

INTERLOCAL AGREEMENT BETWEEN
SCHERTZ, TEXAS AND
THE ALAMO AREA COUNCIL OF GOVERNMENTS RELATED TO THE
PROVISION OF GOODS AND SERVICES TO JOINT BASE SAN ANTONIO

This Interlocal Agreement (the “Agreement”) is entered into this ____ day of _____, 2020, by and between **SCHERTZ, TEXAS**, a political subdivision of the State of Texas (“LOCAL GOVERNMENT”) and **THE ALAMO AREA COUNCIL OF GOVERNMENTS (“AACOG”)**, a political subdivision of the State of Texas, pursuant to the Interlocal Cooperation Act, Chapter 791 Government Code, as the same may be amended from time to time, to be effective as of the date on which the last Party signs this Agreement (the “Effective Date”). The City and the Authority are collectively referred to herein as the “Parties” and are each a “Party.”

I. PURPOSE

- 1.01 Federal law authorizes the branches of the U.S. Military to enter into an intergovernmental support agreement (“IGSA”), which terms are incorporated herein and attached as Exhibit A, with a state or local government for the purpose of providing, receiving, or sharing installation support services. See 10 U.S.C. § 2679. Experience has shown that military installations can achieve substantial costs savings and obtain goods and services faster by entering into an IGSA with a state or local government, thereby increasing efficiency and military readiness. AACOG and LOCAL GOVERNMENT desire to assist Joint Base San Antonio (“JBSA”) in increasing efficiencies and reducing costs in the procurement of goods and services necessary to achieve JBSA’s mission objectives.
- 1.02 The purpose of this agreement is to create a voluntary procurement framework for AACOG and its member governments whereby AACOG will contract with its member governments, including LOCAL GOVERNMENT, to provide goods and services to JBSA. The parties agree and understand that the primary goal of this agreement is not profit but, rather, to enhance JBSA’s ability to accomplish its mission in the most efficient manner possible. By procuring goods and services through AACOG and its member governments, JBSA may avoid higher costs and substantial time delays that are often encountered when using the Federal Acquisition Regulations.

II. RESPONSIBILITIES

- 2.01 AACOG Responsibilities.
 - 2.01.1 AACOG will enter into an IGSA with JBSA to procure goods and services for JBSA pursuant to a request via a “Task Order” or other procurement document (“collectively referred to herein as a “Task Order”) to provide specific goods or services at a fixed price under terms and conditions set out in the Task Order.
 - 2.01.2 AACOG and JBSA have created an initial process whereby JBSA informally communicates to AACOG its requirements and historical unit cost. AACOG will then relay the information to its

members to determine any interest in the project and preparation of a preliminary cost estimate. AACOG in its sole discretion will determine whether it will respond to the Task Order with a quote. JBSA will review the preliminary cost estimate, other relevant issues and then decide whether to proceed further with AACOG or pursue other options. AACOG may choose to perform the Task Order request on its own or to contract with LOCAL GOVERNMENT or another participating member government to supply the goods or perform the services requested in the Task Order.

2.01.3 Once a Task Order is awarded, AACOG will:

- Participate in the kickoff meeting;
- Coordinate with Local Government and its subcontractors as necessary;
- Coordinate with JBSA to arrange base access and compliance with security procedures;
- Keep abreast of quality assurance and quality control but not actually perform these functions;
- As the Task Order is completed according to its terms, AACOG will promptly submit its invoice to JBSA and in turn pay the corresponding invoice submitted by LOCAL GOVERNMENT upon payment by JBSA in a time period not to exceed 150 days.
- Participate in any change order or dispute resolution process;
- Receive final notice of acceptance from JBSA; and
- Submit any final billing to JBSA.

2.01.4 Without undertaking any liability for such actions, AACOG will engage in accounting functions including, but not limited to, monitoring and reviewing LOCAL GOVERNMENT's invoices for accuracy and completeness before submitting its own invoice to JBSA.

2.01.5 AACOG and LOCAL GOVERNMENT will share responsibilities to JBSA for performance of the Task Order. AACOG shall be responsible for providing the LOCAL GOVERNMENT with all information, terms and conditions as required by JBSA for appropriate fulfillment of the particular Task Order.

2.02 LOCAL GOVERNMENT Responsibilities.

2.02.1 LOCAL GOVERNMENT shall not be obligated to respond to a request for quote from AACOG.

2.02.2 If LOCAL GOVERNMENT chooses to submit a quote, and its quote is accepted by AACOG, then LOCAL GOVERNMENT agrees to complete the Task Order according to its terms and conditions by performing services in good and workman like manner and/or supplying conforming goods. LOCAL GOVERNMENT may subcontract to its approved vendors and contractors as it deems necessary. LOCAL GOVERNMENT and AACOG will create a process to ensure that any subcontractors are acceptable to AACOG and that LOCAL GOVERNMENT'S legally mandated procurement requirements have been satisfied.

2.02.3 LOCAL GOVERNMENT shall be required to perform quality assurance and quality control during the performance of the Task Order so as to ensure that JBSA's requirements are satisfied.

2.02.4 LOCAL GOVERNMENT cannot indemnify AACOG or JBSA, but in any agreement for a Task Order, shall require terms that any vendor, contractor or subcontractor indemnify the LOCAL

GOVERNMENT, AACOG and JBSA for any negligent acts or failure to adhere to the contract terms arising from its conduct while completing the requirements of the Task Order. Unless otherwise noted in this Agreement, and to the extent that LOCAL GOVERNMENT does not have or maintain insurance or does not have or maintain sufficient insurance, LOCAL GOVERNMENT acknowledges and agrees that LOCAL GOVERNMENT will be solely responsible for any losses or damages related to or caused by the LOCAL GOVERNMENT's performing its duties and obligations under this Agreement. AACOG will have no obligation to reimburse or otherwise pay LOCAL GOVERNMENT for any costs incurred related to any such losses or damages.

- 2.02.5 The LOCAL GOVERNMENT Scope of Work or invoices shall be detailed and described in such a manner that the payment items for LOCAL GOVERNMENT's work or goods can be distinguished. Each invoice provided to AACOG by LOCAL GOVERNMENT shall include any copies of contractor's supporting documentation as required by AACOG or under the Task Order and evidence of LOCAL GOVERNMENT prior payment for LOCAL GOVERNMENT goods or services provided by a vendor or contractor.
- 2.02.6 LOCAL GOVERNMENT shall ensure compliance with any and all applicable procurement statutes and LOCAL GOVERNMENT rules, regulations, and specifications.
- 2.02.7 LOCAL GOVERNMENT agrees to allow AACOG and its designees access to any project site to (i) inspect and witness any testing and to determine if the services performed or goods supplied are in conformity with the plans, specifications and special provisions applicable thereto and in good working order, and (ii) verify all quantities used in connection with the subject Task Order. LOCAL GOVERNMENT shall be responsible for quality control and assurance to ensure that any services performed or good provided meet JBSA's specifications and requirements such that JBSA approves the services or goods and payment therefor.
- 2.02.8 LOCAL GOVERNMENT shall cooperate with AACOG to the extent reasonably necessary for AACOG to meet its obligations to JBSA. This cooperation includes any post Task Order completion review, audits, and inspections.
- 2.02.9 In the event AACOG has paid LOCAL GOVERNMENT for goods and services and such payment is subsequently disallowed or for any other reason AACOG is required to refund funds to JBSA that have been paid to LOCAL GOVERNMENT, then LOCAL GOVERNMENT shall promptly refund to AACOG the same amount of money that AACOG was required to refund, subject to any adjustments or other discounts as agreed to by the Parties based on the work performed and/or completed subject to the terms of the adjustments, bonding payments made to cover such refunds, funds not associated with a Task Order, and subject to the terms for dispute resolution in Section IX of this Agreement. To the extent permitted by federal law, AACOG shall give LOCAL GOVERNMENT the opportunity to meaningfully and timely respond to any administrative findings or disallowances issued by JBSA or related federal authority. AACOG shall promptly notify LOCAL GOVERNMENT of any administrative findings or disallowance requiring a disallowance, refund, or denial of payment of funds. The parties agree they shall fully cooperate with each other to respond to or appeal any disallowance, denial of payment, or finding requiring a refund of funds in an effort to preserve AACOG's contractual right to the funds. AACOG shall accept, adhere to and honor all bonding documents and/or terms for projects requiring or subject to payment and performance bonding under the Task Order as required by LOCAL

GOVERNMENT. This provision does not require LOCAL GOVERNMENT to expend any of its own funds not associated with a Task Order.

Nothing herein prohibits the LOCAL GOVERNMENT from enforcing the Texas Prompt Payment Act (Tex. Gov't Code Chapter 2251) with its contractors. In the event of an issue of payment with a contractor and LOCAL GOVERNMENT for a Task Order, and AACOG it agrees it will also work with LOCAL GOVERNMENT prior to requesting disallowance, denial of payment, or refund based on such issues with contractors.

2.02.10 Nothing herein prohibits the LOCAL GOVERNMENT from proceeding with terminating a contractor and engaging a new one to ensure the Task Order is completed.

III. GOVERNMENTAL FUNCTIONS: LIABILITY; NO WAIVER OF IMMUNITY OR DEFENSES

3.01 Notwithstanding any provision to the contrary herein, this Agreement is a contract for and with respect to the performance of governmental functions by governmental entities.

3.01.1 The services provided for herein are governmental functions, and the LOCAL GOVERNMENT and AACOG shall be engaged in the conduct of a governmental function while providing and/or performing any service pursuant to this Agreement.

3.01.2 The relationship of AACOG and the LOCAL GOVERNMENT shall, with respect to that part of any service or function undertaken as a result of or pursuant to this Agreement, be that of independent contractors as noted in Section VII below.

3.02 The LOCAL GOVERNMENT shall have no liability whatsoever for the actions of, or failure to act by, any employees, agents, representatives, or assigns of AACOG in connection with the Agreement, and AACOG covenants and agrees, to the extent permitted by law, that AACOG shall be solely responsible, as between AACOG and the LOCAL GOVERNMENT, for and with respect to any claim or cause of action arising out of or with respect to any act, omission, or failure to act by AACOG or its respective employees, agents, representatives, or assigns, in connection therewith.

3.03 Each Party reserves and does not waive any defense available to it at law or in equity as to any claim or cause of action whatsoever that may arise or result from or in connection with this Agreement. This Agreement shall not be interpreted nor construed to give to any third party the right to any claim or cause of action, and neither the LOCAL GOVERNMENT nor AACOG shall be held legally liable for any claim or cause of action arising pursuant to or in connection with this Agreement except as specifically provided herein or by law.

3.04 Neither Party waives or relinquishes any immunity or defense on behalf of itself, its board members, trustees, councilmembers, officers, employees, and agents as a result of the execution of this Agreement and the performance of the covenants and agreements contained herein.

IV. COSTS AND FEES

3.01 As profit is not the goal of supplying goods and services to JB SA, AACOG and LOCAL GOVERNMENT agree that they will recover their expenses and contingencies by adding an administrative fee based on a percentage of the quote for the particular Task Order. The parties envision that the administrative fee will be ten percent (10%) which will be added to any quote for a Task Order. The administrative fee may be more or less depending on the requirements of the Task Order. AACOG and LOCAL GOVERNMENT will divide the administrative fee between them in amounts to be determined for each Task Order.

V. FORCE MAJEURE

5.01 Neither party shall be required to perform any obligation under this Agreement or be liable or responsible for any loss or damage resulting from its failure to perform so long as performance is delayed by force majeure or acts of God, including but not limited to strikes, lockouts or labor shortages, embargo, riot, war, revolution, terrorism, rebellion, insurrection, flood, natural disaster, unforeseen environmental conditions, or interruption of utilities from external causes.

VI. INSURANCE

6.01 LOCAL GOVERNMENT shall ensure that it and/or all subcontractors to a Task Order have the appropriate insurance for worker's compensation, general liability, automobile liability, subcontractor and qualifying insurance as attached in Exhibit B.

VII. INDEPENDENT CONTRACTOR

7.01 LOCAL GOVERNMENT or LOCAL GOVERNMENT's employees, representatives, agents and any subcontractors shall serve as an independent contractor in performing the services under this Agreement and shall not be employees of AACOG.

VIII. TERM, TERMINATION & NOTICES

8.01 This Agreement shall be for an initial term of one (1) year, with automatic renewals annually thereafter. Either Party to this Agreement shall have the right to terminate this Agreement for convenience or for any reason, with or without cause, upon thirty (30) days' notice to the other party, provided that any Task Orders in process shall be completed according to their terms or otherwise terminated according to the terms of the particular Task Order.

All correspondence and communications concerning this Agreement shall be directed to:

SCHERTZ: City of SCHERTZ
 1400 Schertz Parkway, Bldg 2
 Schertz, Texas 78154
 Attention: City Secretary

With a copy to: Denton, Navarro, Rocha, Bernal & Zech, P.C.
 2517 N. Main Avenue
 San Antonio, Texas 78212
 Attention: Clarissa M. Rodriguez

AACOG: Alamo Area Council of Governments
8700 Tesoro Dr., #160
San Antonio, Texas 78212
Attn: Diane Rath, Executive Director

Notices required hereunder shall be hand-delivered or sent by prepaid certified mail, return receipt requested.

IX. DISPUTE RESOLUTION

9.01 The parties agree to follow the applicable dispute resolution procedures established in the Federal Acquisition Regulation as per Paragraph 6 of the IGSA. See Exhibit A, IGSA at number 6.

X. ENTIRE AGREEMENT

10.01 This Agreement supersedes any and all other agreements, either oral or in writing.

XI. TEXAS LAW TO APPLY

11.01 This Agreement is performable in Bexar County, Texas and the validity of any of its terms or provisions, as well as the rights and duties of the parties, will be governed by the laws of the State of Texas and venue shall be in Bexar County, Texas.

XII. SEVERABILITY

12.01 If any provision contained in this Agreement is held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability will not affect any other provision and this Agreement will be construed as if the invalid, illegal, or unenforceable provision had never been contained the Agreement.

XIII. AMENDMENT

13.01 In order to be binding, any amendment to this Agreement must be in writing, dated subsequent to the date of this Agreement and duly executed by both parties.

EXECUTED IN DUPLICATE ORIGINALS, this _____ day of _____, 2020.

SCHERTZ, TEXAS

BY: _____
MARK BROWNE,
CITY MANAGER
CITY OF SCHERTZ

BY: _____
DIANE RATH,
EXECUTIVE DIRECTOR
ALAMO AREA COUNCIL OF GOVERNMENTS

EXHIBIT B
Insurance for Each Task Order

Before commencing work under this Agreement, Contractor or Subcontractor shall obtain and furnish to the Local Government evidence of the following insurance during the term of the Agreement for each Task Order and thereafter as required herein:

Professional Liability Insurance: professional errors and omissions liability insurance with limits of liability not less than \$1,000,000 per occurrence covering all work performed by the Professional, its employees, sub-contractors, or independent contractors. If this coverage can only be obtained on a "claims made" basis, the certificate of insurance must clearly state coverage is on a "claims made" basis and coverage must remain in effect for at least two years after final payment with the Professional continuing to furnish the Local Government certificates of insurance.

Workers Compensation Insurance: The Professional shall carry and maintain during the term of this Agreement, workers compensation and employers liability insurance meeting the requirements of the State of Texas on all the Professional's employees carrying out the work involved in this contract.

General Liability Insurance: The Professional shall carry and maintain during the term of this Agreement, general liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 for each occurrence and for fire damage. For Bodily Injury and Property Damage no less than \$1,000,000. As a minimum, coverage for Premises, Operations, Products and Completed Operations shall be \$2,000,000. This coverage shall protect the public or any person from injury or property damages sustained by reason of the Professional or its employees carrying out the work involved in this Agreement. The general aggregate shall be no less than \$2,000,000.

Automobile Liability Insurance: Professional shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage or split limits of at least \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this contract by the Professional or its employees.

Subcontractor: In the case of any work sublet, the Professional shall require subcontractor and independent contractors working under the direction of either the Professional or a subcontractor to carry and maintain the same workers compensation and liability insurance required of the Professional.

Qualifying Insurance: The insurance required by this Agreement shall be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B" or better by the A.M. Best Companies. All policies shall be written on a "per occurrence basis" and not a "claims made" form.