATC shall have the responsibility for the Program and Project management, design, public relations, legal, insurance, bonding, and construction elements of the Program. The ATC shall provide the team of subconsultants and design-build construction contractors, and all resources necessary to implement the Program, including the construction contracting effort and downstream **payment of subconsultants and construction contractors.**

The ATC's responsibilities shall include, but not be limited the following Work efforts:

#### Design:

Develop Program construction and technical specifications

Product selection and certification process

Conduct Environmental Assessments

Incorporate the IAQ, insulation and venting recommendations

**Public Relations:**

ATC shall develop and implement an ongoing Program public information system, and coordinate with the Airport's Public Information Office. At the request of the City, ATC will attend public information meetings and briefings.

- Conduct outreach for prospective subconsultant and construction contractor participation
- Conduct Community Participation Outreach
- Conduct communications with City, state, legislative and media representatives
- Assist City during construction contractor prequalification process
- Coordinate activities with eligible Program participants
- Conduct homeowner orientation workshops
- Present legal documents to homeowners, to include at least rights-of-entry licenses and avigation easement
- Manage all correspondence and questions from homeowners
- Coordinate homeowner internal or external relocation and occupancy schedules
- Conduct Entry/Exit Surveys with ATC construction contractors and homeowners

**Legal Services**

- Prepare and secure Avigation Easements and related legal documents (rights-of-entry licenses, etc.) from homeowners; coordinate with lenders, sureties and insurance companies in close coordination with the City Attorney's Office
- Secure property title certifications
- Conduct avigation easement closings with homeowners
- Record avigation easements in Bexar County Deed Records
- Review legal, bonding and insurance issues with City staff

**Construction (Renovations)**

- Obtain all necessary permits with ATC construction contractor(s)
- Abatement will be performed with a seamless transition into construction
- Contract for all construction Work with individual ATC construction contractors and negotiate Requirements Construction Orders with the Director; and separately contract for any Environmental Abatement as required
- Maintain construction contractor database
- Develop construction contractor standards, outreach, training and management support
- Monitor schedules of ATC construction contractors

**Environmental Assessments and Abatement**

- Perform Environmental Assessments and any Abatement as identified in preliminary design effort
- Perform Environmental Abatement as required

The City shall contract individually with the Design Review Team (DRT), the Inspection Team (IT), the Acoustical and IAQ Testing Team and the ATC. Periodically, typically monthly, each team shall prepare and submit an invoice for services rendered for the prior period. The ATC shall include billing for the services performed during the billing period. The ATC shall bill for their services (administrative, PR, legal, construction management) plus expenditures to the ATC construction contractors performing the acoustical renovation Work.

The ATC shall locally establish and maintain, for the duration of the Program, a combination office/showroom/conference room to accommodate meetings with homeowners and to display acoustical products (windows, doors, etc.) for homeowner and construction contractor consideration.

When the Director issues a written Notice to Proceed, ATC agrees to provide the following services to the City in the course of leading the direction, coordination, and management of the Program implementation.

ATC shall manage the development of design and construction strategies; maintain comprehensive management information, control and documentation systems; and provide management for the administration, coordination and completion of the design and construction phases for the Program.

The ATC shall establish a local organizational structure and lines of communication and authority in order to accomplish the Work, and prepare and submit, for the City's review and approval, an organizational chart showing consulting staff personnel, job classifications and billing rates pertaining to the Program management Work. The City and the ATC will continuously monitor the ATC's staffing plan and mutually agree in writing if adjustments to the staffing plan are periodically required to increase or decrease manpower.

Section 3.1. - Administrative Duties, Section 3.2. - Program Development and Design Management and Section 3.3. - Construction Management each establish and set forth individual tasks to be accomplished by the ATC during performance of the Work.

### **3.1. ADMINISTRATIVE DUTIES:**

The services performed under this Section 3.1. during the term of this Agreement shall include but not necessarily be limited to, the following tasks:

#### **3.1.1. Program Administration.**

Throughout the Program duration, ATC shall provide full-time supervision of ATC's employees and its subconsultants required to manage and monitor the performance of all design and construction Work. ATC shall direct the performance of all subconsultants and construction contractors under contract with the ATC to provide services relating to the Program. ATC shall not be City's Agent with respect to any of ATC's duties, rather, ATC will perform as City's independent contractor.

#### **3.1.2. Program Coordination.**

ATC shall maintain coordination and liaison with appropriate affected organizations such as the FAA, local governments, agencies, utilities and regulatory authorities to eliminate or mitigate negative schedule impacts, as well as to eliminate conflicts among ATC designers, ATC testing companies and ATC construction contractors. ATC also shall establish and implement procedures for coordination among the City, Airport, ATC, construction contractors, and the City's other consultants.

ATC shall assist City, as directed by the City, in supporting City Council and other relevant committees established for the monitoring of the Program and shall maintain "on call" status to be available to timely respond to all Program related activities requiring input of a technical nature, including but not limited to Program information, schedule, budget and cost status and attendance at meetings with the City staff, City Council, and other Program participants.

### 3.1.3. Meeting Memoranda.

ATC shall record the proceedings of each Project meeting and submit a meeting record to the City within seven (7) calendar days of the date of the meeting. Meetings to be documented include all meetings related to the Program attended by City, City consultants, ATC, and persons outside of ATC staff, and ATC sub-consultants and ATC construction contractors. Distribution of these records shall be to a list of recipients designated by the City.

### 3.1.4 Project Filing System.

Establish and maintain files of all documents, letters, reports, plans, permits, etc. pertinent to the Program. Provide City a complete set of files at completion of each Project in the Program, including both paper and electronic file media.

### 3.1.5. Program Administration Office.

ATC shall establish, maintain and staff for the duration of the Project a local, primary administration office/showroom/conference room, to accommodate meetings with homeowners and to display acoustical products (windows, doors, etc.). ATC operations described hereunder shall be performed from such location unless noted otherwise.

### 3.1.6. Insurance Records.

ATC shall secure from its underwriters, and the underwriters for its subconsultants and construction contractors, the required Certificates of Insurance and/or certified copies of policies evidencing proper insurance coverage to be in force. ATC shall also secure copies of any existing homeowner's/renter's insurance policies for those properties participating in the Program. Maintain copies of these Certificates and policies among the Program site records for its records. Verify validity of said policies and provide a recommendation for acceptance in accordance with the ATC's professional service subconsultant agreements and construction document packages.

### 3.1.7. Safety

The ATC's construction contractor is fully responsible for private residential construction job site safety. The ATC shall employ a full time safety representative on site during the construction periods of each Project. The ATC's safety representative will be responsible for observing implementation of the ATC construction contractors' safety programs and will identify, document and report deficiencies to the contractors' management for correction and compliance. The City's Risk Manager and the Director will be copied on any correspondence related to safety. City shall have no power or responsibility to formulate ATC and ATC construction contractors' safety plan or enforce or modify such safety plan.

## 3.2. PROGRAM DEVELOPMENT AND DESIGN MANAGEMENT.

The ATC shall perform the Services required by the following tasks:

### 3.2.1. Review Project Related Documents.

ATC shall review pertinent noise abatement regulations and studies in order to gain the background necessary to understand issues associated with each Project and develop a Program administration plan. ATC shall meet with the City to discuss the review and resolve any questions concerning each Project. Documents to be reviewed will include but not be limited to:

#### 3.2.1.1. SAIA Residential Acoustical Treatment Pilot Program Results

### 3.2.2. Program Schedule.

ATC shall prepare a Master Schedule utilizing critical path methodology that coordinates and integrates the ATC design and ATC construction Work to accomplish each Project within the time frame determined to be most reasonable for expediting the Project. The initial Master Schedule shall be prepared by ATC within (90) ninety calendar days of City's issuance of the written Notice to Proceed and shall be subsequently updated at least quarterly by the ATC, and otherwise as directed by the City or as necessary to maintain control of the Program. Scheduling software used for the Program shall be "MICROSOFT PROJECT," utilizing the latest version available at the date this Agreement is executed. The Master Schedule shall show in detail significant design and construction milestones required to administer the Program, as well as each design phase and construction contract for each Project. The Master Schedule shall, at the City's request, also reflect significant milestones for all other facets related to the Program, including, but not limited to: Exhibit "B"

### 3.2.3. Program Reports.

ATC will record the progress of the Project Work by submission of monthly written summary Program progress reports to the City, including information on the as-planned vs. as-performed design and construction Work and the percentage of Program completion as compared to costs expended; maintain a daily log of job site events, significant activities, accomplishments, manpower, on-site problems encountered, meetings and maintain Program progress photographs.

### 3.2.4. Program Outline.

Subsequent to the homeowner/housing qualification process, and in coordination with the City, ATC shall prepare a Program Outline, which defines and describes the Projects or facilities and the scopes of Work for their design and construction, priority of design and construction for the Projects, schedules, construction sequence, construction phasing, and budget for each Project. This Outline will establish the foundation for the management and development of the Program.

### 3.2.5. Preparation of Design Standards, Criteria and Guidelines.

ATC must develop and implement residential acoustical treatment design standards, criteria and guidelines that it intends to utilize with ATC construction contractors. The purpose of these standards, criteria, and guidelines is to provide a common basis for design and construction of the various Projects. The ATC is required to review the City's Unified Development Code and industry noise abatement standards, criteria and guidelines and recommend any required changes.

In reviewing such design and construction standards, criteria, and guidelines, ATC will work with the City, and in some cases be guided by the City, as to which standards, criteria, and guidelines will be utilized for the Program.

Develop permit requirements for the Program, including permitting procedures outlining requirements for various types of building permits as required.

### 3.2.6. Coordination of Work By Others.

The ATC shall coordinate with the various ATC subconsultants and consultants hired by the City for the Program and Projects, and review reports submitted by these City consultants. The ATC will not assume any responsibilities for the accuracy of the technical information contained in said City consultant reports, however, the ATC shall be responsible for promptly notifying the City, in writing, of potential areas of concern observed by the ATC.

The ATC shall be responsible for utility coordination (gas; electric; water; sewer; cable; telephone; security alarm, etc.) that is related to Project planning, scheduling, design and construction activities of the Program.



### 3.2.7 Design

#### 3.2.7.1. Design Coordination.

Coordinate activities of ATC's engineers, architects and subconsultants in the development and production of Project plans and specifications for the individual Projects. ATC will coordinate the ATC design consultants' activities and will provide leadership with respect to the implementation of design management procedures by all parties.

#### 3.2.7.2. Private Residential Homeowner Coordination.

Confer with the City and homeowner representatives during the design phase to insure compliance with Program design concepts and special homeowner requirements.

#### 3.2.7.3. Agency Coordination.

Coordinate approval by appropriate City departments, and other agencies of Project plans and specifications and verify that any ATC Project design subconsultants and ATC construction contractors secure all necessary permits. ATC will attempt to expedite agency reviews and approvals. ATC will assist in securing and transmitting appropriate documents to the various approval agencies outside of the control of City, at the appropriate times.

#### 3.2.7.4. Cost Estimating.

The format for the Schematic Design and 100% Construction Document Estimates referred to below in this Section 3.2.7.4. will be determined and accepted by the City and ATC prior to initiating such Project Estimates.

3.2.7.4.1 ATC shall inspect each house included in a bid phase and determine a programming cost estimate to be used as a baseline for the schematic and construction document estimates.

3.2.7.4.1. Schematic Design Estimate: ATC will provide a budget estimate at the Schematic Design phase for each Project upon completion of the Schematic Design performed by the ATC. Each Schematic Design Estimate will be accompanied by a report to the City identifying variances with the programming budget for a Project and making recommendations for appropriate corrective action, if required.

3.2.7.4.3. One Hundred Percent Construction Document ("CD") estimate. ATC will provide an estimate at the 100% CD Estimate phase for each Project upon completion of the 100% Construction Documents by the ATC. Each 100% CD Estimate will be accompanied by a report to the City identifying variances with the programming budget for a Project and making recommendations for appropriate corrective action, if required.

#### 3.2.7.5. Design Progress Meetings.

Conduct joint design progress meetings for each Project in conjunction with the City, Project design subconsultants, and others. These joint meetings will serve as a forum for the exchange of information and resolution of Project design decisions, and will be a point where Project design progress is reviewed and noted. ATC will record, transcribe and distribute minutes of these joint meetings to all attendees and all other appropriate parties utilizing appropriate electronic information exchange mediums.

#### 3.2.7.6. Coordination Review.

Review the design and construction contract documents for each Project prepared by an ATC Project design subconsultant and provide written comments on the coordination by the Project design subconsultants of the various disciplines, including any civil, architectural, structural, mechanical, electrical and plumbing.

3.2.7.7. Review Design Consultant's Invoice.

Review Project design subconsultant's invoices to ATC, and, if acceptable to ATC, recommend payment by the City of ATC's comprehensive pay request. Request revisions or additional information from the ATC Project design subconsultant's invoices as may be necessary. Review any ATC Project design subconsultant's requests for additional fees and advise City on the appropriateness thereof.

3.2.7.8. Design Review.

Review each ATC Project design subconsultant's plans and contract documents for compliance with Program design and formatting standards as well as constructability, including "CADD/FAA" standards. ATC will compile and expedite joint City/DRT and ATC comments to the ATC Project design subconsultants. ATC will provide coordination between the Project design subconsultants and the City/DRT in an effort to obtain the proper flow of information. ATC will coordinate the Project design reviews at the Design Development, and 100% CD phases.

3.2.7.9. Monitor Design Quality Control ("DQC").

Monitor the DQC to assure that ATC Project design consultants are addressing and maintaining their quality control in their document preparation.

3.2.7.10. Cost Control and Budget Review During Design.

Develop and monitor an effective system of Program cost control and revise and refine the approved Program budget, incorporate approved changes as they occur and develop cash flow reports and forecasts as needed. ATC also shall identify variances between projected and actual costs and advise the City whenever projected costs will be exceeded.

3.2.7.11. Schedules:

3.2.7.11.1. Design Phase Schedule.

ATC will continuously monitor the design phase schedule and make reports to the City and ATC Project design subconsultants. ATC will advise the ATC Project design subconsultants and City when potential or actual constraints to the schedule exist, and make recommendations for corrective action.

The ATC will review and advise the City as to the adequacy of the ATC's Project design subconsultant's personnel and the availability of alternative measures and resources to meet the Program Schedule. Recommend courses of action to the City when requirements of the Project or Program Schedule are not being met. Implement such courses of action as are required to facilitate productivity and schedule/cost control.

3.2.7.11.2. Update Master Schedule

During the design phase, ATC will periodically update and maintain the Master Schedule. The updated Master Schedule will be distributed to the City, the ATC Project design subconsultants, and other appropriate parties.

3.2.7.12. Coordination of Contracts for Construction.

ATC will review the ATC design subconsultant's format for the Form of Bid Proposal and the Special Conditions for the contracts for construction. These shall include ATC and any City required contract provisions such as the Requirements Construction Order format in order to describe the roles of the City, City consultants, and ATC to the ATC construction contractor. The General Conditions for construction will contain various construction time/cost control provisions for each construction phase, which, in general, provide better control and options to expedite the construction utilizing the ATC's oversight. The ATC and its construction contractors will develop construction safety requirements for each Project construction contract.

3.2.7.13. Prepare Construction Control Plan.

ATC and its construction contractors shall prepare a construction control plan for each Project, which delineates how construction access, temporary storage of equipment and vehicles, sanitation facilities, staging areas, and stockpiling of material will be organized and controlled. ATC shall also develop a list of long lead items for constructing the Project, which will require special attention in ordering, delivery, and installation, so as not to delay the Project. ATC will develop a Safety Program for each Project, which will delineate responsibilities of all Project participants with regard to safety on the Project. Requirements for Project construction control and construction safety will be incorporated into ATC construction contract documents prepared by the ATC and its design subconsultants with input and recommendations provided to ATC design subconsultants by the ATC and the City.

**3.3. CONSTRUCTION MANAGEMENT:**

ATC shall monitor and observe the construction Work to facilitate timely completion of the construction Project and within the not-to-exceed construction cost limit for the Project. ATC shall also monitor ATC construction contractor's quality control procedures in accordance with the construction and materials procurement contracts. ATC shall monitor the Work of ATC's construction contractors and coordinate all phases of their Work to facilitate completion of the Project in accordance with the established time period and not-to-exceed construction cost limit for the Project.

3.3.1 Coordination and Inquiries.

ATC will coordinate communications related to construction bidder inquiries and seek resolution from the appropriate party and timely forward such information to the prospective bidders. ATC will instruct the ATC Project design subconsultants to issue addenda when necessary.

3.3.2. Addendum Review.

ATC will provide a review of each addendum during the bidding process for time, cost, or constructability impact, and make appropriate comments or recommendations to ATC subconsultants.

3.3.3. Addendum Estimate.

ATC will provide a cost estimate for each addendum. This estimate will be communicated to the City and ATC Project design subconsultants.

3.3.4. Bid Evaluation.

Upon receipt of bids, ATC will conduct the bid opening, evaluate the bids for completeness, full responsiveness and price, including any alternate prices and unit prices, and will make a formal recommendation to the City in regard to the award of a Project design-build contract to be entered between ATC's construction implementation joint venture subcontractor and the successful, low, responsive bidder in accordance with the Requirements Construction Order. ATC shall also evaluate the prospective contractor's proposed subcontracting plan contained in the bids received.

### 3.3.5. Entry of ATC Agreement and Subsequent Awards of Design-Build Contracts.

ATC shall, within ten (10) days of ATC Agreement Award, provide City with the following:

#### 3.3.5.1 Performance and Payment Bonds

Initially, ATC will, through its construction implementation joint venture subcontractor, provide the City with Payment and Performance Bonds in the amounts of \$500,000.00 each, running to the benefit of City as obligee, in general accordance with Texas Local Government Code LGC 271.119(i) based upon the first phase construction Project preliminary budget, and an assurance letter from the Surety to the City, that will guarantee to the City that at the appropriate future junctures prior to respective construction phases, that ATC will be able to procure additional appropriate payment and performance bonds protecting the City during the subsequent construction phases. The assurance letter from a reputable surety will demonstrate that ATC's construction implementation joint venture subcontractor has already undergone "due diligence" review by a reputable payment and performance bond surety who stands ready to participate in the issuance of additional appropriate payment and performance bonds to include the ATC construction implementation joint venture subcontractor as one of several anticipated principals to be named in such bonds once the identity of subtier construction contractor is established and the Work scope defined.

Prior to the commencement of any construction phase, ATC shall provide City as obligee, with construction performance and payment bonds made payable to the City of San Antonio, executed by a corporate surety acceptable to City who is licensed pursuant to the Texas Insurance Code, and listed in the most current U.S. Department of Treasury's Circular 570 Listing of Approved Sureties, in the amount of the estimated construction costs for each construction phase only (excluding design, Program and Project administration, construction phase design services, construction observation and testing fees) as estimated by projection of the City. Said bonds must be in a form acceptable to City. Said bonds shall further provide that the surety shall indemnify the Obligee City for all damages or losses resulting from any Principal's construction performance default and/or failure to pay subtier subcontractors and suppliers having lawfully perfected claims. Said bonds shall further guarantee each Principal's performance of all terms and obligations under the construction contract awarded. Said bonds must have attached thereto a Power of Attorney as evidence of the authority of the person executing the bond to bind the surety. The bonds must be furnished in compliance with the statutory requirements of the Texas Government Code, Chapter 2253. Other than the initial bond issuance, subsequent bonds must be executed and delivered to City prior to commencement of subsequent construction Work phases under this Agreement.

The surety shall indemnify the Obligee for all damages or losses resulting only from the Principal(s) (joint and/or several) construction performance default, but the surety shall not be liable for any losses or damages resulting from City's independent Program and Project administration, ATC's construction phase design services, construction observation, testing services, nor failure of any properly installed and completed improvements to achieve the desired noise reduction level. Regardless of the multi-year nature of this Agreement, the performance and payment bonds will run for a period of 12 months from the point of completion of each individually covered construction phase, and failure of the Principal(s) or surety to provide a bond for any succeeding construction phases will not constitute a default under any separate, prior existing bond.

### 3.3.6. Pre-construction Conference(s).

ATC will conduct, in conjunction with the City, a pre-construction orientation conference for the benefit of each successful construction contractor and will serve to orient the contractor to the various reporting procedures and Program rules prior to negotiation of the Requirements Construction Order with the

Director, execution of the design-build construction contract with the ATC's construction implementation joint venture subcontractor, , and the commencement of actual Project phases of construction.

### 3.3.7. Administration of Each Project.

ATC will provide a management team to provide Project contract administration and to establish and implement coordination procedures between the City/DRT, the ATC Project design subconsultants and ATC construction contractors.

ATC will observe the progress of each Project. ATC's observation duties shall include reasonable diligence to discover Work that is not in compliance with the Project construction contract documents of the ATC contractors. ATC shall be alternatively, jointly and severally responsible for the duties and responsibilities of all ATC subconsultants, including obligations to produce clear, accurate drawings and specifications and the ATC construction contractor's responsibility for quality control and the techniques and sequences of construction, and safety precautions relevant thereto, and for performing the Project construction Work in accordance with its construction contract documents and Requirements Construction Order negotiated with the Director. ATC shall prepare required periodic Project observation reports and final construction observation reports.

### 3.3.8. Master Schedule - Updated During Construction.

ATC will continue to update and maintain the Master Schedule by incorporating all adjustments necessary to reflect actual Project progress, and will distribute the updated Master Schedule to the City, ATC Project design subconsultants and other appropriate parties.

Upon the ATC's transmission of a Notice of Award to a successful ATC construction contractor, ATC will validate the contractor's development of its detailed Project Construction Schedule. The contractor's approved Project Construction Schedule will be the contractual schedule by which the construction Work will be sequenced and will be the basis for measuring Project progress. ATC will review the detailed Construction Schedule with the ATC contractor, the City, the ATC Project design subconsultants and other appropriate parties.

### 3.3.9. Construction Progress Review.

For those construction contracts other than unit price, ATC will validate the progress of construction with the ATC contractor, observe Work in place and properly stored materials on a monthly basis, and confirm the percentage complete of each construction activity as indicated in the Project Construction Schedule. This will serve as data for input to the monthly Project Construction Schedule update report, which will be prepared and distributed to the ATC construction contractor, the City, Project design subconsultants and other appropriate parties. This report will reflect the ATC's contractor's contractual progress, and will indicate to the City whether notices to the ATC for any recovery of Work schedule are appropriate. Develop and implement a system for monitoring construction in progress to confirm that deviations from cost, quality, and completion date are identified in a timely manner as a basis for corrective action. Work with the ATC Project design subconsultants and ATC contractors to develop recovery plans if deviations occur.

### 3.3.10. Construction Coordination.

Coordinate, monitor and implement actions in an effort to assure that scheduled homeowner property security provisions related to construction are maintained during the Program. ATC shall conduct activities and create schedules to avoid or mitigate disruption of homeowner activities. It is imperative that simultaneous homeowner activities and security continue during the course of ATC construction.

Provide coordination between ATC construction contractors, homeowner, any tenants, and any independent homeowner construction Work that occurs or affects activities scheduled within the

immediate Project area. Provide recommendations and logistical solutions if physical or sequential conflicts are anticipated.

#### 3.3.11. Monthly Construction Schedule Updates.

ATC will prepare and distribute a monthly Project Construction Schedule update report. After an evaluation of the actual progress as observed by ATC, schedule activities will then be assigned percentage-complete values in coordination with the ATC contractor. The report will reflect actual progress as compared to scheduled progress, noting variances.

Consult with the City on any proposed ATC construction contractor schedule recovery or suspension Work Orders as necessary. Monitor such Work Orders for Program Schedule impacts.

#### 3.3.12. Procedures.

ATC will establish and implement procedures, subject to City approval, for submittals, requests for information, change proposal requests, design Change Orders, construction Field Alterations, payment requests, submittals and when information will be processed from ATC to City, and from the ATC Project design subconsultants to the ATC construction contractors.

#### 3.3.13. Job Site Meetings.

ATC will conduct periodic Project site progress meetings with each ATC contractor, conduct an overall coordination meeting with all ATC contractors, and will record, transcribe and distribute minutes to all attendees, the City, the ATC Project design subconsultants, and all other appropriate parties.

#### 3.3.14. Coordination of Technical Inspection and Testing.

ATC will coordinate the technical inspection and testing provided by ATC subconsultants. All technical inspection reports will be in a format approved by City and will be received and reviewed by ATC regularly. The ATC shall confirm that all technical inspections and testing comply with all City requirements and any FAA Grant Agreements.

#### 3.3.15. Monthly ATC Payment.

ATC will develop requests for monthly Project payments submitted to City pursuant to the Requirements Construction Orders negotiated with the Director, and in turn by ATC's construction implementation joint venture subcontractor to each ATC design-build construction contractor. This activity will be an integral part of the monthly progress report updates. However, if it should be later found that the ATC and/or its construction contractor(s) has failed to comply with the provisions of either the Requirements Construction Order, or the design-build construction contract with the ATC's construction implementation joint venture subcontractor in any way or detail, such failures and subsequent compliance will be the joint and several responsibility of the ATC and its construction contractor(s).

#### 3.3.16. Monthly Construction Payment Report.

ATC will prepare and distribute the monthly Project payment schedule report. This report will reflect the total construction contract price, ATC contractor's payments received to date, current payment requested, retainage, and actual amounts owed for the current period. The final portion of this report will be a Certificate of Payment, which will be jointly executed by ATC and ATC construction contractor(s), and transmitted to the City for use in the City's internal accounting system and payment to the ATC only.

#### 3.3.17. Recovery Schedule.

ATC shall prepare a Recovery Schedule that will reflect the corrective action and efforts to be undertaken by any ATC contractors to recapture any lost time and to complete the Work in accordance with the

Project Construction Schedule. This Recovery Schedule will be distributed to such ATC contractors, the City, ATC Project design subconsultants and other appropriate parties.

#### 3.3.18. Construction Records.

ATC shall develop and implement a Program construction records system, including review and processing of applications by ATC construction contractors for progress and final payments. ATC shall develop, implement and monitor a system for tracking Project payment requests from ATC while being processed by the City. ATC shall record the progress of the Project and submit written progress reports to the City including information on each ATC construction contractor's Work, the percentage of completion, and the number and amounts of change orders, and ATC shall keep a log available to the City reflecting all such information. ATC shall maintain, on a current basis, records of all necessary ATC construction contracts; bonds and insurance; shop drawings; samples; purchases; materials; equipment; applicable handbooks; governmental, commercial and technical standards and specifications; maintenance and operating manuals and instructions; and any other documents and revisions thereto which arise out of each Project construction contract. ATC shall obtain data from ATC contractors and maintain a current set of record drawings, specifications and operating manuals and instructions, and any other documents and revisions thereto which arise out of each Project construction contract. At the completion of the Project, ATC shall deliver all such records to the City.

#### 3.3.19. Claims Management.

Develop and implement a claims management system as well as a construction claims prevention program. ATC shall recommend and implement specific action to avoid or resolve potential or actual claims, which arise during Project construction between homeowner and ATC construction contractor(s), ATC construction contractor(s) and suppliers, ATC's construction implementation joint venture subcontractor and all subtier subcontractors. In the event any claim is made or any action is brought in any way relating to the design or construction of the Project, whether initiated before or after completion of construction, ATC shall render all assistance, which the claim may reasonably require, including preparation of written reports with supporting documentation and making witnesses available for testimony during hearings or conferences.

##### 3.3.19.1 Claims.

ATC will be the recipient of all notices of claims by any homeowner, subcontractor or supplier for additional cost or time due to any alleged cause. ATC and ATC's construction implementation joint venture subcontractor will perform a preliminary evaluation of the contents of a claim, obtain factual information concerning a claim, and make recommendations to the City and other appropriate parties.

##### 3.3.19.2. Evaluate Claim Cost.

ATC will prepare a cost estimate based on the alleged cause of a claim submitted by a homeowner, subcontractor or supplier and will prepare alternate estimates based on varying scenarios of the claim cause. These alternate estimates will be transmitted to the City and other appropriate parties and will be used in claims rulings and negotiations.

##### 3.3.19.3. Claims Negotiations.

ATC, and ATC's construction implementation joint venture subcontractor will attempt to negotiate and resolve claims among the homeowner, subcontractor or supplier.

##### 3.3.19.4. Terminated Contracts.

If allowed by the City and/or Surety, ATC will coordinate Work performed by any surety or its substitute contractors, in the event of default or termination of any of the ATC construction implementation joint venture subcontractor's, subtier construction contractors.

### 3.3.20. Project Status Reports.

ATC will prepare and distribute a monthly Project status report, which will include schedule analysis and cost status reports. The schedule analysis report will reflect actual progress against scheduled progress for the construction Work. The cost status report will reflect actual cost and forecast cost compared to budgeted cost for each Project. ATC will record the progress of the Work by submission of monthly written Program progress reports to the City, including information on the as-planned vs. as-performed construction Work, and the percentage of Program completion as compared to costs expended; maintain a daily log of job site events, which will be provided to City monthly; maintain logs of significant activities, accomplishments, manpower and equipment on-site; maintain records of problems encountered; maintain records of meetings; and maintain Program progress photographs.

### 3.3.1 Evaluate Proposal Cost.

ATC will evaluate all ATC construction contractor Field Alteration proposal costs and will make a formal recommendation to the City regarding acceptance of the proposal for a Field Alteration.

3.3.21.1. Develop and implement a system for review and processing of construction Field Alterations. In addition, monitor the history and accomplishments of any no-cost or no-schedule impact Work Directives and Field Orders issued to ATC contractors by City through the ATC. Recommend necessary or desirable Program changes to the City. The ATC shall review and verify all pricing of changes to Program participant contracts to determine if pricing is fair and equitable, as well as within generally accepted trade practices.

### 3.3.21.2. Negotiation of Field Alteration Costs and Time Extensions.

ATC, and ATC's construction implementation joint venture subcontractor, will negotiate requested Field Alteration costs and time extensions with the City when appropriate. ATC will advise the City of acceptability of such negotiated price and time extension, prior to the execution of any Field Alteration.

### 3.3.21.3. Force Account Records.

In instances when the Field Alteration Work is to be done on a time and material basis, ATC, and ATC's construction implementation joint venture subcontractor will maintain force account records on a daily basis to determine the actual Project cost and time required for the Field Alteration Work.

### 3.3.21.4. Field Alteration Reports.

ATC shall prepare and distribute a Field Alteration Report for each ATC construction contract on a monthly basis throughout the duration of construction for the Project. Such Report will provide Field Alteration information pertaining to proposed and executed Field Alterations and their effect on the construction contract price as of the date of each such Report.

### 3.3.22 Homeowner Occupancy

Develop a plan for occupants remaining within, moving out of, and moving back into homes, as may be required, including schedules and activities for all occupants or tenants. Address the start-up of the Project as well as the phase-down of any existing facilities. Identify any relocation tasks and establish party responsibility for accomplishment of each task. ATC shall assist in coordinating the occupant transition within, in, or out of homes.



ATC will prepare requests for proposals, solicit quotes, prepare contracts, obtain ATC construction implementation joint venture subcontractor's execution of subtier contracts, conduct any pre-moving conferences and administer the ATC contract for any moving activities in conjunction with partial or total move-out or move-in to the residential structures. ATC will provide on-site personnel to oversee the temporary relocation of all furniture, equipment, and other articles by the ATC's moving contractors while any actual internal relocation, move-out or move-in is in progress. ATC will make a final report to the City concerning any internal relocation, move-out or move-in.

ATC will prepare an occupancy plan for the home, which will include a schedule indicating critical interfaces for relocation of existing furniture and equipment, and any required relocation of occupants. Such schedule will be distributed to any ATC moving contractors, the City's affected departments, and other appropriate parties.

#### 3.3.23. Occupancy Permit.

ATC will obtain any Building Occupancy Permits for the residential structure. This task may encompass accompanying governmental officials during inspections of the Project, assisting in preparing and submitting proper documentation to the appropriate approving agencies, assisting in final testing and other necessary and reasonable activities.

#### 3.3.24. Develop and implement Construction Close-Out Procedures.

Develop and implement ATC construction implementation joint venture subcontractor's construction closeout procedures so that all Project construction contract deliverables have been transferred prior to closeout.

#### 3.3.5 Warranty Repairs.

ATC, and/or ATC's construction implementation joint venture subcontractor will pursue Project homeowner warranty repairs and/or correcting residential construction deficiencies.

ATC shall schedule, coordinate, conduct and record with the City, any post-completion inspections during the one (1) year bonded post-construction workmanship warranty period to ascertain the existence of any defects in material and workmanship, and determine the necessity for correction and resolution of same by ATC and its construction contractors and subconsultants. The ATC shall perform any corrective action in filing construction and/or equipment warranty, insurance and bond claims where coverage is available.

#### 3.3.26. Systems Checkout and Training.

ATC's construction implementation joint venture subcontractor shall coordinate start-up and testing of mechanical systems and utilities with ATC construction contractors. ATC shall receive, review and compile all operations and maintenance manuals and distribute them to the homeowner and City. During construction, ATC's construction implementation joint venture subcontractor shall, when required and appropriate, conduct familiarization/demonstration inspections for homeowners. ATC shall coordinate in-depth Program training seminars for City's personnel (building inspections; code compliance; public information, etc.).

#### 3.3.27 Substantial and Final Completion.

ATC shall determine substantial Project completion of each Project or designated portions thereof, and prepare for the City a list of incomplete or unsatisfactory items and a schedule for their completion. ATC shall certify the date of substantial completion and supervise the correction and completion of Work. ATC shall determine final Project completion, in consultation with ATC's construction implementation joint venture subcontractor, ATC Project subconsultants, and provide written notice to the City that each Project is ready for final City inspection. ATC shall secure and transmit to the City and homeowner

required guarantees, affidavits, releases, bonds, waivers and record drawings. ATC shall turn over to the homeowner all keys, manuals, and operations and maintenance manuals.

Assemble, catalogue and transmit to the homeowner and City, required Project guarantees, bills paid affidavits, consents of sureties, claims, and waivers received from the various ATC suppliers, manufacturers and contractors. Organize and deliver to the homeowner all keys, operating equipment, maintenance stocks, maintenance manuals, parts lists, and As-Built Drawings received from the various Project participants and ATC construction contractors.

ATC shall assemble, catalogue, and submit to the homeowner and the City all permanent Certificates of Occupancy for the Program Projects.

The ATC shall prepare documents necessary to the closeout of FAA Grants, including: Final Inspection Report; Materials Testing Summary; Noise Abatement Certification; Record Drawings; and other items identified in the FAA Grant Agreement.

#### ARTICLE 4

##### Contract Term, Fee, Reimbursable Expenses, and Payments

- 4.1. For basic services performed under this Agreement, the fees paid to the ATC shall be compensated monthly by the City based upon actual personnel base hourly rates and hours of service provided by the ATC and its subconsultants multiplied by fixed overhead and fixed profit multipliers. The base labor rate schedule, fixed overhead rate schedule, fixed profit rate, total direct labor multipliers, and estimated hours per month are outlined in Exhibit "C." It is mutually agreed that these rates, multipliers and estimated hours may be mutually reviewed, negotiated, and possibly revised upward or downward annually. (TBD) In addition, ATC shall be paid a certified value for the construction completed.
- 4.2. The Parties anticipate that the City's Program will have a duration of approximately four years, concluding in the year 2009. The Parties anticipate that ATC may perform the services outlined in this Agreement throughout the entire duration of the Program, provided the City adjudges ATC's performance as acceptable. The original term of this Agreement shall be for two (2) years from the effective date. The City shall reserve an option to renew the Agreement for an additional two (2) year term with any mutually agreed to language and pricing modifications, and City Council approval. The total compensation for labor and reimbursable expenses due to the ATC and its subconsultants for basic Program design and Program management services during such original two (2) year term shall not exceed Three Million Three Hundred Eight Thousand Three Hundred Sixteen and 00/100 Dollars (\$3,308,316.00) for labor and reimbursable expenses, without a written amendment to this Agreement. The total compensation for ATC construction phase "design-build" and ATC construction contractor labor, equipment and materials due to the ATC and its construction contractors and subcontractors during the first year shall not exceed Eight Million Eight Hundred Fourteen Thousand Eight Hundred Thirteen and 00/100 Dollars (\$8,814,813.00) without a written amendment to this Agreement. It is hereby mutually agreed between the Director and ATC that they shall negotiate in good faith to establish periodic Project by Project Requirements Construction Orders governing portions of Work ("Projects") to be constructed within previously appropriated not-to-exceed total amounts. No later than ninety (90) days prior to the completion of the initial two (2) year term, the City will issue ATC a written Notice of Intent that will inform ATC of the City's decision with regard to exercising its option to negotiate an extension to the Agreement for not more than two (2) additional years.
- 4.3. The City shall reimburse the ATC monthly at actual costs for expenses the ATC incurs in support of the Program to include, but not be limited to any non-home office special Program office rental; parking; computer purchase/rental; work-specific, personal employee vehicle mileage (to be reimbursed in accordance with the most current IRS guidelines); computer

software; travel expenses; telephone charges; printing; photography; postage; delivery; office supplies; janitorial service and other expendables and incidentals.

4.4 Billing Procedures.

4.4.1 The ATC shall notify the City when either ATC design and administrative fees, or ATC construction contractor fees incurred to date equal 80% of the maximum limitation set forth in Section 4.2, or any otherwise established funding level.

4.4.2 Portions of ATC's services are to be funded by federal grant or loan moneys, and allowable costs shall be in accordance with the cost principles and procedures set forth in the Federal Acquisition Regulations (FAR), if required by the Funding Agency. It shall be the responsibility of the ATC to ensure that all its subconsultants and construction contractors shall also be in compliance with the provisions thereof.

4.4.3 Reimbursable expenses are those types of expenses listed in Exhibit "C." Routine, daily personal employee vehicle travel expenses of ATC's San Antonio-area employees to and from the Program office(s) and Project(s) are non-reimbursable. Any ATC personal employee vehicle travel expenses while on official Program business traveling from Project to Project, Program office-to-office, or in support of a Project are reimbursable.

4.5. ATC must submit a written progress report outlining the actual Work performed by the ATC for the billing period reflected in the invoice. Payments shall be payable no later than thirty (30) days following invoice date.

4.6. Invoices.

4.6.1 The ATC shall submit to the Director a monthly invoice for initial Program mobilization not-to-exceed \$110,000.00, fees, reimbursable expenses, and construction costs on or about the tenth day of the month for services, expenses, and construction incurred in the previous month. At a future point in time, the City may require electronic submittal of invoices to expedite processing of same. Undisputed amounts invoiced shall be paid within thirty (30) days of the date of a mathematically correct invoice submittal. Any prior invoice that requires correction due to an under or overpayment by City will be corrected in the month following discovery of the error.

4.6.2 The ATC shall submit two (2) original certified invoices subdivided by Project and detailed to show the names of the ATC employees, any subconsultant employees, their classification and rates of pay, the time worked and the overhead rates of ATC and subconsultants. Construction invoices will be submitted as described further elsewhere herein.

4.6.3 A separate component of each invoice shall cover reimbursable and direct expenses chargeable and identifiable to this Agreement. Any charges submitted by the ATC must be substantiated by documentation. Reimbursable and direct expenses will be disallowed if invoice support materials are inaccurate or inadequate, or City audit(s) reveal that adequate bookkeeping has not been maintained by the ATC and/or ATC's construction joint venture implementation subcontractor. It is understood that the ATC's accounting records must segregate reimbursable and direct expenses out of its general overhead figures.

4.7. The ATC's invoice format and back-up materials required by the Director for expeditious approval and payment of the invoices shall be reviewed and approved by the Director or his designee prior to submittal of the initial invoice by the ATC. The ATC can then assume that all future invoices will be prepared and approved based upon the approved initial format and back up, unless directed otherwise by the City.

- 4.8. Final payment, constituting the final monthly payment of the ATC's compensation, shall be paid by the City to the ATC thirty (30) days after Final Completion of the Program and acceptance by the City. City may offset or adjust the amount of final payment to correct any previous over and under payments and any accounting errors.
- 4.9. ATC may be requested to perform additional Program services that are not included within the Article 3 Scope of Services; Basic Services, subject to appropriations having been made therefore, in connection with this Agreement. Should ATC be requested in writing by Director to perform additional Program services, compensation shall be paid by City to ATC as authorized in writing by Director. Notwithstanding the limited authority granted the ATC, the ATC is not authorized to incur additional Agreement expenses chargeable to the City, other than expenses which may result from stoppage of Work by ATC due to: 1) an emergency; or 2) taken as a necessary measure to facilitate the Work safety of individuals. ATC has no duty to incur such expenses or take such action and ATC may be eligible for reimbursement from City for incurring such expenses in good faith and in accordance with prudent business practices based on information then available and known to the ATC. ATC shall include similar provisions in its subcontracts with the ATC subconsultants to advise them of the Program ATC's authority.
- 4.10. City, as a municipal, corporate public entity, and political subdivision of the State of Texas, has a duty to document the expenditure of public funds. ATC acknowledges this duty on the part of City. To this end, ATC understands that failure of ATC to substantially comply with the submittal of the statements and documents as required herein shall constitute a **WAIVER** of reimbursement rights by ATC to any portion of the fee for which ATC did not supply such necessary statements and/or documents.
- 4.11. The City will normally pay ATC undisputed amounts within thirty (30) calendar days of monthly invoicing. If City fails to pay to ATC any undisputed amount due it under this Agreement within sixty (60) calendar days from the original date such payment is due, ATC may terminate this Agreement in accordance with this Article and ATC shall be compensated as provided in Article 11. In the event of such extended nonpayment by City for a cumulative period of sixty (60) calendar days from the original date such payment was due, ATC shall give written notice to City at least fourteen (14) calendar days prior to any such ATC termination. If City cures such payment default within fourteen (14) calendar days from the date of ATC notice (post-initial sixty (60) cumulative calendar days), ATC shall not have the right to terminate this Agreement pursuant to this provision. A disputed payment will be initially referred to senior management of both entities for attempted informal resolution, and if unsuccessful, then pursued in accordance with Article 9, "Dispute Resolution."

## ARTICLE 5

### Responsibilities

- 5.1. City's Responsibilities:
- 5.1.1. City's Information - The City shall provide full information regarding its requirements for the Program.
- 5.1.2. Owner Consultant Agreements - The City itself will retain various consultants to independently test and verify certain aspects of the ATC's Work product for each Project in the Program. The professional services, duties, and responsibilities of those independent consultants will be described in the Agreements between the City and those consultants.
- 5.1.3. Director or his designee shall act as the City's representative; receive, examine and review all documents submitted by the ATC; interpret and define City policies; negotiate Requirements Construction Orders and any Contract Amendments in good faith with ATC; and render

- decisions and authorizations. City will supply a separate independent consultant, as required, to monitor the activities of an ATC abatement contractor if hazardous materials are encountered on any Project. An ATC abatement contractor shall be responsible for the removal, encapsulation, transportation, manifesting, and legal disposal of any hazardous materials including, but not limited to, lead paint, asbestos or asbestos-containing materials as may be required in connection with the Project.
- 5.1.4. Legal Services - The City or its representatives shall provide legal, accounting, and insurance consulting services for the City as necessary for the Program; legal review and preparation of any construction auditing services as the City may require to account for expenditures of sums paid to the ATC contractor(s) and subconsultants, and for the review of construction documents and any disputes with homeowners, sureties, or insurance companies.
- 5.1.5. Program Faults or Defects - If the City becomes aware of any fault, or defect in the Program or a Project, or ATC, ATC subconsultant, or ATC contractor non-conformance with City Program requirements, or any other event that may substantially affect the ATC's performance of services under this Agreement, it shall give prompt written notice thereof to the ATC.
- 5.1.6. Verification Testing and Inspection – City will conduct some independent verification testing and inspection for City's benefit, which will be paid for by the City.
- 5.1.7. City's Cooperation - City will give ATC City's full and complete support and cooperation for interfacing with public and private agencies.
- 5.1.8. Consultants - The City shall include in its contracts with consultants, and shall cause its consultants to include in their contracts with subconsultants, the following or other similar language: "1) City's consultants acknowledge that the ATC has authority as an independent contractor to design, manage and construct the Program Work for the City. City's consultants recognize ATC is providing professional and personal services to City in connection with the management and direction of the overall Program and construction Projects and is not the City, nor the City's agent.
- 5.2. ATC's Subconsultant Architects and Engineers Responsibilities:
- 5.2.1. The ATC's Architects and Engineers will provide the engineering and design services to the ATC for the Program Projects. Basically, the ATC's Architects' and Engineers' scopes of Work will include but not be limited to the following:
- 5.2.2. Provide information to the ATC for updating of Program and Project schedules and budgets.
- 5.2.3. Provide all necessary professional design services for completion of the Project and produce a final set of construction Drawings and technical Specifications suitable for construction bidding activities as approved by City, subject to recommendations by the ATC.
- 5.2.4. Promptly review and act on shop drawings, samples, and other submittals of manufacturers and ATC's contractor(s) for conformance to the design concept of the ATC Program and Project and for compliance with equipment specifications and the construction contracts, including checking of dimensions. The A/E review cycle should be on a timely basis in compliance with the total Program and Project Schedule. Copies of finally "approved" shop drawings will be forwarded to the ATC for its information.
- 5.2.5. Timely furnish to the ATC's construction implementation joint venture subcontractor, and/or ATC subtier contractor(s), all necessary architectural and engineering data and documents so that the ATC construction contractor(s) may secure timely approval from City building inspectors and other reviewing entities having jurisdiction over the Program and Project.

- 5.2.6. On the basis of their limited on-site observations, notify in writing the ATC, and ATC's construction implementation joint venture subcontractor of any apparent defects and deficiencies in all Work constructed by the ATC construction contractor(s).
- 5.2.7. Prepare and forward to ATC a final set of reproducible mylar "As-Built" record drawings and specifications conforming to construction records provided to the Architect or Engineer by the ATC contractor(s) upon completion of the construction process. A draft final "As-Built," City record set of drawings will be supplied by the ATC to the City for City standard format uniformity verification, and when deemed final by City, transmitted to City by ATC.
- 5.2.8. Make limited periodic visits to the construction site to attend significant on-site meetings and to observe the progress and quality of the construction Work and to determine, in general, if the ongoing Work and results of the construction Work are in accordance with the design criteria, drawings, and technical specifications as prepared by the ATC's Architect or Engineer.
- 5.2.9. Assist the ATC and City in analyzing bids, and making recommendations to ATC for the award of any ATC construction implementation joint venture subcontractor construction contracts, or resolution of any bid protests. Negotiate Requirements Construction Orders in good faith with Director.
- 5.2.10. Assist the ATC in any material supplier or specialty equipment component selections or standardizations and related requirements.
- 5.3. ATC Contractor Responsibilities.
- 5.3.1. ATC agrees that ATC's construction implementation joint venture subcontractor and ATC subcontractor construction contractors shall have the following responsibilities: to develop contractor's own safety plan; to be fully responsible for construction job site safety; to develop contractor's means and methods for performance of contractor's duties; to ensure quality control of contractor's performance of services; and to procure and pay for insurance, and prorata share of premiums for payment and performance bonds, which City will require in adequate amounts to protect City and to ensure completion of the Project, within budget, and on time, in the event of default and termination of any ATC construction contractor. ATC construction contractor's duties also include the obligation to pay for all labor, material and equipment used in the Work.

## ARTICLE 6

### Ownership of Documents

- 6.1. All of the ATC's documentary Work product reports and correspondence to City under this Agreement shall be the property of the City and, upon completion of this Agreement, such documentary Work product shall be promptly delivered to City in a reasonably organized form, without restriction on its future use by City on any additional Work associated with the SAIA noise abatement programs. The above notwithstanding, the ATC shall retain all rights in any standard drawing details, designs, specifications, databases, computer software and any other proprietary information provided pursuant to this Agreement, whether or not such proprietary information was modified during the course of providing the services hereunder. ATC may retain for its files any copies of documents it chooses to retain and may use ATC's Work product as it deems fit. Any materially significant Work product lost or destroyed by the ATC shall be replaced or reproduced at the ATC's nonreimbursable, sole cost. In addition, City shall have access during ATC's normal business hours and following reasonable notice during the time this Agreement is in effect, and for three (3) years after Agreement expiration, to all of ATC's records and documents covering reimbursable expenses, actual base hourly

rates, time cards, annual salary escalation records maintained in connection with this Agreement, for purposes of auditing same at the sole cost of the City. The purpose of any such audit shall be for the verification of such costs. ATC shall not be required to keep records of, or provide access to the make up of any negotiated and agreed to lump sums or fixed overhead and profit multipliers. At the conclusion of any City audit, ATC will be afforded an audit exit conference to review the results of City's audit. Nothing herein shall deny ATC the right to retain duplicates. Refusal by ATC to comply with the provisions hereof shall entitle City to withhold further payments to ATC until compliance is obtained. All of the ATC's documentary Work product shall be maintained within the ATC's San Antonio offices, unless otherwise authorized by the City. After expiration of this Agreement, ATC's documents may be archived in ATC's central records storage facility.

## ARTICLE 7

### Status of ATC

- 7.1. ATC shall not be considered an employee of the City, but shall occupy the status of Independent Contractor as a professional consultant and design-builder to the City. The ATC shall perform its tasks and duties consistent with such status, and will make no claim or demand for any right or privilege applicable to an officer or employee of the City, including, but not limited to, worker's compensation, disability benefits, tax withholding, accident or health insurance, unemployment insurance, social security or retirement membership.

## ARTICLE 8

### ATC Construction Contracts

- 8.1. All Program construction Work shall be performed by ATC construction contractors under separate design-build construction contracts entered by the ATC's construction implementation joint venture subcontractor in accordance with the prerequisite Requirements Construction Orders executed between Director and ATC. Award of each design-build construction contract shall be made by ATC's construction implementation joint venture subcontractor, with the input from the Director, to the lowest, responsive and responsible prequalified bidder whose bid is responsive to the Project bid invitation. A separate Project by Project design-build construction contract format will be entered between ATC's construction implementation joint venture subcontractor and each subtier construction contractor governing ATC construction phase design implementation and observation services and ATC construction contractor labor and materials performance. Concurrent with that ATC construction contractor procurement, ATC and Director will in good faith negotiate a parallel, not-to-exceed Requirements Construction Order, governing not-to-exceed construction phase pricing.

## ARTICLE 9

### Dispute Resolution

- 9.1. In the event there is any dispute between or among the ATC and City that cannot be resolved by referral to upper management as otherwise provided herein, the Parties agree to submit the dispute to a mutually agreeable third party who will assist in mediating the dispute to a satisfactory resolution utilizing the then current construction industry non-binding mediation rules of the American Arbitration Association or other mutually agreed to and recognized industry source for such standardized mediation rules, prior to recourse to any other formal dispute resolution procedure, including any binding arbitration. The mediation process may be invoked by either Party on written request and shall not be construed to constitute an admission against interest of the Party requesting mediation. Any mediation shall be confidential and non-binding on the Parties, all costs to be equally borne by the Parties, and no statements made or information exchanged during mediation will be admissible in any future legal or arbitral proceedings without the written consent of the Party producing same or as otherwise allowed by the Texas Rules of Civil Procedure and Evidence. Notwithstanding anything to the contrary in this Agreement, either Party may immediately file suit in a court of competent jurisdiction to obtain equitable relief without resort to mediation, if faced with immediate, irreparable injury, and either party may file suit without resort to mediation if mediation is not completed within 60 days after either party invokes mediation.

## ARTICLE 10

### Insurance AND INDEMNIFICATION

- 10.1. The ATC shall purchase and maintain such appropriate insurance coverages as follow:
- 10.1.1 Insurance Requirements -- Prior to the commencement of any Work under this Contract, ATC shall furnish an original completed Certificate(s) of Insurance to the City's Aviation Department and City Clerk's Office, and shall be clearly labeled "Acoustical Treatment Project", 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(s) or form 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 the City. The City shall have no duty to pay or perform under this Contract until such certificate shall have been delivered to City's Aviation Department and the City Clerk's Office; and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 10.1.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Contract and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance will City allow modification whereupon City may incur increased risk.
- 10.1.3 ATC's, financial integrity is of interest to the City; therefore, subject to ATC's right to maintain reasonable deductibles in such amounts as are approved by the City in its reasonable discretion, ATC, shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at ATC's, sole expense, insurance coverages written on an occurrence (except for professional liability and environmental liability insurance to be issued on a claims made basis) basis, by companies authorized and admitted to do business in the State of Texas and rated B+ or better by A.M. Best Company and/or otherwise acceptable to the City exercising reasonable discretion, in the following types and amounts:



TYPE	AMOUNTS
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
3. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined <u>Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
4. ATC's Environmental Liability (if applicable)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional environmental services
5. ATC's Professional Liability	\$1,000,000 per claim and annual aggregate

10.1.4. Commercial general liability insurance coverage shall be on an "occurrence" basis, and shall insure ATC, against claims for bodily injury, including death of any person other than ATC's employees, and property damage for injury to or destruction of tangible property, other than the Work itself. The policy shall contain the personal injury and broad form property damage endorsements modified as set forth below, and the policy shall be endorsed to remove any property damage liability exclusions pertaining to loss by explosion, collapse or underground damage. The policy shall include coverage for:

- 10.1.4.1. The "City of San Antonio, its officers and employees, volunteers, and elected representatives, added as "named additional insureds"
- 10.1.4.2. Premises/Operations Coverage
- 10.1.4.3. Products/Completed Operations Hazard
- 10.1.4.4. Coverage for Independent Contractors and Subconsultants
- 10.1.4.5. Blanket Contractual liability insuring the indemnification agreement contained in this Agreement.
- 10.1.4.6. Aggregate Limits of Insurance (per phase) amendment CG 25031185
- 10.1.4.7. Personal injury liability with employee exclusion deleted
- 10.1.4.8. Broad form property damage extended to apply to completed operations

- 10.1.4.9. Endorsement or certificate that such insurance provides that any insurance or self-insurance maintained by the City of San Antonio shall apply in excess of and not contribute with insurance provided by ATC's policy.
- 10.1.5. ATC agrees to maintain professional liability errors and omissions insurance coverages in the amount of not less than one million (\$1,000,000) annual aggregate, on a claims made basis, as long as reasonably available under standard policies.
- 10.1.6. The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto, and may reasonably require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon any of the Parties hereto or the underwriter of any such policies). ATC shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the addresses provided below herein within thirty (30) days of the requested change. ATC shall pay any costs incurred resulting from said changes.
- 10.1.7. With respect to deductibles, City shall be entitled, upon request and without expense to ATC to review and approve or disapprove any ATC deductibles.
- 10.1.8. ATC agrees that with respect to the above required insurance all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:
- 10.1.8.1. Name the City and its officers, employees, volunteers, and elected representatives as additional insureds with regard to operations and activities of, or on behalf of, the named insureds performed for the benefit of the City, with the exception of workers' compensation, ATC's environmental liability (if any), and professional liability errors and omissions policies.
- 10.1.8.2. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- 10.1.8.3. Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- 10.1.9. When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by City, ATC, shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if ATC knows of said change in advance, or ten (10) days notice after the change, if the ATC did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following address:
- |                            |                            |
|----------------------------|----------------------------|
| City of San Antonio        | City of San Antonio        |
| <b>Aviation Department</b> | <b>City Clerk's Office</b> |
| 9800 Airport Blvd.         | P.O. Box 839966            |
| San Antonio, Texas 78216   | San Antonio, Texas 78283   |
- 10.1.10. If ATC, fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the City may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the ATC Agreement; however, procuring of said insurance by the City is an alternative to other remedies the City may have, and is not the exclusive remedy for failure of ATC to maintain said insurance, or secure such endorsement. In addition to any other remedies the City may have upon ATC's failures to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order ATC to stop work hereunder, and/or withhold

any payment(s) which become due to ATC hereunder until ATC demonstrates compliance with the requirements hereof.

- 10.1.11. Nothing herein contained shall be construed as limiting in any way the extent to which ATC may be held responsible for payments of damages to persons or property resulting from ATC's performance of the Work covered under this Agreement.
- 10.1.12. It is agreed that ATC's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Contract.
- 10.1.13 ATC subconsultants, and the ATC construction implementation joint venture subcontractor, will also be required to procure appropriate insurance coverages given the type of work performed for ATC which will protect the interests of the ATC and City as appropriate by industry standards. At the Program juncture when actual construction implementation activities are about to commence, ATC and City will, through the negotiation of the Requirements Construction Orders, establish appropriate additional insurance requirements for construction phase participants.

### 10.3 INDEMNIFICATION

- 10.3.1. ATC covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage ( collectively, "Losses"), made upon or incurred by the CITY, directly or indirectly arising out of, resulting from or related to ATC's activities under this CONTRACT, including any acts or omissions of ATC, any agent, officer, director, representative, employee, subconsultant, construction implementation joint venture subcontractor, or subtier construction contractor of ATC, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this CONTRACT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this INDEMNITY are solely for the benefit of the Parties hereto, and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. ATC shall advise the CITY in writing within ten (10) days of any claim or demand against the CITY or ATC, known to ATC, related to or arising out of ATC's activities under this its CONTRACT and shall see to the investigation and defense of such claim or demand at ATC's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving ATC of any of its obligations under this paragraph.

It is the EXPRESS INTENT of the Parties to this CONTRACT, that the INDEMNITY provided for in this paragraph is an INDEMNITY extended by ATC to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from losses caused by ATC's NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of ATC is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and then only in an amount that is proportionate to the extent of ATC's negligence and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage. THE INDEMNITY PROVIDED BY ATC HEREIN SHALL ALSO NOT APPLY TO ANY DEFECTIVE ARCHITECTURAL OR ENGINEERING WORK PERFORMED BY THE CITY OR ANY OF CITY'S SEPARATELY CONTRACTED INDEPENDENT A/E SUBCONSULTANTS. ATC 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 and its elected officials, employees,

**officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.**

**ATC further agrees to include substantially similar language in any and all ATC subagreements with ATC subconsultants, its construction implementation joint venture subcontractor and ATC subtier construction contractors that will similarly INDEMNIFY and HOLD HARMLESS the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively.**

#### ARTICLE 11

##### Termination; Default; Cure

- 11.1. City reserves the right to terminate this Agreement or revise ATC's Scope of Services, in whole or in part, with cause or without cause, and for the convenience of the City. In such event, a written Notice of Termination or Modification shall be delivered to the ATC at least ninety (90) days prior to the effective date of such Termination or Modification. ATC shall then be paid by City for all Work satisfactorily completed and certain non-recoverable expenses of termination or modification, such as, without limitation, certain demobilization expenses and cancellation fees due to subconsultants, contractors and suppliers as further qualified in Article 11.3.2 below. No amount shall be due for ATC's alleged lost or anticipated profits. All Work-related documents and records shall become the property of City, and shall be promptly delivered to City in a reasonably organized form without restriction on future use by City for any additional Work associated with the SAIA noise abatement Program. Should City subsequently contract with a new acoustical treatment consultant for new services on the Program, which right City specifically retains, ATC shall cooperate in providing existing information to City.
- 11.2. For purposes of this Agreement, termination of the Agreement shall mean termination by expiration of the Agreement term or earlier termination pursuant to any of the provisions hereof.
- 11.3 Termination Without Cause.
- 11.3.1 This Agreement may be terminated by either party upon written notice in accordance with Article 16, Notices. Such notice must specify an effective date of termination, which shall not be less than ninety (90) calendar days after the date of receipt of the notice by the other Party. If the notice does not specify a date of termination, the effective date of termination shall be ninety (90) calendar days after receipt of the notice by the other Party.
- 11.3.2 City shall equitably compensate ATC in accordance with the terms of this Agreement for the Work properly performed after City's written Notice to Proceed and prior to the effective date of any termination. ATC shall not, however, be entitled to lost or anticipated profits should City choose to exercise its option to terminate without cause. ATC will be paid certain non-recoverable expenses of termination or modification, such as, without limitation, equipment lease cancellation penalties, restocking of supply fees, and similar cancellation fees owed to ATC subconsultants, contractors, subcontractors and suppliers. ATC will act in good faith to mitigate termination expenses to the extent practicable.
- 11.4. Defaults With Opportunity for Cure.
- 11.4.1. Should ATC fail to perform the Scope required by Article 3, Scope of Services; Basic Services by the performance milestones established in Article 3, Exhibit "D," Performance Schedule, same shall be considered a default. However, the Parties agree that no default shall be considered to occur where ATC's failure to perform is directly caused by the actions of Homeowner and/or Tenant, or City or its consultants. City shall deliver written notice of said

default specifying such matter(s) in default. ATC shall have ten (10) calendar days after receipt of the written notice, in accordance with Article 16, Notices, to cure or initiate steps reasonably calculated to cure such default. If ATC fails to cure, or initiate steps reasonably calculated 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 consultant 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 consultant against ATC's future or unpaid invoice(s) if the expense of a new consultant exceeds what ATC would have been paid to complete the Agreement, subject to the duty on the part of City to mitigate its losses to the extent required by law.

- 11.5. 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 Termination under this Agreement:
  - 11.5.1. ATC makes, or allows its subconsultants, subcontractor, or subtier construction contractors to make any material misrepresentation or provides any materially misleading information to Homeowner and/or Tenant, or City in connection with this Agreement, or materially breaches any covenant, obligation, term or condition contained in this Agreement; or
  - 11.5.2. ATC violates or materially fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this Agreement, except those events of default for which an opportunity to cure is provided herein; or
    - 11.5.2.1. ATC fails to cure, or initiate steps reasonably calculated to cure, a default listed in Article 11.4 within the time period required for cure; or
  - 11.5.3. ATC attempts to assign this Agreement contrary to the assignment terms hereof; or
  - 11.5.4. ATC ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Agreement shall continue) and such petition is not dismissed within forty-five (45) days of filing; or if a receiver, trustee or liquidator is appointed for it, or its joint venture entity, or any substantial part of ATC's assets or properties; or
  - 11.5.5. ATC fails to comply in any material respect with the bonding and/or insurance requirements set forth in this Agreement after given a reasonable opportunity to cure; or
  - 11.5.6. ATC materially violates any rule, regulation or law by which ATC is bound, or shall be bound, while and in performing the services required under this Agreement.
- 11.6. Termination By Law. If any state or federal law or regulation exists or is enacted or promulgated which prohibits the performance of any of the ATC's, ATC's subcontractors', subconsultants' or subtier construction contractors' 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.
- 11.7. Effect of Termination. Notwithstanding Article 11.4, Defaults with Opportunity for Cure, upon a decision to terminate by City, written notice of such shall be immediately provided to ATC specifying the effective date of termination, notice of which shall be given in accordance with Article 16, Notices.
  - 11.7.1. Regardless of how this Agreement is terminated, ATC shall effect an orderly transfer of records and materials identified herein to City or to such person(s) or firm(s) as the City may

designate. At no additional cost to City, ATC shall provide the following: all completed or partially completed documents prepared pursuant to this Agreement; papers, records, charts, reports, electronic files and any other materials or information produced as a result of, or pertaining to, the services rendered by ATC, its subconsultants, subcontractor or subtier construction contractors, or provided to ATC hereunder in accordance with Article 6, Ownership of Documents. Any record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at ATC's sole cost and expense. Payment of any compensation due or to become due to ATC is conditioned upon delivery of all such documents.

- 11.7.2. Within ninety (90) calendar days of the effective date of completion, or termination or expiration of this Agreement, ATC shall submit to City such claims as ATC has knowledge of, in detail, for any moneys owed by City for services performed under this Agreement through the effective date of termination. Failure by ATC to submit a claim known by ATC within ninety (90) calendar days after the effective date of completion, or termination or expiration of this Agreement shall negate any liability on the part of City and constitute a **WAIVER** by ATC of any and all right or claims to collect moneys that ATC may rightfully be otherwise entitled to for services performed pursuant to this Agreement.
- 11.7.3. Upon the effective date of expiration or termination of this Agreement, ATC shall cease all operations of Work being performed by ATC or any of its subconsultants, subcontractors, and subtier contractors pursuant to this Agreement.
- 11.7.4. Termination is not City's sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an exclusive 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 ATC for any default or breach hereunder or other action.
- 11.8. Right of City to Suspend Giving Rise to Right of ATC to Terminate.
- 11.8.1. City may suspend this Agreement in whole or in part for the convenience of City by issuing a signed, written notice of suspension (citing this Article) as provided in Article 16, Notices, which shall outline the reasons for the partial or total suspension and the duration of the suspension. A partial suspension would allow some Work to proceed (e.g., a one-third production per day suspension would not equate to a full day of suspension until the passage of three days); however, it is understood and agreed by the Parties that the total number of equivalent cumulative calendar days of suspension as reflected in said notice shall not exceed one hundred and twenty (120) cumulative full calendar days. Such suspension shall take effect upon the date set forth in the notice, or if no date is set forth, immediately upon ATC's receipt of said notice.
- 11.8.2. ATC's Right to Terminate.
  - 11.8.2.1. ATC may terminate this Agreement in the event one or more partial or total suspensions cumulatively exceed one hundred and twenty (120) full calendar days. ATC may exercise this right to terminate by issuing a signed, written notice of termination, in accordance with Article 16, Notices, (citing this Article) to City after the expiration of one hundred and twenty (120) cumulative full 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.

11.8.2.2. ATC may terminate this Agreement as provided in Paragraph 4.11 of this Agreement, as provided therein. In addition, ATC may terminate this Agreement for cause, if City unreasonably disregards ATC's recommendations to take action reasonably calculated to facilitate completion of City's Program within the Master Schedule and budget established for the Program.

11.8.3. Procedures for ATC to follow upon Receipt of Notice of Suspension.

11.8.3.1. Upon receipt of written notice of suspension, ATC shall, unless the notice otherwise directs, immediately discontinue all Work in connection with the performance of this Agreement and suspend or cancel all existing orders and contracts.

11.8.3.2. ATC shall prepare a statement showing in detail the Work performed under this Agreement prior to the effective date of suspension.

11.8.3.3. All completed or partially completed Work prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to City, but shall be retained by ATC until such time as ATC may exercise the right to terminate.

11.8.3.4. In the event that ATC exercises the right to terminate after the suspension date and passage of 120 equivalent, cumulative, full calendar days as provided by Article 11.8.2, within an additional thirty (30) calendar days after receipt by City of ATC's notice of termination, ATC shall submit the above referenced statement showing in detail the Work performed under this Agreement prior to the effective date of suspension. Nothing in this Article shall prevent ATC from submitting invoices for partial payments for Work performed prior to the termination date as provided by Article 4, "Payments."

11.8.3.5. Additionally, any documents prepared in association with this Agreement shall be delivered to City by ATC, as a pre-condition to final payment, within the additional thirty (30) calendar days after receipt by City of ATC's notice of termination.

11.8.3.6. Upon the above conditions being met, City shall pay ATC that proportion of the prescribed fee which the Work actually performed under this Agreement bear to the total services called for under this Agreement, less previous payments of the fee, and any non-recoverable expenses of suspension, such as, without limitation, demobilization expenses, severance pay for terminated employees, travel costs of released employees and cancellation fees due to subconsultants, contractors and suppliers.

## ARTICLE 12

### Remedies

12.1. Nothing contained elsewhere in this Agreement shall require City to pay for Work not in compliance with the provisions of this Agreement. The City may withhold entire or partial payments to ATC when City reasonably determines ATC is in complete or partial default under this Agreement without waiving any other remedy or right available at law or in equity, including the right to bring legal action for breach and damages, or to force specific performance of this Agreement.

## ARTICLE 13

### Assignment

- 13.1. This Agreement shall be binding on the Parties hereto, their successors, assigns and representatives. Neither Party shall assign their interest in this Agreement without the written consent of the other.
- 13.2.1. ATC shall not transfer or assign this Agreement without having first obtained City's prior written consent, which may be given only by or pursuant to an ordinance enacted by the City Council of the City of San Antonio, Texas; provided, however, that the foregoing shall not apply to, and not prevent the assignment of this Agreement to any corporation with which ATC may lawfully merge or consolidate, or which may succeed to a controlling interest in the business of ATC. Notwithstanding the foregoing, and for so long as any pledge or collateral assignment of ATC's interest in this Agreement shall be by instrument substantially in such form as shall have previously been approved by the City Council, the consent of City to such pledge, or collateral assignment, may be given by City acting by and through the Director.
- 13.3. Each transfer or assignment to which there has been City consent shall be by written instrument, in a form satisfactory to City, and shall be executed by the transferee and assignee who shall agree, in writing, for the benefit of City, to be bound by and to perform the terms, covenants and conditions of this Agreement. Four (4) original executed written assignment instruments shall be delivered to City. Failure either to obtain City's prior written consent, or to comply with the provisions herein contained, shall operate to prevent any such transfer or assignment from becoming effective.
- 13.4. Should the assignment of this Agreement be approved by City, and to the extent that such assignee assumes ATC's remaining obligations hereunder, ATC shall by virtue of such assignment be released from such remaining obligations. No provision of this Agreement shall be deemed to have been waived by the City, unless such waiver is memorialized in writing, signed by the Director.

## ARTICLE 14

### Governing Law

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

## ARTICLE 15

### Venue

- 15.1. **THIS AGREEMENT SHALL BE ENFORCEABLE IN SAN ANTONIO, TEXAS, AND IF MEDIATION OR LEGAL ACTION IS NECESSARY BY EITHER PARTY WITH RESPECT TO THE ENFORCEMENT OF ANY OR ALL OF THE TERMS AND PROVISIONS HEREIN, EXCLUSIVE VENUE FOR SAME SHALL LIE IN BEXAR COUNTY, SAN ANTONIO, TEXAS.**

## ARTICLE 16

### Notices

All written notices to City by ATC shall be addressed to:



Mr. Les Heinen  
Project Control Manager  
City of San Antonio Aviation Department  
9800 Airport Blvd.  
San Antonio, Texas 78216

With copies to:

San Antonio International Airport  
Attn: Kevin C. Dolliole, Aviation Director  
Frank Melton, Chief Legal Counsel  
9800 Airport Blvd.  
San Antonio, TX 78216

All written notices from City to ATC shall be addressed as follows:

Joe A. Carroll  
THC, Inc.  
Sugarloaf Corporate Center  
2180 Satellite Blvd., Suite 160  
Duluth, Georgia 30097-4074

With copies to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ARTICLE 17

Compliance with Applicable Laws; Small, Minority and  
Woman Owned Business Enterprises Policy; Non-discrimination and  
Equal Employment Opportunity Policy; and Federal Funds Conditions

- 17.1. The ATC agrees to fully and promptly comply with all laws, rules and orders of the federal, state and municipal governments applicable to the ATC in the performance of this Agreement, including, but not limited to, Title II and III of the Americans with Disabilities Act, without accepting any responsibility of City.
- 17.2. ATC 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, ATC, upon written notification by City, will commence compliance procedures within thirty (30) days.
- 17.3. Title VI Assurances. During the performance of the Agreement, ATC agrees as follows:
- 17.3.1. Compliance with Regulations. ATC 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. ATC, 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, subcontractors and subtier construction contractors.
- 17.3.3. Solicitations for Subconsultants and Subtier Construction Contractors. In solicitations and negotiations made by ATC for subconsultant services and subtier construction services, each potential subconsultant and subtier construction contractor shall be notified by ATC of ATC'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. ATC 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 ATC is in the exclusive possession of another who fails or refuses to furnish this information, ATC shall so 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 ATC's material 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 ATC, 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 ATC under this Agreement until ATC complies; and/or cancellation or termination of this Agreement, in whole or in part.
- 17.3.6. Incorporation of Provisions. ATC shall include the provisions of Sections 17.3.1 through 17.3.5 above in every subcontract and subtier construction contract issued pursuant hereto. ATC shall take such 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 ATC becomes involved in, or is threatened with, litigation with a subconsultant, subtier contractor or supplier as a result of such direction, ATC may request City to enter into such litigation to protect the interests of City, and in addition, ATC 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 23 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 23 shall apply to this Agreement should federal funds be expended hereunder.
- 17.4.2. DBE Obligation. ATC agrees to ensure that disadvantaged business enterprises, as defined in 49 CFR part 23, 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, ATC shall take all necessary and reasonable steps in accordance with 49 CFR part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete on the basis of race, color, national origin, gender, physically challenged condition or veteran status in the award and performance of DOT-assisted contracts.

- 17.4.3. Sanctions for Noncompliance. ATC is hereby advised that any material failure of ATC, or with ATC's knowledge, any material failure by subcontractor, subconsultant or subtier 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 ATC or such other remedy as City deems necessary.
- 17.4.4. Inclusion in Subcontracts and Construction Contracts. ATC shall physically insert in each of its subcontracts and subtier construction contracts, City's Disadvantaged Business Enterprise Policy, as set forth in Section 17.4.2 above, and also a clause requiring its subconsultants and ATC's construction implementation joint venture subcontractor to include this same policy in any lower tier construction 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. This policy shall not be incorporated by reference.
- 17.5. The ATC 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 ATC 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 ATC 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.
- 17.6. The ATC 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, ATC may be required to submit a written report to City's Economic Development Department. The ATC 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 ATC. 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, or initiate steps reasonably calculated to cure, constitutes a default by the ATC and which can, at the option of the Director, result in termination of this Agreement pursuant to Article 11.
- 17.7. In the event City receives funds from any federal agency to be utilized in planning, design, construction or management of the Program and/or Project, City shall notify ATC of any terms, requirements, conditions or restrictions attached to the use of said funds. Thereafter, ATC shall assist City in notifying all affected ATC subconsultants, subcontractor and subtier construction contractors, and will include, to the extent necessary, all federal requirements as a part of each and every request for proposal or bid package on the federally funded portion of a Project. ATC shall also comply with any applicable requirements and assist City with assembling the documents necessary to evidence compliance by each affected ATC subconsultants, subcontractor and subtier construction contractors. Should unforeseen additional Program management costs be incurred by the ATC to monitor/coordinate the Program due to any federal agency or federal funding, a Change Order for such costs will be issued by the City to the ATC. If such federal compliance services are required, City and ATC shall mutually agree upon a level of staffing and cost for services to be performed by the ATC.

## ARTICLE 18

### Financial Interest Prohibited

- 18.1. ATC covenants and represents that ATC, its officers, employees, agents, and subconsultants, and construction implementation joint venture subcontractor, and subtier construction contractors, and their respective officers, employees, and agents, will have no substantial financial interest as defined by Section 171.002 of the Texas Government Code, direct or indirect, in product, materials or equipment that will be specified for the design or construction of the Program. Additionally, ATC covenants and represents that ATC, its officers, employees, agents will have no substantial financial interest, direct or indirect, in any of ATC's subconsultant or subtier construction contractor entities, except for the controlling interest ATC shall have in the construction implementation joint venture subcontractor entity.
- 18.2. ATC understands that the Charter of the City of San Antonio in Section 141 provides that: "No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or service, except on behalf of the City as an officer or employee. Any willful violation of this Section shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit his office or position. Any violation of this Section, with the knowledge, express or implied, of the person or corporation contracting with the City shall render the contract involved voidable by the Director, City Manager, or the City Council."

The ATC represents that to the best of its knowledge that no employee or officer of the City has an interest in the ATC corporation, or any of the corporate subconsultants, the construction implementation joint venture subcontractor, and any subtier construction contractors.

- 18.3. **"Financial Interest." (See: City Code of Ethics § 2-52)** An officer or employee has a prohibited "financial interest" in a contract with the City, or in the sale to the City of land, materials, supplies, or service, if any of the following individuals or entities is a party to the contract or sale:

- (1) the officer or employee;
- (2) his or her parent, child, or spouse;
- (3) a business entity in which the officer or employee, or his or her parent, child or spouse, directly or indirectly owns:
  - (A) ten (10) percent or more of the voting stock or shares of the business entity, or
  - (B) ten (10) percent or more of the fair market value of the business entity; or
- (4) a business entity of which any individual or entity listed in Subsection (1), (2) or (3) is:
  - (A) a subcontractor on a City contract;
  - (B) a partner; or
  - (C) a parent of subsidiary business entity.

- 18.4. For purposes of enforcing Section 141 of the City Charter consider the following:
- (1) a City "employee" is any employee of the city who is required to file a financial disclosure statement pursuant to Section 2-52(e)(1).
  - (2) a City "officer" is:
    - (A) the Mayor or any Council member;
    - (B) a Municipal Judge or Magistrate; or
- a member of any board or commission which is more than advisory in function. The term does not include members of the board of another

governmental entity even if some or all of these members are appointed by the City.

- 18.5 ATC acknowledges that it is hereby and otherwise informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City "officer" or "employee," as those terms are defined in Section 2-52 of the Ethics Code, from having a "financial interest" in any contract with the City or any City agency such as City owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City, or in the sale to the 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 or subconsultant on a City contract, a partner, or a parent, or subsidiary business entity.

ATC warrants and certifies, and this Contract is made in reliance upon the above expressions of City law summarized in this Article 18, and that it, its officers, employees and agents are neither officers nor employees of the City. ATC further warrants and certifies that it has tendered to the City appropriate Discretionary Contracts Disclosure Statement(s) in compliance with the City's Ethics Code.

- 18.6. ATC, after due diligence review of its past and present contracts, represents to City that it is not aware of any conflict of interest in the award of this Work that might ethically compromise ATC's legal commitment to faithfully perform the Work under this Agreement for City.

#### ARTICLE 19

##### Potential Agreement Extension

- 19.1. If the Program is substantially delayed at any time in the orderly progress of the Work by any act, neglect or failure to act by the City, or by major City-directed Change Order in the design Work or Field Alteration in the construction Work, or by labor disputes, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the ATC's reasonable control, or by delay authorized or directed by the City, the ATC shall immediately notify the City, in writing, of such delay. The date for Completion of ATC's services may be extended, upon mutual agreement between the City and ATC, by Change Order, for a reasonable length of time, and City's consent will not be unreasonably withheld, conditioned or delayed. However, such extension, if necessary, will be granted only if the delay cannot reasonably be recovered elsewhere in the Program Management Schedule, without significant cost impact to the Program.

#### ARTICLE 20

##### Survival

- 20.1. Any and all representations, covenants and conditions made by ATC and the City under this Agreement are of the essence of this Agreement and shall survive the execution, delivery and termination of it, and all statements contained in any document required by the City, whether delivered at the time of the Agreement execution, or at a later date, shall constitute ATC representations hereunder.

## ARTICLE 21

### Cumulative Remedies

- 21.1. In the event of default by ATC herein, City shall have all rights and remedies afforded to it at law or in equity to recover damages and interpret or enforce the terms of the Agreement. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity.

## ARTICLE 22

### Incorporation of Provisions Required by Law

- 22.1. Each provision and clause required by law to be inserted into this Agreement shall be deemed to be included herein and this Agreement shall be read and enforced as though each were physically included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, this Agreement shall be mutually amended to make such insertion on application by either Party. This Agreement is subject to all applicable Federal, State and local laws, statutes, codes, and any applicable permits, ordinances, rules, order and regulations of any local, state or federal government authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction.

## ARTICLE 23

### Waiver

- 23.1. The failure on the part of the City herein at any time to require the performance by ATC of any portion of this Agreement shall not be deemed a waiver of, or in any way affect the City's rights to enforce such provision or any other provisions. Any waiver by the City herein of any provision hereof shall not be taken or held to be a waiver of any other provisions hereof or any other breach hereof.

## ARTICLE 24

### Entire Agreement

- 24.1. This Agreement, any written amendments hereto, any anticipated written Requirements Construction Orders and the Exhibits (\_\_\_\_ -- \_\_\_\_), and any identified Attachments appended hereto and incorporated herein for all purposes, constitutes the entire Agreement and supersedes all prior agreements and understandings between the Parties concerning the subject matter of this Agreement.

## ARTICLE 25

### Severability

- 25.1. The invalidity, illegality or unenforceability of any provision of this Agreement shall not affect the validity, legality or enforceability of any other provision of this Agreement.

ATC represents to the City that ATC has full power and authority to execute, deliver, and perform this Agreement, and all other documents and certificates contemplated hereby, and the execution, delivery, and performance thereof have been duly authorized by ATC and no other corporate action is or was required to be taken to permit the execution, delivery, and performance of this Agreement, the transactions contemplated hereby, and all other

documents and certificates contemplated hereby, and no consent or approval of any third party or governmental authority is or was required or appropriate in connection with the execution of this Agreement, or to consummate the transactions contemplated hereby.

2005. WITNESS, the signature of the Parties hereto in triplicate originals, this \_\_\_\_\_ day of April

CITY OF SAN ANTONIO, TEXAS

\_\_\_\_\_  
Interim City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
ANDREW MARTIN  
City Attorney

\_\_\_\_\_  
ACOUSTICAL TREATMENT CONSULTANT  
"ATC"

"THC, Inc."

By: \_\_\_\_\_  
Name: Joe A. Carroll  
Title: \_\_\_\_\_

Federal Tax Identification No.:  
\_\_\_\_\_