

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
CITY MANAGER'S OFFICE**

TO: Mayor and City Council

FROM: Jelynn LeBlanc Burley, Assistant City Manager

THROUGH: Terry M. Brechtel, City Manager

COPIES: Marc Kimball; Andrew W. Cameron; Andrew Martin; Louis A. Lendman;
Milo D. Nitschke; Dennis J. Campa; and file

SUBJECT: Carver Community Cultural Center Building Repairs, Phase III

DATE: October 23, 2003

SUMMARY AND RECOMMENDATIONS

This Ordinance approves the terms and conditions, authorizes the execution of a Construction Contract with Vaughn Construction Company for Phase III of the Carver Community Cultural Center Building Repairs in the amount of \$987,395.00 and authorizes a construction contingency in the amount of \$98,739.50, for an overall total of \$1,086,134.50, and provides for payment.

Staff recommends approval of this Ordinance.

BACKGROUND

Through Ordinance Number 96444, on September 26, 2002, City Council approved the construction contract with Vaughn Construction for Phase I of the Carver Community Cultural Center Repairs Project, which included the interior asbestos and mold remediation work at the Carver. Staff represented to City Council that at a later date future phases of work would be recommended for implementation. On January 31, 2003 the Phase I work was deemed to be substantially complete.

Phase II of the project which was approved on February 13, 2003 by Ordinance Number 97190, is now substantially complete, and provided for the restoration of the exterior facade, window and roof replacement as well as the required structural repairs to address failing floor slabs in the lobby and the addition of structural bracing to existing roof joists necessary to support new mechanical equipment being located on the roof of the facility.

This ordinance approves the Scope of Work for Phase III of the repairs, approves the terms and conditions and authorizes the execution of a construction contract with Vaughn Construction Company for interior repairs and mechanical work to include the following:

- interior repairs to include installation of theater drum and miscellaneous supports; drywall installation; re-installation of steel windows above West entrance; installation of interior wood doors; construction of new restrooms; plaster patch and preparation for painting of walls and ceilings; interior signage; new acoustical ceilings and wall panels; HVAC duct installation; communication systems conduit installation, new electrical work for switchgear, miscellaneous equipment, fire alarm, telephone etc.;
- exterior work to include installation of all rooftop equipment, exterior screens; purchase of HVAC equipment; aluminum storefronts; and new door and frame installation.

The Economic Development Department is reviewing additions to the Good Faith Effort Plan submitted by Vaughn Construction Company. The contract provides for 131 calendar days, or approximately 4 ½ months, to complete the project.

FISCAL IMPACT

The overall Project Budget is \$2,300,000.00 of which \$1,550,000 will be funded by CDBG funds, \$250,000 from the Kronkowsky Foundation, and \$500,000 in City of San Antonio Certificates of Obligation. This expenditure for Phase III of the Construction in the amount of \$1,086,134.50, will be funded with Community Development Block Grant (CDBG) funds, and is authorized payable as follows:

\$987,395.00	Payable to Vaughn Construction Company for construction expenses;
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\$ 98,739.50	Payable for Construction Contingency.
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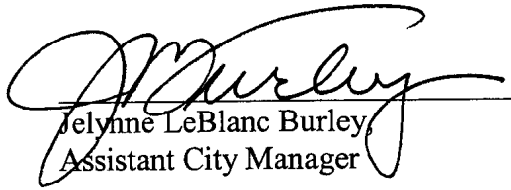
The construction cost incurred to date for Phases I and II of Construction is \$965,242.75 and approval of this item will bring the total project expenditure for the three project phases to \$2,051,377.25. This item does not impact the General Fund.

COORDINATION

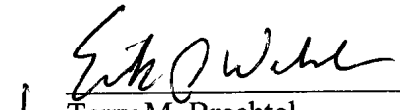
This action has been coordinated with the Economic Development Department – SBEDA office, the City Attorney's Office, the Finance Department, the Department of Housing and Community Development and the Department of Community Initiatives.

SUPPLEMENTARY COMMENTS

A Discretionary Contracts Disclosure Statement is not required.


Jelynné LeBlanc Burley,
Assistant City Manager

APPROVED:


Terry M. Brechtel,
City Manager

CONSTRUCTION CONTRACT

**STATE OF TEXAS
COUNTY OF BEXAR
CITY OF SAN ANTONIO**

CONTRACT FOR CARVER COMMUNITY CULTURAL CENTER BUILDING REPAIRS, PHASE III

THIS AGREEMENT made and entered into in San Antonio, Bexar County, Texas between the City of San Antonio, a municipal corporation, in the State of Texas, hereinafter termed "City", and

**J. T. Vaughn Construction Company, Inc.
1000 Central Parkway N., Suite 235
San Antonio, Texas 78232**

hereinafter termed "Contractor", said agreement being executed by the City pursuant to the City Charter and Ordinances and Resolutions of the City Council, and by said Contractor,

WITNESSETH: That the parties hereto, each in consideration of the agreements on the part of the other herein made and referred to, have covenanted mutually, and hereby mutually covenant, the City for itself and its successors, and the Contractor for itself or himself or themselves and his or their heirs, executors and administrators or successors, as follows, to-wit:

A. DEFINITIONS & SCOPE OF CONTRACT

1. **CITY AND OFFICIALS.** Whenever in this contract is found the term "City", "City Council", "City Manager", "Director of Finance", "City Clerk" or other designation of any City institution, officer, employee or title, or a pronoun in its, his or their place, the same shall, unless indicated otherwise, be understood to mean the City of San Antonio or its successors, or the governing body, or the person or persons now or hereafter holding or exercising the duties of such designated official position, office, employment or title, in said City, or any person or persons acting lawfully in the corresponding official capacity on behalf of said City at such time and within the powers and authority held by him or them;

2. **CONTRACTOR.** Whenever the term "Contractor" or a pronoun in its place is used herein, it shall be taken to include any person, association or persons, firm or corporation, notwithstanding such pronoun may be used in the masculine gender or singular number, and said term or pronoun shall include in their respective capacities, the President, Manager, or other officer or agent for the time being, representing or locally managing the work of any corporation contracting herein.

3. **INCLUDED INSTRUMENTS.** The notice to Contractors, specifications including any Special and General Conditions, plans, instructions to bidders, advertisement for bids, the bid proposal, and the construction bond, payment bond, and other bonds, if any, made by the Contractor, the Charter, Ordinances and Resolutions of the City, all in so far as prepared for or relating to said work herein undertaken are hereby made a part of this agreement and are included in this contract as if rewritten or copied in full herein, and shall be deemed "included instruments" when that term is used.

4. **CONTRACT TO CONTROL.** In case of conflict or inconsistency between this contract and the specifications or other included instruments, this contract shall control, but insofar as such provisions can stand together they shall all be regarded as cumulative.

5. **SCOPE OF CONTRACT AND SPECIAL PROVISIONS FOR SUPERVISION OF WORK.** It is contemplated that this contract shall be used as a general form of construction contract for public works projects and for some of said work independent consulting Architects or Engineers may be engaged, their identity and capacity shall be designated herein; however, Contractor understands that City may abrogate the authority of such consultant as provided in the terms of its contract relationship with the latter, and the Assistant City Manager shall, in such event, be vested with all powers formerly exercised by such consultant, provided written notice of such substitution shall be immediately served on the Contractor in writing. Nothing herein shall authorize independent agreements between Contractor and such Engineer or Architect, nor shall the latter be deemed to bear a legal relationship to either Contractor or City other than as evidenced by the City's contract with such consultant.

6. DEFAULT AND VIOLATIONS OF CONTRACT. If Contractor shall fail or refuse to take such measures as the Assistant City Manager or her designee may determine to be necessary to insure the completion of the work within the time allowed therefor, or if the work to be done under this contract shall be abandoned by Contractor, or if this contract, or any right or interest therein shall be assigned or sub-let by Contractor otherwise than is herein specified, or if at any time said Assistant City Manager or her designee shall certify in writing that Contractor is willfully violating or refusing to observe any of the conditions, provisions or stipulations of this contract or of the specifications, or is executing the same in bad faith or not in accordance with the terms thereof, or if the work is not fully completed within the time allowed for its completion, then, in any such event, the City Manager shall be authorized at his election to order Contractor to discontinue all work under this contract by written notice given as herein provided; and Contractor and his employees shall thereupon discontinue all work upon said premises; and the City shall, upon such notice having been given, be authorized fully to enter upon said premises, through any designated officer, agent or contractor, and to take full possession of said work, and to order or contract for the completion of said work in any manner it may deem proper; and said City shall thereupon have a right to take full possession of, and to use for the purposes of said work, all materials, tools, implements or machinery previously provided by the Contractor for the performance of the work and located at the project site. All costs and expenses requisite to the completion of the work by the City whether accomplished by contract or otherwise, and including reasonable costs of supervision, together with damages for delay as herein specified, shall be charged to and paid by the Contractor. If the cost of such completion by the City shall be less than the amount agreed to be paid to the Contractor hereunder, the Contractor shall forfeit by virtue of his default the right to any difference unless otherwise specified by the City Manager; if, however, the cost of such completion shall exceed the amount herein agreed to be paid to the Contractor, then the Contractor or his bondsman shall pay to the City the amount of such additional costs and expenses to be fixed and determined as herein provided.

7. COMMUNICATIONS BETWEEN CONTRACTOR AND CITY. The Contractor agrees that the following address in the City of San Antonio, Texas, shall be used for the transmission to him of any notices or correspondence in connection with the performance of this contract:

**1000 Central Parkway N., Suite 235
San Antonio, Texas 78232**

The above address may be changed only by filing written notice to that effect with the City's Assistant City Manager. All communications, notices and other correspondence forwarded to the above address shall be presumed conclusively to have been delivered by regular course of mail to the Contractor.

8. PREVAILING WAGE RATE AND GENERAL LABOR CONDITIONS. The Provisions of the Davis-Bacon Wage Act, 29 CFR, Parts 1, 3, 5, 6, 7 and Vernon's annotated Civil Statutes, Article 5159a, are expressly made a part of this contract. In accordance therewith, a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform this contract is included with the Special Conditions and made a part hereof. The Contractor shall forfeit as a penalty to the City sixty dollars (\$60.00) for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the contractor or any sub-contractor under him. The establishment of prevailing wage rates pursuant to The Davis-Bacon Wage Act and Vernon's Ann. Civ. Statutes, Article 5159a shall not be construed to relieve the Contractor from his obligation under any Federal or State Law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed hereunder. The Contractor, in the execution of this project, agrees that he shall not discriminate in his employment practices against any person because of race, color, creed, sex or origin. The Contractor agrees that he/she 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, handicap or political belief or affiliation. In addition, Contractor agrees that he/she will abide by all applicable terms and provisions of the Nondiscrimination Clause and the Small and/or Minority Business Advocacy Clause as contained in the City of San Antonio's current Affirmative Action Plan on file in the City Clerk's Office.

9. ASSIGNMENTS AND SUBLETTING. It is understood, and the City consents to Contractor's intention to engage the services of Sub-contractors for the work to be performed incident to this contract. Contractor shall not make any assignment, transference, or conveyance, and shall not sub-let or otherwise dispose of this contract, or any portion thereof, or any right, title or interest in, to or under the same, without previous consent in writing of the City, to be endorsed hereon or hereto attached; and Contractor shall not assign by power of attorney or otherwise any of the monies or other considerations to become due and payable by the City under this contract; unless by and with the consent signified in like manner. And in any event whatsoever, whether by such consent, by operation of law or otherwise, any and all such assignments, transfers or sub-letting, and the entire subject matter thereof, shall be and remain subject to all rights of the City herein or otherwise provided, and no waiver of this stipulation can be invoked against the City. In no event shall the City be liable in excess of the consideration of this contract in the case of any such assignment, transfer, conveyance or sub-letting of the work or performance which is the subject hereof. The City reserves the right to withhold any

monthly payment hereafter provided for in the event of an assignment or sub-letting of a portion of the work without the consent and knowledge of the City and by reserving such right, the City shall not be deemed to have waived its right to declare a full breach of this contract for Contractor's failure to comply with provisions hereof, such remedy being alternative only and exercisable at the option of the City.

B. SCOPE OF WORK

1. **DESCRIPTION AND LOCATION.** The site of the work herein contemplated is located and described generally as follows:

**Carver Cultural Community Center
226 N. Hackberry
San Antonio, Texas 78202**

and this contract is performable exclusively in Bexar County, Texas.

2. **GENERAL UNDERSTANDING.** Contractor at his own cost and expense shall furnish all supervision, tools, implements, machinery, labor, materials and accessories, such as are necessary and proper for the purpose, and pay all permit and license fees, and shall at his own cost and expense construct, build and complete, in a good, first class, substantial and workmanlike manner, the structures, work and improvements herein described or referred to in and upon a certain parcel or parcels of land hereinafter described or referred to, all according to this contract and the included instruments, prepared by:

**Kell Muñoz Architects
800 N.W. Loop 410, Suite 700
San Antonio, Texas 78216**

and now on file in the City Architect's Office and consisting of:

**Construction Documents dated August 13, 2003;
Specifications dated August 13, 2003**

3. **WORK UNDERSTOOD BY CONTRACTOR.** Contractor declares that prior to the submission of his proposal on this contract he has thoroughly examined the location of the work to be performed, is familiar with local conditions, and has read and thoroughly understands the specifications "included instruments" as they relate to the physical conditions prevalent or likely to be encountered in the performance of the work at such location. Contractor hereby accepts such "included instruments" as satisfactory in all respects to accomplish the proper performance of the work at the project site and accordingly assumes the risk of any delays or additional costs which might arise from errors or miscalculations in such "included instruments" or from erroneous assumptions upon which same may have been predicated as to the physical conditions at the work site including, but not by way of limitation, latent defects or conditions of the subsoil.

4. **IMPLIED WORK.** Any work or materials that may have been omitted in the description of said project, but the use of which is implied or necessary to the project's completion, shall be deemed to be included in this contract and shall be furnished by the Contractor as if the same had been stated specifically, without any additional charge to the City.

5. **INCIDENTAL WORK, CONNECTIONS AND PASSAGEWAYS.** The Contractor shall do and perform all implied or incidental work necessary to completion of this contract including, but not by way of limitation, the following: Shall make and provide all suitable connections with existing improvements as are necessarily implied herein for proper completion of the project; shall provide passageways or leave open such thoroughfares in the work area as may be required by the City and shall protect and guard same at his own risk as more specifically detailed in Paragraph E-1 hereof; and shall continuously maintain the work area in a clean and workman-like manner and prior to final acceptance of the work, restore the site to its prior condition to the extent permitted by the improvement. All of said incidental work to be done to the satisfaction of the City at Contractor's own cost and expense.

6. **WORK AND MATERIALS.** All materials used by the Contractor shall conform to the specifications. However, if the specifications are silent, only the best quality materials shall be used, as applicable, and in the event of dispute as to the relative quality of materials, the selection of the Assistant City Manager or her designee shall be final. All of said work shall be executed in a good, thorough and workman-like manner, to the satisfaction of the Assistant City Manager, or her designee who, together with all assistants and inspectors under his direction, or in the employ of the City for the purpose of said work, shall at all times have free access to the project site, stores and materials, and shall be privileged to take such samples of all materials and to cause tests of materials or of any part of the work to be made except as otherwise provided in the specifications. Contractor shall render all assistance required of him

by the Assistant City Manager or her aforementioned assistants or inspectors in connection with any such tests, and if any part of the work or the materials used shall be found unsuitable or improper, either wholly or in part, Contractor shall correct or remove such defective work or materials from the project site. In connection with the visual inspection or materials testing contemplated herein, it is clearly understood that the City exercises no right to control the means of accomplishing the end product of the work and no approval of any phase of the construction project by any of the City's agents or inspectors shall relieve the Contractor from full compliance with the specifications regarding the ultimate work product and any additional cost or delay occasioned by defects in the work or failure to meet specifications at any such phase shall be borne by the Contractor.

7. **CONTRACTOR'S RISK.** Contractor shall be responsible for the complete performance of and compliance with this contract, and for all materials on the ground or elsewhere, and for all the work performed under this contract, and shall protect the same from all loss or damage from any cause whatsoever until final completion and acceptance; and shall deliver said structures, work and improvements to the City in a completed and perfect condition, as applicable, in accordance with this contract.

C. **BEGINNING AND COMPLETION OF WORK, DAMAGES FOR DELAY**

1. **TIME TO BEGIN WORK.** The work embraced in this contract shall be begun by contractor within seven (7) days after City shall notify Contractor in writing to begin, and if such work be actually begun by Contractor before such notice, then the period of time herein allowed for the completion of the work shall begin to run from such date when work is actually commenced.

2. **COMPLETION OF WORK.**

Date Certain Contract -- After beginning work as outlined in Paragraph C-1 above, the Contractor shall complete the work to be **Substantially Complete by one hundred thirty one (131) calendar days from the start of construction** during which period of time Contractor binds and obligates himself at all times to employ sufficient force and diligence to complete said structures, work and improvements, and to deliver same over to the City in a completed, undamaged and clean condition; and the time of beginning, rate of progress and time of completion of said work are hereby declared and understood to be of the essence of this contract; provided, however, said Assistant City Manager or her designee may suspend said work wholly or in part by her written order whenever in her opinion the interests of the City require the suspension of such work, such orders not to continue in effect longer than one week at any one time. The City may, at its discretion, establish phases of the project or areas of the work to be performed and in such order or sequence as the City shall deem best in the public interest. No additional time for completion will be allowed unless granted in writing by the Assistant City Manager or her designee.

Should the work be delayed necessarily by any damage that may happen thereto by any unusual, unavoidable accident, or by the condition of the weather, or by action of the elements, or by any general strike of employees, or by shortage of materials, or by suspension of the work, or by any injunction or other court action or by any delay which may exist for the City to procure any title to lands or any right or interest therein needed for the purposes of said work, Contractor shall have no claim for damages on account of such delay, but working days will not be charged during the period of any such delays.

3. **DAMAGES FOR DELAY.** The Owner shall sustain damage if Contractor fails to achieve Substantial Completion within Contract time. Such damage includes, but is not limited to delays in the completion and operation of the Project, unreasonable inconvenience to the public, loss of revenue, increased financing costs, increased costs of Contract administration, delays and increased costs to other contractors, increased costs due to acceleration of other contractors necessary to mitigate effect of the Contractor's delay on completion of the Project, and delays and increased costs to the Owner, the Architect and their consultants. Contractor expressly acknowledges that it is anticipated and foreseeable that, in the event it delays the completion and operation of the project, the Owner will suffer the consequential damages enumerated above, especially including but not limited to the loss of business revenue. Notwithstanding anything contained in the Contract Documents to the contrary, the remedies provided herein are not exclusive, and are in addition to other rights and remedies provided by law or under this Contract.

4. **COMPLETION.** Completion of the project will be considered only after all stipulations, requirements and provisions of this contract are faithfully completed and the project is delivered to the City for use. In the event that only minor items remain for completion, the Assistant City Manager or her designee may issue a conditional approval in accordance with Paragraph D-2, listing the exceptions; however, the completion date will not be effective until all items noted as exceptions in the Conditional Approval have been corrected.

5. **NO WAIVER OF CITY'S RIGHTS.** Neither the inspection nor approval by said Assistant City Manager, her designee, or any inspector, officer or employee of the City, nor any order, measurement or certificate by said Assistant City Manager or designee, nor any estimate or payment by the City for any part of said work, or material or method or equipment, nor any extension of

time, nor any possession of the work or place taken by the City, or any officer or employee thereof at any time before final acceptance, shall operate as a waiver of any provision or obligation of this contract or of any right or power herein given or reserved to said City, or of any right to claim any indemnity or damages herein provided for; nor shall any waiver of any breach of this contract be deemed as a waiver of any other or subsequent breach; and every right or remedy under this contract or included instruments shall be cumulative, and in addition to all other rights and remedies.

6. **OCCUPANCY.** The City, at the discretion of the Assistant City Manager, or her designee, shall have the right to take possession of and use any completed portion or partially completed portion of the structure or work, provided, in the opinion of the Assistant to the City Manager or her designee, such possession or use does not materially affect the Contractor's ability to proceed with his work on the project. No additional time will be granted the Contractor for occupancy or possession and use of any partially completed or completed work, and such possession or use shall not constitute acceptance of the work taken or used.

D. **PAYMENT**

1. **PRICES AND CONSIDERATIONS.** In consideration of the faithful performance of this contract and the construction, completion, and delivery of said structures, work and improvements, the City of San Antonio agrees and shall be and is hereby bound and obligated to pay at the office of the Director of Finance of the City of San Antonio, in Bexar County, Texas, to the Contractor as hereinafter provided out of its **fund 28, Community Development Block Grant (CDBG) Funds**, the following sum or amount or amounts, or prices, to-wit: Nine Hundred Eighty Seven Thousand Three Hundred Ninety Five Dollars (**\$987,395.00**), the same being the amount or amounts or prices for said work named in the proposal of Contractor, attached hereto as an included instrument.

2. **MONTHLY ESTIMATES.** During the early part of each month as the work progresses said Assistant City Manager or her designee shall make an estimate of the materials brought into the work and the labor performed during the preceding month, as well as the number of working days used during such month, and the City shall thereupon, about the middle of each month, make payments to Contractor of monthly installments based upon such estimate in a sum equivalent to ninety percent (90%) of each such monthly estimate. At the time the last monthly estimate is paid, a letter of conditional approval will be furnished the Contractor. The remaining ten percent (10%) of the estimated value shall be held by the City until the final settlement hereinafter provided for. However, where the contract price exceeds four hundred thousand dollars, installments shall be paid to Contractor at the rate of ninety-five (95%) percent of each monthly estimate, and the retainage held until final acceptance shall be five (5%) percent. The payments of such installments shall be held to be payments on account of the contract sum, and the certificates or estimates of the Assistant City Manager or her designee upon which such monthly payments are based shall be held to have been given only for the purposes of fixing the sums to be so paid in compliance with Paragraph D-5 hereof and shall not in any way be deemed to have been an acceptance of any part of the work, or to prejudice said City in the final settlement of account or in requiring the completion of the work as herein provided.

3. **FINAL ESTIMATE.** Contractor shall not be entitled to receive payment of any sum in excess of the amounts paid upon such monthly estimates as outlined above for at least thirty (30) days after transmittal of the letter of conditional approval and not before all the stipulations, requirements and provisions of this contract are faithfully performed and complied with, and unless and until said structures, work and improvements shall be entirely completed, and delivered to and accepted by the City in accordance with this contract; and such completion, delivery and acceptance is evidenced by the final certificate of the Assistant City Manager or her designee and such certificate of acceptance is approved by the City Manager. Simultaneous with the transmittal of the final certificate of completion, delivery and acceptance, the Assistant City Manager or her designee shall prepare her final estimate as the basis for final settlement upon this contract, whereupon the same having been first approved by the signature of the City Manager and Director of Finance, City shall pay to Contractor the amount of such final estimate, taking into account all amounts previously retained and deducted from such monthly estimates and remaining payable to Contractor, but deducting from the amount of such final estimate and retaining any and all sums which are to be deducted by the City or paid or allowed by the Contractor to City, or claimed for labor or materials furnished by any person, firm or corporation, or which are to be retained and held by City for any reason.

4. **CLAIMS FOR LABOR OR MATERIALS.** Contractor hereby agrees to promptly pay all persons supplying labor, services and materials in the prosecution of the work provided for in this contract and any and all duly authorized modifications of said contract that may hereafter be made, and shall and will fully indemnify and hold harmless the City against any and all claims, liens, suits or actions asserted by any person, persons, firm or corporation on account of labor, materials or services furnished such Contractor during the prosecution of the work herein undertaken and Contractor shall execute a bond for this purpose as hereinafter set out. Before the City shall be obliged to pay any amount to Contractor on final settlement, Contractor shall furnish to the satisfaction of the Director of Finance, evidence that all labor employed and all materials used in the construction of the work have been fully paid for by Contractor.

5. **ASSISTANT CITY MANAGER TO FINALLY DETERMINE ALL AMOUNTS PAYABLE OR CHARGEABLE.** It is specially understood and agreed that subject only to the prices, terms and provisions specifically set forth in this contract and included instruments, the written estimates and certificates of the Assistant City Manager or her designee shall be final in fixing and determining amounts payable or chargeable hereunder to Contractor by City as required by the other terms and conditions hereof, also in case of controversy, in fixing and determining all unliquidated sums to be deducted and retained by City for any purpose whatever out of any funds estimated as payable to Contractor by City.

6. **ALTERATIONS AND EXTRA WORK.** Said Assistant City Manager or her designee may, by written order, approved by the signature of the City Manager, make deletions, alterations, modifications or additions in the specifications and plans for the work for the purpose of perfecting the work herein undertaken or the ramifications thereof, and the Contractor shall execute the work as so changed, provided the entire cost of such extra work as results from such changes, including the cost of extra work resulting from any prior alterations modifications, or additions so ordered, shall not exceed twenty-five percent (25%) of the original amount of the contract, as set out in paragraph D-1 hereof; and provided further that the price is agreed upon in writing before the work is done or materials furnished and that such agreement is signed by the Contractor and by the Assistant City Manager or her designee and the City Manager, it being further agreed and understood that if no such agreement as to price can be reached after discussions, that payment by the City shall be upon the basis of cost of labor and materials plus ten percent (10%). The cost of such extra work shall be added to the estimates payable to the Contractor by the City, all of which shall be effected under the terms and provisions of this contract. The Assistant City Manager or her designee may order the Contractor to omit any part or parts of the work remaining to be done and the City shall not be bound to pay for extra work so ordered to be omitted. No additional working time will be granted for alterations and/or extra work unless specified in said written order approving work.

E. INDEMNIFICATION

1. **CARE TO AVOID ACCIDENTS OR INJURY TO PERSON OR PROPERTY.** During the performance of the work within the contemplation of this contract and until final completion and acceptance thereof, Contractor shall exercise the utmost care to avoid accident or injury to persons or property. He shall place and maintain all necessary barriers and safeguards, including watchmen, if necessary, about the work site for the prevention of accidents and at night shall maintain adequate lights and other warning devices, and generally shall take all precautions requisite to the protection of the general public and properties adjacent to the work site. Contractor shall and will indemnify and save harmless the City from and against any and all actions and claims, and against all costs, damages and expenses to which the City may be put by reason of any injury or alleged injury to person or property, resulting or alleged to result from or to be occasioned by the acts or omissions of the Contractor, whether negligent or otherwise, in the performance, conduct or maintenance of the work, or in guarding same, or from any improper methods, tools, implements or materials employed therein, or on account of any such acts or omissions of Contractor's agents, servants, employees, assignees or sub-contractors (including the agents, servants and employees of such sub-contractor); and Contractor or his insurer shall well and truly make payment of any and all sums recovered against the City in any suit or suits on account of such alleged injury or damage, to which the City may be made a party, together with all costs, damages and expenses borne by the City in connection with such suits, all in a manner as to save the City harmless from any expense connected with such actions and claims. The City is further authorized, upon the order of the Assistant City Manager or her designee, to deduct or retain from any estimate or estimates or amounts retained hereunder, such sum as may be claimed for any injury or damage described above unless and until Contractor shall give a further and special bond or deposit adequate to cover such contingent liability as determined by the Assistant City Manager or her designee or otherwise present evidence of full indemnification to the City in connection with such claims or actions.

1. **PATENTS, ETC.** Contractor agrees that he will at all times pay all fees, royalties or license charges on all patented, registered or copyrighted machines, materials, methods or processes used in the construction of said work and supplied as a part of the finished work, or appurtenant thereof; and that he will ever hold the City free and harmless from any and all claims on account of the use of any machines, materials, methods, or processes.

F. INSURANCE

The Contractor shall obtain and maintain in full force and effect for the duration of the Contract, and any extension hereof, at Contractors sole expense, insurance coverage written, on 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 Owner. Two copies of Certificates of Insurance showing compliance with the provisions of this paragraph shall be furnished to the Assistant City Manager or her designee prior to, or at the time this Contract is executed by the Contractor for the following types and amounts:

TYPEAMOUNTWorker's Compensation

Statutory

Employer's Liability

\$1,000,000/\$1,000,000/\$1,000,000

A. Extensions of Coverage

1. Other States Endorsement
2. Voluntary Compensation, if exposure exists
3. United States Longshoreman's & Harborworker's Act, if exposure exists
4. Jones Act, if exposure exists
5. One hundred twenty (120) day notice of Cancellation or Material Change
6. Alternate Employer Endorsement
7. Amendment of Notice of Occurrence

Commercial General Liability Insurance to include coverage for the following

B. Limits

1. \$1,000,000 Each Occurrence/all insureds
2. \$2,000,000 Personal Injury and Advertising Injury Limit
3. \$2,000,000 Completed Operations Aggregate/all insureds
4. \$2,000,000 General Aggregate/all insureds (Annual)
5. \$5,000 Medical Payments
6. \$50,000 Fire Legal Liability

Extensions of Coverage

1. Blanket Contractual Liability
2. Broad Form Property Damage, including Completed Operations
3. Personal Injury with Extended Bodily Injury
4. Blanket Explosion, Collapse and Underground Coverage
5. Completed Operations and/or Products Liability coverage for a period of three (3) years after final acceptance by Owner or three (3) years after the entire project is placed into operation, whichever occurs first

Comprehensive Automobile Liability

- | | |
|--------------------------|----------------------------------|
| a. Owned/Leased Vehicles | Combined Single Limit for Bodily |
| b. Non-owned Vehicles | Injury and Property Damage of |
| c. Hired Vehicles | \$1,000,000 per occurrence |

The insurance required by this Section is intended to cover machinery, tools or equipment owned or rented by the contractor which are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor must, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment which shall be subject to the provisions of Sub-Article 7.2 of the Contract General Conditions.

G. BONDS

1. **PERFORMANCE BOND.** Contractor hereby agrees to execute with sureties and deliver to the City, at once, a "Performance Bond" in the total amount of the contract price, **\$987,395.00** approved by the City as to form and sufficiency, conditioned that Contractor shall faithfully perform, observe and comply with all the terms, conditions and stipulations, undertakings and provisions of the contract, said Performance Bond to be attached hereto as an included instrument.

2. **PAYMENT BOND.** Contractor hereby agrees to execute with sureties and to delivery to the City, at once, a "Payment Bond" in an amount at least equal to the contract price, such as shall be satisfactory to the City as to form and sufficiency, as security for the payment of all persons supplying labor and material in the prosecution of the work provided for in this contract; said Payment Bond to be attached hereto as an included instrument.

3. **CONTRACTOR AND SURETIES STILL BOUND.** No assignment, transfer or subletting, whether with or without the consent of said City, and no order of said City for or approval or any alterations or modifications in said specifications, plans, or work, and no change in the requirements or order for extra work made by the City as provided in this contract, shall ever in any manner release or diminish the responsibility of Contractor or any surety on any bond of Contractor, but on the contrary, such responsibility shall extend to and comprehend all such changes and other matters.

H. COMPLIANCE WITH FEDERAL REGULATIONS

1. The Contractor is responsible for compliance with all Federal regulations included in the City of San Antonio Compliance Manual, as may occasionally be amended. The Compliance Manual is incorporated and made part of this contract.

I. SPECIAL CONSIDERATIONS

1. Contractor shall ensure that all professional and contractual services with third parties in connection with Project implementation be procured in accordance with 24 CFR 570, Part 85, The Common Rule, Procurement, Competitive Standards.

2. Contractor agrees to deliver to City, as soon as available, the following:

- (a) Evidence of Contractor's and sub-contractor's compliance with the Davis-Bacon Act, as supplemented by Department of Labor Regulations in accordance with 29 CFR Part 5; and
- (b) Copies of all environmental reports and tests prepared for the Project with an accompanying certification by Contractor that all such reports applicable to the Project have been prepared and submitted to the CITY.

3. Contractor ensures that the funds described herein shall be utilized solely for the construction/rehabilitation of the property herein.

4. The Contractor assumes sole responsibility for monitoring and oversight of all construction/rehabilitation activities involving this project and ensures all appropriate Building Permits, Certificates of Occupancy and Building Inspections are acquired prior to certifying Project completion.

5. The Contractor shall comply with all statutory and regulatory guidelines in relation to Federal, State and local laws as required for building stabilization and repair during the implementation and administration of the project including, but not limited to, environmental review requirements in accordance with 24 CFR Part 58, Lead-Based Paint and Asbestos Pollution Requirements.

J. INTEREST IN CITY CONTRACT PROHIBITED

1. 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. This prohibition extends to the City Public Service Board, City Water Board, and City boards and commissions other than those which are purely advisory.

This document and included instruments is the entire contract and recites the full consideration between the parties, there being no other written or oral agreement; it being understood that the Charter of the City of San Antonio requires all of its contracts to be written and made by ordinance.

IN WITNESS WHEREOF, said City of San Antonio has lawfully caused these presents to be executed by the Assistant City Manager of said City, and the corporate seal of said City to be hereunto affixed and this instrument to be attested by the City Clerk; and the said Contractor, acting by and through its President, thereunto duly authorized, J. Thomas Vaughn does now sign, execute and deliver this instrument.

DONE at San Antonio, Texas on this _____ day of _____, A.D. 2003.

(CITY SEAL)

CITY OF SAN ANTONIO

BY: _____
Jelynn Burley, Assistant City Manager

ATTEST: _____
City Clerk

J.T. VAUGHN CONSTRUCTION COMPANY, INC.
Contractor

(CORPORATE SEAL)

BY: _____
J. Thomas Vaughn, President

ATTEST: _____
Secretary

APPROVED AS TO FORM: _____
Assistant City Attorney

Exhibits:

Exhibit "A": City of San Antonio Department of Housing and Community Development Federal Compliance Manual;
Exhibit "B": City of San Antonio Operational Guidelines and General Provisions;
Exhibit "C": Contractor's Proposal