

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
BROOKS CITY-BASE DEPARTMENT**

AGENDA ITEM NO.

23

TO: Mayor and City Council

FROM: Thomas Rumora, Director

THROUGH: Terry M. Brechtel, City Manager

COPIES: Christopher J. Brady, Assistant City Manager; Ramiro Cavazos, Director;
Economic Development; Virginia Cobarrubias, Finance & Operations Manager,
Brooks City-Base Office

SUBJECT: Brooks Development Authority Operating Agency Contract FY03

DATE: February 7, 2003

SUMMARY AND RECOMMENDATIONS

This Ordinance authorizes the execution of a General Operating Agency Contract between the City of San Antonio and the Brooks Development Authority ("BDA"), pertaining to the distribution of \$2,688,715.22 for 14 projects at Brooks City-Base. The funding for this contract was appropriated in the Adopted FY 2002-2003 Budget.

Staff recommends approval of this Ordinance.

BACKGROUND INFORMATION

The FY 2003 Annual Adopted Budget included \$2,688,715.22 in funding for 14 projects, as indicated below. The projects shall be completed by September 30, 2003.

CITY OF SAN ANTONIO OPERATING AGENCY CONTRACT FY03

Budget Item	Purpose	Budget
1	Architectural and Engineering services in preparing a building site for a new office building development	\$35,000
2	Engineering services to prepare two sites for sale or for building development	\$35,000
3	Phase I of a communications infrastructure project which includes project planning and consulting for creating a communications infrastructure at Brooks City-Base	\$100,000
4	Architectural and Engineering services, renovation and transaction costs to facilitate the occupancy of vacant office buildings at Brooks City-Base	\$975,000
5	Space planning, master planning, and creation of a Marketing Center for Brooks City-Base	\$455,000
6	Marketing & Promotions materials and services	\$361,752.60

7	Outside Legal Counsel for Brooks Development Authority Board of Directors	\$100,000
8	Creation and completion of a business plan for Brooks City-Base	\$60,000
9	Security services for Brooks City-Base	\$335,000
10	Insurance policies for Brooks Development Authority	\$60,000
11	Brooks City-Base Office Contractual Services	\$154,635.29
12	Brooks City-Base Office Commodities	\$14,871
13	Brooks City-Base Office Liability, Hazard, & Fidelity Insurance	\$1,457
14	Brooks City-Base Office Capital Outlay	\$999.33
Total		\$2,688,715.22

POLICY ANALYSIS

The City has provided financial assistance to BDA staff operations and capital improvements since FY 2001-2002. This assistance supports implementation of "Objective 3.2: Promote Revitalization in Targeted Areas," as stated in the City's Strategic Plan for enhanced economic development.

FISCAL IMPACT

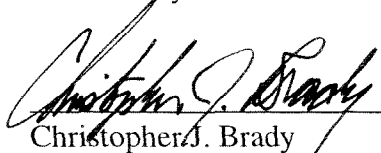
These funds were appropriated in the FY 2003 Adopted Budget. This agreement will be based on a reimbursement basis. The salaries and benefits of the Brooks City-Base Office personnel will reside in the City office. In addition, the project funds include carry forwards from FY 02.

COORDINATION

This action was coordinated with the City Attorney's Office, Office of Management and Budget, and the Finance Department.

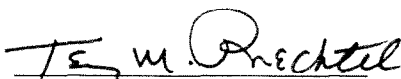


Thomas Rumora, Director
Brooks City-Base



Christopher J. Brady
Assistant City Manager

Approved:



Terry M. Brechtel
City Manager

STATE OF TEXAS

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**OPERATING AGENCY CONTRACT
GENERAL OPERATING BUDGET**

COUNTY OF BEXAR

This Agreement is hereby made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "CITY"), a Texas municipal corporation acting by and through its City Manager pursuant to Ordinance No. _____, dated _____, 2003 and the **BROOKS DEVELOPMENT AUTHORITY** (hereinafter referred to as "CONTRACTOR"), a defense base development authority and political subdivision of the State of Texas, established by the City of San Antonio pursuant to Chapter 378 of the Texas Local Government Code acting by and through its Board of Directors, and duly authorized Executive Director.

WHEREAS, CITY has provided certain funds from its General Operating Fund Budget; and

WHEREAS, CITY has adopted a budget for expenditure of such funds, and included therein is an allocation of funds for use by CONTRACTOR as a one-time allocation from the CITY's adopted budget; and

WHEREAS, CITY designates its Brooks City-Base Office as the CITY Department, acting for its City Manager, responsible for the evaluation and monitoring of the PROGRAM (hereinafter referred to as "RESPONSIBLE DEPARTMENT"). The Department of Finance will function in a supporting role; and

WHEREAS, CITY wishes to engage CONTRACTOR to carry out such PROGRAM;
NOW THEREFORE:

The parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

I. GENERAL PROVISIONS

1. CONTRACTOR is a defense base development authority and political subdivision of the State of Texas, established by the City of San Antonio pursuant to Chapter 378 of the Texas Local Government Code, governed by an autonomous governing body acting in accordance with the governing instruments submitted in the application for funding and meeting officially at least four times per year.
2. CONTRACTOR represents, warrants, assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required.
3. The signer of this Agreement for CONTRACTOR represents, warrants, assures and guarantees that he or she has full legal authority to execute this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to all terms, performances and provisions herein contained.
4. In the event that a dispute arises as to the legal authority of either the CONTRACTOR, or the person signing on behalf of CONTRACTOR, to enter into this Agreement, CITY shall have the right, at its option, to either

temporarily suspend or permanently terminate this Agreement. Should CITY suspend or permanently terminate this Agreement pursuant to this paragraph, however, CONTRACTOR shall be liable to CITY for any money it has received from CITY for performance of any of the provisions hereof.

5. The CONTRACTOR understands that the funds provided it pursuant to this Agreement are funds which have been made available by CITY's General Fund Operating Budget and CONTRACTOR will, therefore, comply with all rules, regulations, policies and procedures applicable to these funds as directed by CITY, including those set forth in the Operational Guidelines for City of San Antonio Funded Projects Operational Guidelines as amended and contained as Exhibit "A" attached hereto and incorporated herein for all purposes. However, should a conflict arise between the provisions in the Operational Guidelines and the provisions hereof, the provisions of this Agreement shall prevail. This section shall also incorporate and CONTRACTOR agrees to abide by any and all future revisions, amendments and additions to such rules and regulations as may be promulgated in the Operational Guidelines as amended. CONTRACTOR further understands that said Operational Guidelines are in no way meant to constitute a complete compilation of all duties imposed upon CONTRACTOR by law, or administrative ruling, or to narrow the standards CONTRACTOR must follow.
6. CONTRACTOR and CITY agree that CONTRACTOR is an independent contractor, that CONTRACTOR shall be responsible to all parties for its respective acts and omissions, and that CITY shall in no way be responsible therefor, and that neither has authority to bind the other, or hold out to third parties that it has the authority to bind the other.
7. CONTRACTOR understands and agrees that this Standard Operating Agency - General Fund Operating Budget Contract is subject to mutual termination. Therefore, either party shall have the option of terminating this Agreement by giving the second party no less than thirty- (30) days written notice. Such notice shall specify the effective date of termination, which date shall not be sooner than the end of thirty (30) days following the day on which such notice is sent.
8. CONTRACTOR understands and agrees that this Operating Agency - General Fund Operating Budget Contract may be revised and updated by and at the discretion of the City Council of the City of San Antonio. Therefore, CONTRACTOR agrees that, at such time as any revisions are so made during the term hereof, this Agreement will be amended to include such revisions. In the event CONTRACTOR does not agree to any changes, CONTRACTOR shall have the option of terminating this Agreement by giving thirty (30) days written notice to CITY. CONTRACTOR shall have the right to exercise such option within thirty (30) days of receipt of notice of any such revisions.
9. CONTRACTOR understands and agrees that this Agreement is subject to a general reduction in funding. If and when CITY implements a reduction in General Fund Operating Budget expenditures, agency contracts funded by CITY's General Fund Operating Budget, including this Agreement, may, at CITY's option, be reduced in a like manner. However, for the purposes of this Contract funding will not be reduced to exclude the payment of projects that have already been contractually committed to by Contractor. CITY will attempt to provide CONTRACTOR with as much advance notice of a potential funding reduction as is possible to allow CONTRACTOR to make budget adjustments.

10. CONTRACTOR expressly agrees and understands that this is a cost reimbursement contract and that CITY's liability hereunder is limited to making reimbursements for allowable services provided by CONTRACTOR.
11. In no event shall CITY be liable for any expense of CONTRACTOR not eligible or allowable for reimbursement hereunder, and in no event shall employees of CONTRACTOR be deemed to be employees of CITY.
12. Should CONTRACTOR fail to fulfill in timely and proper manner obligations under this Agreement, or if CONTRACTOR should violate any of the covenants, conditions, or stipulations of this Agreement, CITY shall have the right to terminate this Agreement by sending written notice to CONTRACTOR of such termination and specifying the effective date thereof, which date shall not be sooner than the end of thirty (30) days following the day on which such notice is sent.
 - a. Previous breach of any of the terms or conditions herein shall not be construed as a waiver of same nor preclude CITY's termination right for successive breach of the same condition.
 - b. Notwithstanding the above, CONTRACTOR shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this Agreement and CITY may withhold funds otherwise due as damages.
 - c. In addition to the above provisions, the City Council shall have the right to terminate this Agreement at any time upon a finding by ordinance that CONTRACTOR's activities, programs or operations no longer are in the best interest of the City of San Antonio or its citizens. Adequate provisions shall be made for CONTRACTOR to be heard by the City Council prior to voting on such an ordinance. The effective date of the termination shall be set in the ordinance.
13. Should this Agreement be terminated by either party for any reason and the PROGRAM IS not fully completed as solely determined by CITY after consultation with CONTRACTOR, CONTRACTOR shall refund any and all sums of money paid by CITY to CONTRACTOR that is not contractually obligated by CONTRACTOR, in accordance with the terms of this Agreement, within ten (10) working days of CITY's written request thereof.
14. Except as otherwise provided for pursuant to the provisions hereof, this Agreement shall begin on October 1, 2002 and shall terminate on September 30, 2003.
15. CONTRACTOR shall establish and use internal accounting and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action and to prevent frauds and program abuse. The City's Office of Internal Review shall review Contractor's system of internal administrative and accounting controls prior to the release of funds and periodically thereafter.
16. CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and further that no such understanding or agreement exists or has existed, with any employee of CONTRACTOR or CITY.

17. CONTRACTOR may use funds provided hereunder either directly or indirectly as a contribution in order to obtain any federal funds under any federal program that is consistent with the program objectives herein, upon prior written approval by CITY's RESPONSIBLE DEPARTMENT.
18. CONTRACTOR is required to publicly acknowledge that the City of San Antonio as directed by City's RESPONSIBLE DEPARTMENT supports this program.
19. CONTRACTOR acknowledges that this contract cannot be assigned without the express written consent of CITY.
20. CONTRACTOR shall not use funds from this contract for purposes other than those listed in Section II. Specifically, funds from this contract shall not be used for costs associated with environmental clean up, disposing of environmentally hazardous material or soil, or litigation costs from such causes of action.

II. SCOPE OF SERVICES

1. CONTRACTOR shall utilize thirty-five thousand dollars (\$35,000.00) for architectural and engineering services in preparing a building site for a new office building development. The building site is near the main entrance to Brooks City-Base, just south of the existing Air Force Center for Environmental Excellence (AFCEE) Headquarters Building. Services planned include a site plan and survey including location of adjacent utility and road infrastructure and topography and hydrology studies. Other services planned include preliminary building design, concept sketches and cost analyses.
2. CONTRACTOR shall utilize thirty-five thousand dollars (\$35,000.00) for engineering services to prepare two sites for sale or for building development. The sites are at southeast and southwest corners of SE Military and Sidney Brooks (the main entrance to Brooks City-Base). Engineering Services planned include a site perimeter survey, location of adjacent utility and road infrastructure and topography and hydrology studies.
3. CONTRACTOR shall utilize one-hundred thousand dollars (\$100,000.00) for Phase I of a communications infrastructure project which includes project planning and advice for creating a communications infrastructure at Brooks City-Base. The existing fiber-optic communications infrastructure is owned by the U.S. Air Force and cannot be shared with non-military tenants for security reasons. Phase. Phase I will also produce a plan and alternatives for funding the infrastructure project.
4. CONTRACTOR shall utilize nine hundred and seventy-five thousand dollars (\$975,000.00) for the architectural and engineering services, renovation and transaction costs to facilitate the occupancy of vacant office buildings at Brooks City-Base. These buildings include a former retail building (Bldg. 704) to be converted for office use, five former Air Force occupied office buildings (Bldgs. 531, 624, 625, 626 & 642) and an office/warehouse building (Bldg. 640). The specified funding is insufficient to cover all of the above mention services for all the listed buildings, however contractor does not anticipate all services will be needed for each of the buildings, depending on the terms negotiated with each prospective tenant.
5. CONTRACTOR shall utilize four hundred and fifty-five thousand dollars (\$455,000.00) for space planning, master planning and creation of a marketing center for Brooks City-Base. The master planning portion is expected to be \$100,000 and will assist in determination of the location of the marketing center as well as confirm and update past master planning studies for Brooks City-Base.

The remaining effort will be towards architectural and engineering services and renovation of a building for a marketing center for Brooks City-Base.

6. CONTRACTOR shall utilize two hundred thousand dollars (\$380,000.00) for the marketing and promotion of Brooks City-Base.
7. CONTRACTOR shall utilize one hundred thousand dollars (\$100,000.00) for outside legal counsel to be utilized by the BDA Board of Directors.
8. CONTRACTOR shall utilize sixty thousand dollars (\$60,000.00) for the creation and completion of a business plan provided that CONTRACTOR obtains matching funds in the amount of sixty thousand dollars to be used in conjunction with the business plan.
9. CONTRACTOR shall utilize three hundred and thirty-five thousand dollars (\$335,000.00) to acquire adequate security for Brooks City-Base.
10. CONTRACTOR shall utilize sixty thousand dollars (\$60,000.00) to provide necessary insurance policies at Brooks City-Base.
11. CONTRACTOR shall utilize two hundred and seventy-one thousand three hundred and eighty-seven dollars and eighty-nine cents (\$271,387.89) to provide necessary contractual services.
12. CONTRACTOR shall utilize fourteen thousand eight hundred and seventy-one dollars (\$14,871.00) for necessary office commodities.
13. CONTRACTOR shall utilize one thousand four hundred and fifty-seven dollars (\$1,457.00) for Liability, Hazard, & Fidelity Insurance.
14. CONTRACTOR shall utilize nine hundred and ninety-nine dollars and thirty-three cents (\$999.33) for capital outlay.
15. The City's Brooks City-Base Office is assigned monitoring responsibility to evaluate the accountability of all projects, including the PROGRAM referred to herein, and to insure program objectives are met. CONTRACTOR will provide CITY's staff, including internal auditors, EEO officers and other persons as designated by CITY, such as independent public accountants and representatives of the federal government, access during regular business hours, as deemed necessary by CITY for the purposes of auditing, monitoring, evaluating, coordinating, investigating and making excerpts and/or copies of any and all of CONTRACTOR's books, records and files on the PROGRAM covered by this Agreement and such other programs administered by CONTRACTOR with funds from any other sources, and to any and all books, records and files pertaining to CONTRACTOR's proprietary, agency and/or trust funds as CITY may need and request.
 - a. All such records shall continue to be available for inspection and audit for a period of three (3) years after the termination date hereof. However, if during the course of this three-year period, an audit or investigation of the CONTRACTOR begins, then CONTRACTOR is required to maintain said records until such time as the audit or investigation is completely finished.
 - b. CONTRACTOR agrees that during the term of this Agreement, any duly authorized representative of CITY's RESPONSIBLE DEPARTMENT shall have the right to conduct on-site inspections at reasonable times and to interview personnel and clients for the purposes of evaluating and monitoring the PROGRAM for compliance with this Agreement.

- c. The submission of falsified information or the failure to timely submit all information by CONTRACTOR as requested by CITY is grounds for termination of this Agreement.
 - d. CONTRACTOR agrees to provide CITY with the names and license registration of any and all contracting agency employees regulated by State law whose activities contribute towards, facilitate or coordinate the performance of this Agreement.
- 16. No program or activity receiving funds from or through CITY, nor the personnel involved in the administration of such PROGRAM or activity, nor any of the funds received hereunder shall be involved, directly or indirectly, in the construction, operation or maintenance of such part of any facility as is used or will be used for sectarian instruction or activity or as a place of religious worship.
 - 17. CONTRACTOR agrees to abide by the CITY's current Ethics Code or any amendment or revisions thereto. CONTRACTOR will establish safeguards to prohibit its officers or employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or those with whom they have family, business or other ties. CITY may, at its option, cancel this Agreement for any violation of this section by CONTRACTOR, or its officers, directors or employees.
 - 18. Members of the Board of Directors or governing body of CONTRACTOR may not be employees of CONTRACTOR or paid in any way for services with CITY contract funds.
 - 19. CONTRACTOR agrees to establish internal procedures that assure employees of an established complaint and grievance policy.
 - a. Such grievance policy will include procedures to receive, investigate and resolve complaints and grievances in an expeditious manner.
 - b. In the event no complaint and grievance policy has been established, CONTRACTOR will follow the procedures outlined in the San Antonio Municipal Civil Service rules.

III. FISCAL MANAGEMENT

- 1. In consideration of services provided, CITY will reimburse CONTRACTOR for expenses incurred pursuant hereto. It is specifically agreed that the reimbursement hereunder shall not exceed the amount of two million eight hundred twenty three thousand seven hundred and fifteen dollars and 22 cents (2,823,715.22).
- 2. This Agreement is not considered complete or in compliance until such time as the approved, signed and dated Budget Package is attached.
- 3. An accounting system using generally accepted accounting principles for governmental entities which accurately reflects all costs chargeable (paid and unpaid) to the PROGRAM should the PROGRAM terminate the next day, is mandatory. Details of the required accounting system are contained in the Operational Guidelines for City of San Antonio Funded Projects, as amended, (Exhibit "A") which are an integral part of this Agreement.

4. CONTRACTOR will establish an account in a commercial bank as a depository for receipt and expenditure of all funds provided hereunder. A separate account shall be maintained for the combined projects to assure separation of funds, unless otherwise approved by the CITY's RESPONSIBLE DEPARTMENT.
5. No fees may be charged to or donations requested from participants in any CITY-funded project, including this PROGRAM without the prior written approval of the CITY's RESPONSIBLE DEPARTMENT. This paragraph does not preclude CONTRACTOR from charging rental and leasing related fees to its commercial tenants in connection with the PROGRAM.
6. Income generated by CITY funds through the use of salaried personnel paid wholly or in part through CITY funds, or through the use of equipment or supplies purchased wholly or in part through CITY funds is considered program income and at the option of the CITY's RESPONSIBLE DEPARTMENT may be: (1) added to the PROGRAM and used to further eligible PROGRAM objectives, in which case proposed expenditures must first be approved by CITY; or (2) deducted from the total PROGRAM cost for the purpose of determining the net cost reimbursed by CITY.
 - a. CONTRACTOR must provide CITY with an advance written notice detailing the type, time and place of all activities that generate program income. Further, CONTRACTOR is responsible for full disclosure and accountability of program income generated through the labor or efforts of persons whose salaries or wages are paid wholly or in part through CITY funds, or through the use of equipment or supplies purchased wholly or in part through CITY funds.
 - b. A statement of expenditures and revenues must be submitted by CONTRACTOR within thirty (30) days of said activity; such statement is subject to audit verification. Failure of CONTRACTOR to report program income as required is grounds for suspension, cancellation or termination of this Agreement.
7. CONTRACTOR shall indemnify CITY, its members, agents, representatives, officers and employees against any and all suits, actions, legal proceedings, claims, demands, damages, penalties, costs, expenses, fees, fines, liability and attorney's fees arising out of infringement of copyright on any work used in any way in connection with this Agreement or PROGRAM.
8. **TO THE EXTENT PERMITTED BY LAW, CONTRACTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, 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 injury or death and property damage, made upon the CITY, directly or indirectly arising out of, resulting from or related to CONTRACTOR's activities under this AGREEMENT, including any negligent acts or omissions of CONTRACTOR, any agent, officer, director, representative or employee of CONTRACTOR while in the exercise or performance of the rights or duties under this AGREEMENT, 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. CONTRACTOR shall promptly advise the CITY in writing of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at CONTRACTOR's expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph 8. Furthermore, CONTRACTOR will, by separate contract or lease restrictions, require any of its subcontractors, consultants and/or future commercial tenants to indemnify the CITY against the consequences of any of said subcontractor's, consultant's and/or future commercial tenant's negligent actions or omissions.

9. Upon completion or termination of this PROGRAM any unused funds, rebates or credits must immediately be returned by CONTRACTOR to CITY as specified in its Operational Guidelines, as amended.
10. CONTRACTOR shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this Agreement and CITY may withhold funds otherwise due as damages.
11. Reimbursement of eligible expenses, as determined by CITY's RESPONSIBLE DEPARTMENT, shall be made monthly or bi-weekly, as determined by CITY's Department of Finance and the CITY's RESPONSIBLE DEPARTMENT according to standard procedures followed by said Finance Department, as requested upon receipt of billing from CONTRACTOR.
12. Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, CONTRACTOR will immediately refund such amount to CITY. CONTRACTOR further authorizes CITY, if CITY so elects, to deduct such amount or charge as a claim against future payments. The CITY's RESPONSIBLE DEPARTMENT has the express authority to deduct such claims from subsequent reimbursements.
13. Audit Conditions and Requirements:
 - a. CITY, a political entity, unlike a business for profit, is more interested in knowing if agencies have accomplished or achieved the objectives as stipulated in their contracts, as opposed to certifications that the Balance Sheet fairly represents the financial position at a given date. Therefore, it is essential that City is made aware of progress made upon this contract. Following 30 days after a written request by City, Contractor shall submit a written report stating what has been accomplished to date and the most current percentage of completion of the total contract that has been performed.
 - b. It is imperative the auditor read the entire contract, including all attachments, between the CITY and CONTRACTOR, since the budget and financial compliance of the contract is only a portion of the total contractual obligation.
 - c. All CITY-funded projects and programs, including this PROGRAM, are subject to periodic audits at any reasonable hour of the day by CITY Internal Auditors. This includes the auditing of both the Contractor and subcontractors related to this project.

d. If CONTRACTOR expends \$50,000.00 or more in general fund dollars during the term of this contract, the CONTRACTOR shall furnish the CITY'S RESPONSIBLE DEPARTMENT and the Office of Internal Review with audited financial statements, as described in the CITY'S Operational Guidelines and General Provisions, prepared by an independent auditor (CPA), within one hundred and twenty (120) days of the close of the Contractor's fiscal year or termination of this contract. In addition to the audited financial statements, a copy of the management letter should be submitted. The audited financial statements must include a schedule of receipts and disbursements by budgeting cost category and a certification from the Contractor stating whether or not the terms and conditions of the contract were met. If the CITY determines, in its sole discretion, that CONTRACTOR is in violation of the above requirements, the CITY shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the CONTRACTOR pay for such audit. In addition, when the CONTRACTOR has expended federal or state funds that exceed the single audit threshold amount in effect during the period of this contract, the audit shall be conducted in accordance with the Single Audit Act Amendments of 1996 and the U.S. Office of Management and Budget Circular A-133 (June 1997 revision), and/or the State of Texas Single Audit Circular.

14. CONTRACTOR understands and agrees to abide by and adhere to applicable federal, state and CITY provisions, more specifically described in the Operational Guidelines for City of San Antonio Funded Projects, as amended; provided, however, that said Operational Guidelines in no way are meant to constitute a complete compilation of all duties imposed upon CONTRACTOR by law, administrative ruling or this Agreement, or to narrow the standards which CONTRACTOR must follow.

IV. INSURANCE REQUIREMENTS

1. CONTRACTOR shall furnish a completed Certificate of Insurance to CITY's RESPONSIBLE DEPARTMENT, with a copy sent to Risk Management and the City Clerk's Office, 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, and which shall furnish and contain all required information referenced or indicated thereon. The CITY shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to CITY's RESPONSIBLE DEPARTMENT, Risk Management, and the City Clerk's Office. No CITY officer or employee shall have authority to waive this requirement.
2. The CITY reserves the right to review the insurance requirements of this section during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by the CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance will the CITY allow modification whereupon the CITY may incur increased risk.
3. A CONTRACTOR's financial integrity is of interest to the CITY, therefore, subject to CONTRACTOR's right to maintain reasonable deductibles in such amounts as are approved by the CITY, CONTRACTOR shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at CONTRACTOR's sole expense, insurance coverage written

on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the CITY, in the following types and minimum amounts:

<u>TYPE</u>	<u>AMOUNT</u>
a. Workers' Compensation	Statutory
b. Employers' Liability	\$500,000.00/\$500,000.00/\$500,000.00
c. Commercial General (public) Liability Insurance to include coverage for the following:	
(1) Premises/Operations	
(2) Independent contractors	<u>Bodily Injury and</u>
(3) Products/completed operations	<u>Property Damage of</u>
(4) Contractual liability	\$1,000,000.00 per occurrence
(5) Broad form property damage, to include fire legal liability	
(6) Personal Injury	
d. Excess Liability (umbrella form) (Excess liability insurance shall follow the form of the Primary insurance).	\$5,000,000.00 each occurrence and \$5,000,000.00 aggregate
e. Business Automobile Liability	
(1) Owned/leased vehicles	<u>Combined Single Limit for</u>
(2) Non-owned vehicles	<u>Bodily Injury and Property</u>
(3) Hired vehicles	<u>Damage of 1,000,000.00 per</u>
	occurrence or its equivalent.
f. Errors and Omissions Policy	\$1,000,000.00
4. At least annually on the anniversary date of this Agreement, CONTRACTOR and the CITY's Risk Manager will meet to mutually determine the appropriate CONTRACTOR insurance coverage limits based upon actual and anticipated redevelopment implementation activities for the upcoming year. Any unresolved disputes will be referred to the CITY Council for final determination. The CITY and its officers, employees and elected representatives individually or collectively will be named as "Additional Insureds" on the CONTRACTOR's commercial general liability policy.	
5. The CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the CITY, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by the CITY, the CONTRACTOR shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.	

6. CONTRACTOR agrees that with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.
- a. Name the CITY and its officers, employees, and elected representatives as "Additional Insureds" as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the errors and omissions, workers' compensation, commercial crime policies, and E & L policies;
 - b. 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;
 - c. Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the CITY.
7. CONTRACTOR shall notify the CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the CITY at the two (2) following address:

City of San Antonio
Risk Management Division
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

8. If CONTRACTOR 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 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 CONTRACTOR to maintain said insurance or secure such endorsement. In addition to any other remedies the CITY may have upon CONTRACTOR's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order CONTRACTOR to stop work hereunder, and/or withhold any payment(s) which become due, to CONTRACTOR hereunder until CONTRACTOR demonstrates compliance with the requirements hereof.
9. CONTRACTOR's major industrial tenants will be required, by standard lease restrictions, to obtain and maintain commercial general liability coverage of not less than ten million dollars (\$10,000,000.00), and all other commercial tenants will maintain commercial general liability coverage of not less than the one million (\$1,000,000.00) to two million dollar (\$2,000,000.00) limits as set out in paragraph 3c., also naming the CITY and its officers, employees and elected representatives individually or collectively as "Additional Insureds." Major industrial or commercial tenants with substantial corporate assets may be allowed to self-insure a portion of the identified risks, if agreed to by the CITY's Risk Manager. All such determinations will be reduced to writing for the record and any unresolved disputes will be referred to CITY Council for final determination.

10. CONTRACTOR assures CITY that all primary insurance coverages referenced hereunder to be obtained by tenants shall be written by companies authorized and admitted to do business within the State of Texas and rated A- or better by A. M. Best Company and/or otherwise acceptable to the CITY. Surplus line carriers offering coverages need not be "Admitted Carriers" in the State of Texas, but must otherwise demonstrate their financial strength and reputation to the CITY's Risk Manager. A waiver of subrogation clause in favor of the CITY will be mandated with appropriate coverages obtained by tenants.
11. Types of appropriate coverages to be provided, as applicable to the type of business engaged in by commercial tenants, may include: 1) Commercial General Liability: Premises Operations; Independent Contractual Liability; Explosion/Collapse/Underground; Broad Form Property Damage, to include fire legal liability; 2) Worker's Compensation/Employer's Liability; 3) Business Automobile Liability; 4) Professional Liability; 5) Builder's Risk; 6) Fuel
12. Storage Tank Liability; 7) Environmental Impairment; 8) Hangar Keeper's Legal Liability; 9) Excess Umbrella Liability; or others as deemed appropriate, based upon industrial standards and practices, and future CONTRACTOR consultations with and the concurrence of the CITY'S Risk Manager.

V. COMPLIANCE WITH SMALL, MINORITY AND WOMAN-OWNED BUSINESS ENTERPRISES POLICY, NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY

1. CITY's Affirmative Action Plan requires that all CITY contractors having contracts of ten thousand dollars (\$10,000.00) or more, excluding certain vendors, comply with the Nondiscrimination Clause below.
 - a. CONTRACTOR is hereby advised that it is the policy of the City of San Antonio that Small, Minority or Woman-owned Business Enterprises (SMWBE) shall have the maximum practical opportunity to participate in the performance of public contracts (per Ordinance #77758). In accordance with Ordinance # 69403, CONTRACTOR agrees that CONTRACTOR will not discriminate against any individual or group on the basis of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. CONTRACTOR further agrees that CONTRACTOR will abide by all applicable terms and provisions of CITY's Non-Discrimination Policy, CITY's Small, Minority or Woman-owned Business Advocacy (SBEDA) Policy and CITY's Equal Opportunity Affirmative Action policy, these policies being available in CITY's Department of Economic Development, Division of Internal Review, and the CITY Clerk's Office.
 - b. CONTRACTOR agrees to post in a conspicuous place available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this Nondiscrimination Clause.
 - c. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive fair consideration for employment without regard to race, color, national origin, religion, sex, age, disability, or political belief or affiliation. CONTRACTOR will notify each labor union or

representative of workers with which it may have a collective bargaining agreement or other contract understanding, that CONTRACTOR is bound by the terms of this Agreement and this Nondiscrimination Clause.

- d. CONTRACTOR agrees to affirmatively abide by and cooperate in the implementation of the policies and practices set forth in this Nondiscrimination Clause and any additional policies as may be required as a result of local, state or federal initiatives. CONTRACTOR will furnish all information and reports requested by CITY and will permit access to books, records and accounts for purpose of review and investigation to ascertain compliance with such rules and regulations.
 - e. In the event of CONTRACTOR's failure or refusal to comply with this Nondiscrimination Clause, this Agreement may be canceled, terminated or suspended in whole or in part, and CONTRACTOR may be debarred from further contracts with CITY.
2. The CONTRACTOR agrees that if material deficiencies in any aspect of its SMWBE utilization plan as set out in its proposal are found or if CONTRACTOR does not meet the SMWBE goals as specified by the CITY's Department of Economic Development, whichever is less, as a result of a review or investigation conducted by CITY's Department of Economic Development, CONTRACTOR will be required to submit a written report to CITY's Department of Economic Development. The CONTRACTOR will also be required to submit a supplemental Good Faith Effort Plan (GFEP) indicating efforts to resolve any deficiencies. If the CITY's Department of Economic Development and City Attorney's Office find that material deficiencies exist then the supplemental GFEP shall be denied and will constitute CONTRACTOR's failure to resolve any deficiencies. Failure to obtain an approved GFEP within ninety (90) days of initial denial shall constitute a default and result in payment by CONTRACTOR of one thousand dollars (\$1,000.00) per day as liquidated damages for the default until all deficiencies are resolved. Failure to cure all deficiencies within another ninety (90) days of the date of notice shall constitute a further (additional) condition of default by the CONTRACTOR and which can, at the option of the Director, result in forfeiture of the entirety of this Contract.

VI. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

1. CONTRACTOR further represents and warrants that:
- a. All information, data or reports heretofore or hereafter provided to CITY is, shall be and shall remain complete and accurate as of the date shown on the information, data or report, and that since said date shown, shall not have undergone any significant change without written notice to CITY;
 - b. Any supporting financial statements heretofore or hereafter provided to CITY are, shall be and shall remain complete, accurate and fairly reflective of the financial condition of CONTRACTOR on the date shown on said statements and during the period covered thereby, and that since said date shown, except as provided by written notice to CITY, there has been no material change, adverse or otherwise, in the financial condition of CONTRACTOR;

- c. No litigation or proceedings are presently pending or threatened against CONTRACTOR or if pending have been disclosed by CONTRACTOR in writing to CITY.
 - d. None of the provisions contained herein contravene or in any way conflict with the authority under which CONTRACTOR is doing business or with the provisions of any existing indenture or agreement of CONTRACTOR;
 - e. CONTRACTOR has the legal authority to enter into this Agreement and accept payments hereunder, and has taken all necessary measures to authorize such execution of contract and acceptance of payments pursuant to the terms and conditions hereof; and
 - f. None of the assets of CONTRACTOR are subject to any lien or encumbrance of any character, except as shown in the financial statements provided by CONTRACTOR to CITY.
2. During the period of time that payment may be made hereunder and so long as any payments remain unliquidated, CONTRACTOR covenants that it shall not, without the prior written consent of CITY's City Manager or his designate:
- a. Mortgage, pledge, or otherwise encumber or cause to be encumbered any of the assets of CONTRACTOR now owned or hereafter acquired by it, in whole or in part with funds provided by CITY pursuant to this Agreement, or permit any pre-existing mortgages, liens, or other encumbrances to remain on or attached to any of such assets of CONTRACTOR which are allocated to the performance of this Agreement and with respect to which CITY has an ownership interest hereunder;
 - b. Sell, assign, pledge, transfer or otherwise dispose of accounts receivable, notes or claims for money due or to become due; or
 - c. Make any advance or loan to, or incur any liability as guarantor, surety or accommodation endorser for any other firm, person, entity or corporation;
3. CONTRACTOR shall notify CITY any time it sells, conveys or leases all or any substantial part of CONTRACTOR's assets that are acquired in whole or in part with funds provided by CITY pursuant to this Agreement.
4. CONTRACTOR agrees to comply with the terms and provisions of all City, Federal and State Grant or Loan Agreements for Brooks Development Authority entered into by the CONTRACTOR and further agrees that if CONTRACTOR violates the provisions of such Grant or Loan Agreements, CITY shall have the right to terminate this Agreement and CONTRACTOR shall refund any and all sums of money paid by CITY to CONTRACTOR within ten (10) working days of CITY's written request therefore.

VII. LEGAL/LITIGATION EXPENSES

1. Under no circumstances will the funds received under this CONTRACT or any other funds received from CITY be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the CITY. CONTRACTOR must obtain the written approval of the City Attorney's Office before any funds received under this Agreement may be used in any adversarial proceeding against any other governmental entity or any other public entity.

2. During the term of this Contract, if CONTRACTOR files and/or pursues an adversarial proceeding against the CITY then, at the CITY's option, this Contract and all access to the funding provided for hereunder may terminate if it is found that CONTRACTOR has violated this Article.
3. CONTRACTOR, at the CITY's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the CITY remains unresolved.
4. For purposes of this Article, "adversarial proceedings" include any cause of action filed by the CONTRACTOR in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

VIII. CHANGES AND AMENDMENTS

1. Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and CONTRACTOR.
2. It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.
3. CONTRACTOR agrees to notify CITY in writing of any proposed change in physical location for work to be performed pursuant to the terms of Agreement. Such notice shall be provided by CONTRACTOR to CITY at least thirty (90) calendar days in advance of the proposed change.
4. CONTRACTOR further agrees to notify CITY of any changes in personnel or governing board composition, such notice to be provided within five (5) working days of the change.

IX. SEVERABILITY OF PROVISIONS

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

X. NON-WAIVER OF PERFORMANCE

1. No waiver by CITY of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any

succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of CITY to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged.

2. No act or omission of CITY shall in any manner impair or prejudice any right, power, privilege, or remedy available to CITY hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.
3. No representative or agent of CITY may waive the effect of the provisions of this Article.

XI. SPECIAL CONDITIONS

All CONTRACTOR invoices for eligible expenditures pursuant to this Agreement must be submitted to City's Brooks City-Base Office by CONTRACTOR no later than ninety (90) days after CONTRACTOR's incurring the expense. All invoices submitted by CONTRACTOR after said ninety (90) days are ineligible for reimbursement.

XII. ENTIRE AGREEMENT

This Agreement constitutes the final and entire Agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other Agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and duly executed by the parties.

XIII. NOTICE

1. For purposes of this Agreement, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY:

Director
Economic Development Department
P.O. Box 839966
San Antonio, Texas 78283-3966

and

City Attorney's Office
Commerce & Visitor's Services
City Hall
P.O. Box 839966
San Antonio, Texas 78283-3966

CONTRACTOR:

Director
Brooks Development Authority
8030 Challenger Drive, Bldg. 1156
San Antonio, Texas 78235

2. Notice of changes of address by either party must be made in writing and delivered (or mailed, registered or certified mail, postage prepaid) to the other party's last known address within five (5) business days of such change.

XIV. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided for herein.

XV. GENDER

Words of gender used in this Agreement shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XVI. RELATIONSHIP OF PARTIES

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the parties hereto.

XVII. TEXAS LAW TO APPLY

THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

XVIII. CAPTIONS

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

EXECUTED IN DUPLICATE ORIGINALS this _____ day of _____
2003.

CITY OF SAN ANTONIO

BROOKS DEVELOPMENT
AUTHORITY

By: _____
Terry M. Brechtel
Title: City Manager

By: _____
Howard Peak
Title: Chairman

ATTEST:

ATTEST:

City Clerk

APPROVED AS TO FORM:

Andrew Martin
City Attorney