

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL CORRESPONDENCE SHEET
PUBLIC WORKS DEPARTMENT**

TO: Mayor and City Council

FROM: Thomas G. Wendorf, P.E., Director of Public Works

THROUGH: Terry M. Brechtel, City Manager

COPIES: Melissa Byrne Vossmer, Andrew Martin, Louis A. Lendman, Milo D. Nitschke, and file

SUBJECT: Safe Routes to School Program

DATE: November 13, 2003

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the City Manager to accept a grant and enter into an Advance Funding Agreement with the Texas Department of Transportation for the "Safe Routes to School" Project. This agreement would provide funding for the design and construction of school flashers, crosswalk markings and associated signing at 20 locations in the Northside Independent School District. This ordinance also authorizes payment in the amount of \$2,423.13 to the Texas Department of Transportation for anticipated project review costs, accepts the proposal and authorizes a professional services agreement in an amount not to exceed \$47,900.00 with M.W. Cude Engineers, L.L.C. for engineering services, and authorizes \$47,676.87 for the performance of construction services by City forces.

Funding for this project is being provided by a grant from the Federal Highway Administration, Department of Transportation through the Texas Department of Transportation with a total project budget in the amount of \$533,088.00. Of the \$533,088.00, the Federal Highway Administration will provide funds in the amount of \$435,088.00 for City Forces' construction of the project, and \$98,000.00 will be funded with Neighborhood Accessibility and Mobility Program and Traffic Signal Upgrade Funds. This project is located in Council Districts 4, 7 and 8.

Staff recommends approval of this Ordinance.

BACKGROUND INFORMATION

The Northside Independent School District prepared a grant request in 2002 on behalf of the City of San Antonio for funding through the Texas Department of Transportation "Safe Routes to School" Program. The purpose of this statewide program is to improve

safety in and around schools. In December 2002, the City Manager executed the grant application for the amount of \$533,088.00 (including \$98,000.00 of matching funds pledged by Council Districts 4, 7 and 8). The City's grant request was considered along with 192 other applications requesting a total of \$34 million. The Texas Department of Transportation subsequently awarded 27 localities a total of \$3.8 million for this program. The City of San Antonio's grant of \$435,088.00 in federal funds was the second largest award under this program. This funding will be used for the design and construction of school flashers, crosswalk markings and associated signing at 20 locations in the Northside Independent School District (see Attachment Number 1).

This ordinance authorizes the City Manager to enter into an Advance Funding Agreement with the Texas Department of Transportation (TxDOT).

This ordinance also authorizes engineering services to include the preparation of Plans, Specifications and Estimates and authorizes the construction of the facilities to be performed by City forces in connection with this program.

The Architects and Engineers Selection Committee, headed by the Director of Public Works, approved the selection of this consultant on August 12, 2003 (see Attachment Number 2).

POLICY ANALYSIS

Approval of this ordinance will be a continuation of City Council policy to improve pedestrian and school area safety.

FISCAL IMPACT

Funds in the amount of \$98,000.00 are available from the Neighborhood Accessibility and Mobility Program (NAMP) and Traffic Signal Upgrade funds, and \$435,088.00 is available from the Texas Department of Transportation. These funds are authorized payable as follows:

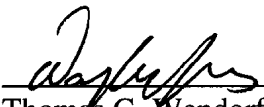
| | |
|---------------|---|
| \$ 47,900.00 | Payable to M.W. Cude Engineers, L.L.C. |
| \$ 482,764.87 | Payable to City forces for construction services |
| \$ 2,423.13 | Payable to the Texas Department of Transportation (TxDOT) |

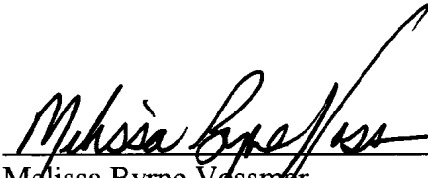
COORDINATION

This request for Ordinance has been coordinated with the Office of Management and Budget, the Finance Department and the Texas Department of Transportation.


ATTACHMENTS

1. List of Project Locations
2. Architects and Engineers Selection Committee Summary of Individual Ratings
3. Letters of Support
4. Advance Funding Agreement
5. Proposal of M.W. Cude Engineers, L.L.C.
6. Professional Services Agreement
7. Discretionary Contracts Disclosure Form

 PE 10/31/03
for Thomas G. Wendorf, P.E.
Director of Public Works


Melissa Byrne Vossmer
Assistant City Manager

Approved:


Terry M. Brechtel
City Manager

ATTACHMENT 1

| Schools | Level | Address |
|----------------|------------|----------------------|
| Braun Station | Elementary | 8631 Tezel Rd. |
| Colonies North | Elementary | 9915 Northhampton |
| Coon | Elementary | 3110 Timber View |
| Galm | Elementary | 1454 Saxonhill |
| Glass | Elementary | 519 Clearview |
| Locke Hill (1) | Elementary | 5050 De Zavala |
| Mary Hull | Elementary | 7230 Remuda |
| Myers | Elementary | 3031 Village Parkway |
| Passmore | Elementary | 570 Pinn Rd. |
| Powell | Elementary | 6003 Thunder |
| Thornton | Elementary | 6450 Pembroke |
| Valley Hi | Elementary | 8503 Ray Ellison |
| Villarreal | Elementary | 2902 White Tail |
| Hobby | Middle | 11843 Vance Jackson |
| Pease | Middle | 201 Hunt Lane |
| Rudder | Middle | 6558 Horn Blvd |
| Stevenson | Middle | 8403 Tezel |
| Stinson | Middle | 13200 Skyhawk |
| Holmes | High | 6500 Ingram |
| Jay | High | 7611 Marbach |
| Clark (1) | High | 5150 De Zavala |

Note (1): Same location

**SAFE ROUTES TO SCHOOL PROGRAM
ARCHITECT/ENGINEER PROPOSALS
CITY OF SAN ANTONIO**

| SUMMARY OF INDIVIDUAL RATINGS | | | | | | | | |
|-------------------------------|-------------------------------|----------|----------|----------|----------|----------|--|-------|
| No. | Architect/Engineer Candidates | RATER #1 | RATER #2 | RATER #3 | RATER #4 | RATER #5 | | TOTAL |
| RATINGS | | | | | | | | |
| 1 | GKW Traffic Engineering | 44 | 98 | 50 | 85 | 44 | | 321 |
| 2 | Lee Engineering | 58 | 90 | 67 | 73 | 46 | | 334 |
| 3 | Civil Engineering Consultants | 74 | 98 | 72 | 90 | 69 | | 403 |
| 4 | M.W. Cude Engineers | 76 | 97 | 74 | 82 | 74 | | 403 |
| 5 | Jaster-Quintanilla | 40 | 84 | 36 | 80 | 44 | | 284 |
| 6 | K.M. Ng & Associates, Inc. | 45 | 97 | 73 | 73 | 50 | | 338 |
| PLACEMENT | | | | | | | | |
| 1 | GKW Traffic Engineering | 5 | 2 | 5 | 2 | 5 | | 19 |
| 2 | Lee Engineering | 3 | 5 | 4 | 5 | 4 | | 21 |
| 3 | Civil Engineering Consultants | 2 | 1 | 3 | 1 | 2 | | 9 |
| 4 | M.W. Cude Engineers | 1 | 3 | 1 | 3 | 1 | | 9 |
| 5 | Jaster-Quintanilla | 6 | 6 | 6 | 4 | 6 | | 28 |
| 6 | K.M. Ng & Associates, Inc. | 4 | 4 | 2 | 6 | 3 | | 19 |
| 12-Aug-03 | | | | | | | | |

ATTACHMENT 2

[illegible]



CITY OF SAN ANTONIO

EDWARD D. GARZA
MAYOR

December 4, 2002

John P. Kelly, P.E.
District Engineer
Texas Department of Transportation
San Antonio, TX 78229

Dear Mr. Kelly:

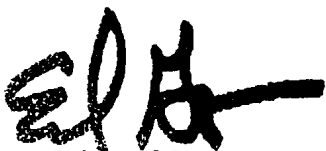
The proposed ***Northside's Safe Routes to Schools*** project involves a unique partnership with the City of San Antonio, Bexar County, and the Northside Independent School (ISD) for funding under the Texas Department of Transportation's Safe Routes to Schools. The goal of this project is to improve pedestrian and pedacyclist safety in and around Northside ISD school areas by installing crosswalks and flashing beacons on city and county streets so that students have a safe route to walk or ride their bicycle to and from school.

Our City of San Antonio departments worked closely with the Northside ISD, the sixth largest district in Texas and the fastest growing in Bexar County, to develop a proposal that improves safety in and around Northside schools. The City Council Office, Public Works Department, the Police Department and the Northside ISD reviewed various data, including the most recent Northside ISD Hazardous Conditions Evaluation; San Antonio Police Department MVTA reports; City of San Antonio Average Daily Traffic (ADT) data; and Safe Routes to Schools surveys completed by Northside parents. The results indicate the need to improve the safety of the routes students take each day in and around 24 Northside ISD schools. The proposed improvements will install flashing beacons and crosswalks at each of the 24 sites to address the identified needs.

The proposed project is part of the City of San Antonio's Safe Routes to Schools Program, a work in progress, that involves the coordination of the City of San Antonio's Traffic Engineering Division in the Public Works Department with local school districts to address the primary processes of engineering, education, and enforcement in regards to safe routes to schools. It permits orderly review of school area traffic control needs as well as the coordination of school pedestrian safety education and engineering activities.

In an effort to address the matching requirement of the grant, funds will come from various City of San Antonio Council Districts (please refer to letters of support). The City of San Antonio fully supports the proposed project with the goal to improve the safety of the children of San Antonio and will work in tandem with the Northside ISD and Bexar County to ensure successful implementation. If you should require additional information, please contact my office at (210) 207-7060.

Sincerely,


Edward D. Garza
MAYOR


Terry M. Brechtel
CITY MANAGER



CITY OF SAN ANTONIO

ENRIQUE "KIKE" MARTIN
COUNCIL MEMBER
DISTRICT 4

December 2, 2002

Ed Garza
Mayor
City of San Antonio
P.O. Box 839966
San Antonio, TX 78283-3966

Mayor Garza,

The proposed program, known as Northside's Safe Routes to Schools, involves a unique partnership with the City of San Antonio, Bexar County, and the Northside Independent School District for funding under the Texas Department of Transportation's Safe Routes to Schools. The goal of the proposed program is to improve pedestrian and bicycle crossings in and around Northside ISD school zones by installing crosswalks and flashing beacons on city and county streets so that students have a safe route to walk or ride their bicycle to and from school.

One of the schools to be serviced by this grant program is located in District 4, Valley Hi Elementary. In an effort to support the proposed program and address the matching requirement of the grant, I will provide \$14,000 in matching contributions to support the installation of two flashing beacons on Medina Base Road.

I fully support the proposed program and the goal to improve the safety of the children of San Antonio. If you should require additional information, please contact me at (210) 207-7281.

Respectfully,

A handwritten signature in black ink, appearing to read "Enrique", enclosed within a circular stamp or seal.

Enrique "Kike" Martin
City Councilman, District 4

EM: mh

CITY HALL MAILING ADDRESS:
P.O. BOX 839966
SAN ANTONIO, TEXAS 78283-3966
PHONE (210) 207-7281
FAX (210) 207-7027
EMAIL: district4@ci.sat.tx.us

HUNT LANE FIELD OFFICE
P.O. BOX 839966
SAN ANTONIO, TEXAS 78283-3966
PHONE (210) 678-0044
FAX (210) 678-0099

SOUTHPARK MALL FIELD OFFICE
P.O. BOX 839966
SAN ANTONIO, TEXAS 78283-3966
PHONE (210) 922-3874
FAX (210) 922-3907



CITY OF SAN ANTONIO

JULIÁN CASTRO

COUNCIL MEMBER

DISTRICT 7

November 15, 2002

Ed Garza
Mayor
City of San Antonio
P.O. Box 839966
San Antonio, TX 78283-3966

Mayor Garza:

The proposed program, known as *Northside's Safe Routes to Schools*, which involves a partnership with the City of San Antonio, Bexar County, and the Northside Independent School (ISD) for funding under the Texas Department of Transportation's Safe Routes to Schools, will improve pedestrian and bicycle crossing in and around Northside ISD school areas by installing crosswalks and flashing beacons on city and county streets so that students have a safe route to walk or ride their bicycle to and from school.

Ten of the schools to be serviced by this grant program are located in the City of San Antonio, District 7. They are Braun Station Elementary, Carson Elementary, Elrod Elementary, Colby Glass Elementary, Lawrence Powell Elementary, Thornton Elementary, Eduardo Villarreal Elementary, and Sul Ross Middle, Earl Rudder Middle, and Coke Stevenson Middle.

In an effort to support the proposed program and address the matching requirement of the grant, the City of San Antonio, District 7 will provide \$56,000 in matching contributions to support safety improvements for three school areas:

- Matching contribution of \$28,000 to pay for flashing beacons near the Lawrence Powell Elementary School.
- Matching contribution of \$14,000 to pay for flashing beacons near the Eduardo Villarreal Elementary School.
- Matching contribution of \$14,000 to pay for flashing beacons near the Coke Stevenson Middle School.

The City of San Antonio, District 7 fully supports the proposed program with the goal to improve the safety of the children of San Antonio. If you should require additional information, please contact me at (210) 207-7044.

Sincerely,

A handwritten signature in black ink, appearing to be 'J. Castro'.

JULIÁN CASTRO
Council Member
District 7

CITY HALL / MAILING ADDRESS:

P.O. Box 839966
San Antonio, TX 78283-3966
PH: (210) 207-7044
FAX: (210) 207-4409

E-mail: district7@sanantonio.govDISTRICT OFFICE:

Summit Tower IV, Suite 302
5805 Callaghan Road
San Antonio, TX 78228
PH: (210) 682-2723
FAX: (210) 682-2773

CITY OF SAN ANTONIO



CITY COUNCILWOMAN
BONNIE CONNER
DISTRICT 8

December 3, 2002

Honorable Ed Garza
Mayor
City of San Antonio
P.O. Box 839966
San Antonio, TX 78283-3966

Mayor Garza:

The proposed program, known as *Northside's Safe Routes to Schools*, which involves a partnership with the City of San Antonio, Bexar County, and the Northside Independent School (ISD) for funding under the Texas Department of Transportation's Safe Routes to Schools, will improve pedestrian and bicycle crossing in and around Northside ISD school areas by installing crosswalks and flashing beacons on city and county streets so that students have a safe route to walk or ride their bicycle to and from school.

Two of the schools to be serviced by this grant program are located in the City of San Antonio, District 8. They are Colonies North Elementary and Hobby Middle School.

In an effort to support the proposed program and address the matching requirement of the grant, the City of San Antonio, District 8 will provide \$28,000 in matching contributions to support safety improvements for the following school areas:

- Matching contribution of \$14,000 to pay for flashing beacons near the Colonies North Elementary.
- Matching contribution of \$14,000 to pay for flashing beacons near the Hobby Middle School.

The City of San Antonio, District 8 fully supports the proposed program with the goal to improve the safety of the children of San Antonio. If you should require additional information, please contact me at (210) 207-2888.

Sincerely,

A handwritten signature in cursive script that reads "Bonnie J. Conner".

BONNIE J. CONNER

STATE OF TEXAS §
COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT
FOR A SAFE ROUTES TO SCHOOL PROJECT**

This Advance Funding Agreement for a safe routes to school project (the Agreement) is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State", and the City of San Antonio, acting by and through its duly authorized officials hereinafter called the "Local Government."

WITNESSETH

WHEREAS, the Local Government prepared and submitted to the State an application for consideration under the Safe Routes to School Program for the project which is briefly described as installation of crosswalks, school zone flashers and school zone signs, hereinafter called the Project; and

WHEREAS, the Intermodal Surface Transportation and Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century (TEA-21) codified under Title 23 U.S.C. Section 101 et seq., authorize transportation programs to meet the challenges of protecting and enhancing communities and the natural environment and advancing the nation's economic growth and competitiveness; and

WHEREAS, ISTEA and TEA-21 establish federally funded programs for transportation improvements, including safe routes to school programs, to implement its public purposes; and

WHEREAS, Title 23 U.S.C. §134 requires that Metropolitan Planning Organizations and the States' Transportation Agencies to develop transportation plans and programs for urbanized areas of the State; and

WHEREAS, the Texas Transportation Code, §201.614 directs the State to establish the Safe Routes to School Program to enhance safety in and around school areas through a construction program designed to improve the bicycle and the pedestrian safety of school age children; and

WHEREAS, federal and state laws require local governments to meet certain contract standards relating to the management and administration of State and federal funds; and

WHEREAS, the Texas Transportation Commission passed Minute Order 109162 awarding funding for projects in the 2002 Program Call, including the Project; and

WHEREAS, the rules and procedures for the selection and administration of the Safe Routes to School Program are established in 43 Texas Administrative Code (TAC) §§25.500 et seq.; and

WHEREAS, the governing body of the Local Government has approved entering into this Agreement by resolution or ordinance dated _____, which is attached hereto and made a part hereof as Attachment A;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

AGREEMENT

1. Period of the Agreement

This Agreement becomes effective when signed by the last party whose signing makes the Agreement fully executed. This Agreement shall remain in effect until terminated as provided in Article 2.

2. Termination of this Agreement

This agreement may be terminated by any of the following conditions:

- by mutual written consent and agreement of all parties.
- by any party with 90 days written notice.
- by either party, upon the failure of the other party to fulfill the obligations as set forth in this Agreement. Any cost incurred due to such breach of contract shall be paid by the breaching party.

A. The termination of this Agreement shall extinguish all rights, duties, obligations and liabilities of the State under this Agreement. If the potential termination of the Agreement is due to the failure of the Local Government to fulfill its contractual obligations, the State will notify the Local Government that possible breach of contract has occurred. The Local Government should make every effort to remedy the breach within a period mutually agreed upon by both parties.

B. If the Local Government withdraws from the Project after this Agreement is executed, it shall be responsible for all direct and indirect Project costs as identified by the State's cost accounting system.

C. A Project may be eliminated from the program as outlined below. If the Project is eliminated for any of these reasons, this Agreement will be appropriately terminated.

A Project may be eliminated from the program, and this Agreement terminated, if:

- i. The Local Government fails to satisfy any requirements of the program rules cited as 43 TAC §25.500 et seq.
- ii. The implementation of the Project would involve significant deviation from the activities as proposed in the application.
- iii. The Local Government withdraws from participation in the Project.
- iv. The State determines that federal funding may be lost due to the Project not being implemented and completed.

3. Amendments

This Agreement may be amended due to changes in the work or amount of funding required to complete the Project or other material, required changes in the responsibilities of the parties. Such amendment must be made through a mutually agreed upon, written amendment that is executed by the parties.

4. Scope of Work

The scope of work for the Project, which is at the location shown in Attachment B, Project Location Map, as described in the application and as approved by the Texas Transportation Commission, consists of the installation of crosswalks, school zone flashers and school zone signs at various locations.

5. Right of Way and Real Property Acquisition

Right-of-way and real property acquisition shall be the responsibility of the Local Government. Title to right of way and other related real property must be acceptable to the State before funds may be expended for the improvement of the right of way or real property. If the Local Government is the owner of any part of the project site under this Agreement, the Local Government shall permit the State or its authorized representative access to occupy the site to perform all activities required to execute the work.

All parties to this agreement will comply with and assume the costs for compliance with all the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Title 42 U.S.C.A. Section 4601 et seq., including those provisions relating to incidental expenses incurred by the property owners in conveying the real property to the Local Government, and benefits applicable to the relocation of any displaced person as defined in 49 CFR Section 24.2(g). Documentation to support such compliance must be maintained and made available to the State and its representatives for review and inspection.

- A. The Local Government shall assume all costs and perform necessary requirements to provide any necessary evidence of title or right of use in the name of the Local Government to the real property required for development of the Project. The evidence of title or rights shall be acceptable to the State, and be free and clear of all encroachments. The Local Government shall secure and provide easements and any needed rights of entry over any other land needed to develop the Project according to the approved Project plans. The Local Government shall be responsible for securing any additional real property required for completion of the Project.
- B. In the event real property is donated to the Local Government after the date of the State's authorization, the Local Government will provide all documentation to the State regarding fair market value of the acquired property. The State will review the Local Government's appraisal, determine the fair market value and credit that amount towards the Local Government's financial share. The State will not reimburse the Local Government for any real property acquired before execution of this agreement and the State's issuance of a letter of funding authority.
- C. The Local Government shall prepare real property maps, property descriptions, and other data as needed to properly describe the real property and submit them to the State for approval prior to the Local Government acquiring the real property. Tracings of the maps shall be retained by the Local Government for a permanent record.
- D. The Local Government agrees to make a determination of property values for each real property parcel by methods acceptable to the State and to submit to the State a tabulation of the values so determined, signed by the appropriate Local Government representative. The tabulations shall list the parcel numbers, ownership, acreage and recommended compensation. Compensation shall be shown in the component parts of land acquired, itemization of improvements acquired, damages (if any) and the amounts by which the total compensation will be reduced if the owner retains improvements. This tabulation shall be accompanied by an explanation to support the

determined values, together with a copy of information or reports used in calculating all determined values. Expenses incurred by the Local Government in performing this work may be eligible for reimbursement after the Local Government has received written authorization by the State to proceed with determination of real property values. The State will review the data submitted and may base its reimbursement for parcel acquisitions on these values.

- E. Condemnation shall not be used to acquire real property for this Project. However, real property that was acquired prior to 1991 through eminent domain and in accordance with applicable state and federal laws, may be used for project purposes.
- F. Reimbursement for real property costs will be made to the Local Government for real property purchased in an amount not to exceed eighty percent (80%) of the cost of the real property purchased in accordance with the terms and provisions of this agreement. Reimbursement will be in an amount not to exceed eighty percent (80%) of the State's predetermined value of each parcel, or the net cost thereof, whichever is less. In addition, reimbursement will be made to the Local Government for necessary payments to appraisers, expenses incurred in order to assure good title, and costs associated with the relocation of displaced persons and personal property as well as incidental expenses.
- G. If the Project requires the use of real property to which the Local Government will not hold title, a separate agreement between the owners of the real property and the Local Government must be executed prior to execution of this Agreement. The separate agreement must establish that the Project will be dedicated for public use for a period of not less than 10 (ten) years after completion. The separate agreement must define the responsibilities of the parties as to the use of the real property and operation and maintenance of the Project after completion. This agreement must be approved by the State prior to its execution. A copy of the executed agreement shall be provided to the State.

6. Utilities

If the required right of way encroaches upon existing utilities and the proposed project requires their adjustment, removal or relocation, the Local Government will be responsible for determining the scope of utility work and notifying the appropriate utility company to schedule adjustments.

The Local Government shall be responsible for the adjustment, removal or relocation of utility facilities in accordance with applicable State laws, regulations, rules, policies and procedures. This may include, but is not limited to: 43 TAC §15.55 relating to Construction Cost Participation; 43 TAC §21.21 relating to State Participation in Relocation, Adjustment, and/or Removal of Utilities; and, 43 TAC §21.31 et seq. relating to Utility Accommodation. The Local Government will be responsible for all costs associated with additional adjustment, removal, or relocation during the construction of the project, unless this work is provided by the owners of the utility facilities:

- a. per agreement; or
- b. per all applicable statutes or rules.

Prior to letting a construction contract for the Project, a utility certification must be made available to the State upon request stating that all utilities needing to be adjusted for completion of the construction activity have been adjusted.

7. Environmental Assessment and Mitigation

Development of the Project must comply with the National Environmental Policy Act and the National Historic Preservation Act of 1966, which require environmental clearance of federal-aid projects.

- A. The Local Government is responsible for the identification and assessment of any environmental problems associated with the development of the Project.
- B. The Local Government is responsible for the cost of any environmental problem's mitigation and remediation.
- C. The Local Government is responsible for providing any public meetings or public hearings required for development of the environmental assessment.
- D. The Local Government shall provide the State with written certification from appropriate regulatory agency(ies) that identified environmental problems have been remediated.

These costs will not be reimbursed or credited towards the Local Government's financial share of the Project unless specified in the application and approved by the State.

Forty five (45) days prior to any construction contract let date, the Local Government shall provide a certification to the State that all real property has been acquired, all environmental problems have been remediated, and all conflicting utilities have been adjusted.

8. Compliance with Texas Accessibility Standards and ADA

All parties to this agreement shall ensure that the plans for and the construction of the project subject to this Agreement are in compliance with the Texas Accessibility Standards (TAS) issued by the Texas Department of Licensing and Regulation, under the Architectural Barriers Act, Article 9102, Texas Civil Statutes. The TAS establishes minimum accessibility requirements to be consistent with minimum accessibility requirements of the Americans with Disabilities Act (P.L. 101-336) (ADA).

9. Engineering Services.

Engineering services will be provided by the Local Government. In procuring professional services, the parties to this agreement must comply with federal requirements cited in 23 CFR Part 172 if the project is federally funded and with Government Code 2254, Subchapter A, in all cases. Professional services contracts for federally funded projects must conform to federal requirements.

- A. The engineering plans shall be developed in accordance with the State's applicable *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges*. All roadway improvement designs for on-system highways must comply with the latest version of TxDOT manuals, including but not limited to, the Roadway Design Manual, the Pavement Design Manual, the Hydraulic Design Manual, the Texas Manual on Uniform Traffic Control Devices, and the latest versions of the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and the Texas Accessibility Standards (TAS). All roadway improvement designs for off-system roads must comply with the minimum standards of the latest version of AASHTO Policy on Geometric Design of the Highways and Streets, the Texas Manual on Uniform Traffic Control Devices, and the latest versions of the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and the Texas Accessibility Standards (TAS). All bicycle path and bicycle lane designs must comply with the latest version of the AASHTO Guide for

the Development of Bicycle Facilities, the Texas Manual on Uniform Traffic Control Devices, the Hydraulic Design Manual, and the latest versions of the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and the Texas Accessibility Standards (TAS). For new shared bicycle lanes on a signed, designated bicycle route, the minimum lane width must be 14 feet, measured from the existing center stripe to the curb or shoulder, where applicable. All contract procurement procedures and documents must adhere to the applicable requirements established in the *Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges*. The use of other systems of specifications shall be approved by the State in writing in advance.

- B. The Local Government shall submit any plans it has completed to the State for review and approval. The Local Government may also submit the plans to the State for review anytime prior to completion. The Local Government shall make the necessary revisions determined by the State. The Local Government will not let the construction contract until all required plans have received State approval.
- C. The Local Government shall submit to the State all documentation relating to authorized costs incurred for providing engineering services. Reasonable, allowable, and allocable costs incurred by the Local Government, after the Local Government has obtained written authorization from the State to incur costs, will be eligible for reimbursement at an amount not to exceed eighty percent (80%) of the eligible authorized costs.

10. Construction Responsibilities

- a. In accordance with the requirements established in 23 CFR Part 635, Part B, the City will submit a "Public Interest Statement" demonstrating the cost benefits to the public, to the State for approval allowing the City to use its own forces to develop the Project. No work shall be performed by the City prior to the State's approval of the "Public Interest Statement". Furthermore, the City will not initiate work associated with the development of the Project until all required plans have been finalized by the State. Once the State has delivered a "Letter of Authority" to the City, development activities may proceed according to the direction of the State.
- b. Upon completion of the Project, the party constructing the project will issue and sign a "Notification of Completion" acknowledging the Project's construction completion.

Any field changes, supplemental agreements or revisions to the design plans that may occur after the construction has begun will be mutually agreed to by the State and the Local Government prior to authorizing this work be performed. Prior to completion of the Project, the party responsible for construction will notify the other party to this Agreement of the anticipated completion date. All parties will be afforded the opportunity to assist in the final review of the construction services.

11. Project Maintenance.

Upon completion of the Project, the Local Government will be responsible for maintaining the completed facility for public use for a period of at least ten (10) years. Any manufacturer warranties extended to the Local Government as a result of the Project shall remain in the name of the Local Government. The State shall not be responsible for honoring any warranties under this agreement.

12. Local Project Sources and Uses of Funds

- A. Project Cost Estimate: A Project Cost Estimate and Payment Schedule is provided in Attachment C, showing the total estimated development cost of the Project. This estimate shows the itemized cost of real property, utilities, environmental assessments and remediation, engineering activities, construction, and any other substantial items of cost. To be eligible for reimbursement, costs must have been included in the itemized budget section of the application approved by the Texas Transportation Commission. Costs may be shifted between work categories after receiving written approval from the State.
- B. A Source of Funds estimate is also provided in Attachment C. Attachment C shows the percentage and absolute dollar amounts to be contributed to the Project by federal and local sources.
- C. The Local Government will be responsible for all non-federal participation costs associated with the Project, including any overruns in excess of the Project cost estimate and any operating or maintenance expenses. Donations of real property, cash, materials, and services required for the development of the Project may be eligible to count towards the local funding share of a project as in-kind contributions as long as the donation is not from the Local Government. In order to be considered as an eligible in-kind contribution, donations must be made by public, non-profit, governmental or non-governmental organizations. The value of the donated contributions of real property, materials, or services will be based on fair market value. In-kind donations of services are limited to preparation of plans, specifications and estimates, and may account for no more than ten percent (10%) of the allowable Project's cost. The remaining balance of the local contribution shall be in cash, donated real property or materials. The Local Government may also provide services or materials to reduce the overall cost of a Project, but it will not be considered as an in-kind contribution.
- D. The State will be responsible for securing the federal share of funding required for the development and construction of the Project, in an amount not to exceed eighty percent (80%) of the actual cost of the work up to the amount of funds approved for the Project by the Texas Transportation Commission. Federal funds will be reimbursed on a cost basis. Project costs incurred prior to Project selection by the Texas Transportation Commission and approval by the State to proceed are not eligible for reimbursement.
- E. Following execution of this AFA, but prior to the performance of any review work by the State, the Local Government will remit a check made payable to the Texas Department of Transportation to cover the estimated cost for the State's review of the plans, specifications, & estimate (PS&E) work. The Local Government shall advance to the State a minimum of a half percent (.5%) of the State's PS&E review cost (Construction Costs \$533,088-\$48,462 (E&C) \times .005 = \$2,423.13). The estimated amount for this Project is \$2,423.13, including cash and allowable donations.
- F. In the event the State determines that additional funding is required by the Local Government at any time during the development of the Project, the State will notify the Local Government in writing. The Local Government will make payment to the State within thirty (30) days from receipt of the State's written notification.
- G. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Local Government, the State, or the Federal Government will be promptly paid by the owing party.

- H. In the event the Project is not completed, the State may seek reimbursement from the Local Government of the expended federal funds. The Local Government will remit the required funds to the State within sixty (60) days from receipt of the State's notification.
- I. The State will not pay interest on any funds provided by the Local Government.
- J. If any existing or future local ordinances, including, but not limited to, outdoor advertising billboards or storm water drainage facility requirements, are more restrictive than State or Federal Regulations, or any other locally proposed changes, including, but not limited to plats or replats, result in increased costs, then, any increased costs associated with the ordinances or changes will be paid by the Local Government. The cost of providing such right of way acquired by the State shall mean the total expenses in acquiring the property interests either through negotiations or eminent domain proceedings, including expenses related to relocation, removal, or adjustment of eligible utilities.

13. Notices

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid or sent by electronic mail, (electronic notice being permitted to the extent permitted by law but only after a separate written consent of the parties), addressed to such party at the following addresses:

| Local Government: | State: |
|--|--|
| <p>The City of San Antonio Attention: Mr. Tom Wendorf, P.E. Director of Public Works P.O. Box 839966 San Antonio, Texas 78283-3966</p> | <p>Texas Department of Transportation Attention: Melissa Jordan Consultant Contract Management Office P.O. Box 29928 San Antonio, Texas 78229-0928</p> |

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

14. Legal Construction

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions and this agreement shall be construed as if it did not contain the invalid, illegal or unenforceable provision.

15. Responsibilities of the Parties

The State and the Local Government agree that neither party is an agent, servant, or employee of the other party and each party agrees it is responsible for its individual acts and deeds as well as the acts and deeds of its contractors, employees, representatives, and agents.

16. Ownership of Documents

Upon completion or termination of this agreement, all documents prepared by the State shall remain the property of the State. All data prepared under this agreement shall be made available to the State without restriction or limitation on their further use. All documents produced or approved or otherwise created by the Local Government shall be transmitted to the State as required by the State. The originals shall remain the property of the Local Government.

17. Document and Information Exchange

The Local Government agrees to electronically deliver to the State all general notes, specifications, contract provision requirements and related documentation in a Microsoft® Word or similar document. If requested by the State, the Local Government will use the State's document template. The Local Government shall also provide a detailed construction time estimate including types of activities and month in the format required by the State. This requirement applies whether the Local Government creates the documents with its own forces or by hiring a consultant or professional provider.

18. Compliance with Laws

The parties shall comply with all Federal, State, and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this agreement. When required, the Local Government shall furnish the State with satisfactory proof of this compliance.

19. Sole Agreement

This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings or written or oral agreements respecting the agreement's subject matter.

20. Cost Principles

In order to be reimbursed with federal funds, the parties shall comply with the Cost Principles established in OMB Circular A-87 that specify that all reimbursed costs are allowable, reasonable and allocable to the Project.

21. Procurement and Property Management Standards

The parties shall adhere to the procurement standards established in Title 49 CFR §18.36 and with the property management standard established in Title 49 CFR §18.32.

22. Inspection of Books and Records

The parties to this Agreement shall maintain all books, documents, papers, accounting records and other documentation relating to costs incurred under this Agreement and shall make such materials available to the State, the Local Government, and, if federally funded, the Federal Highway Administration (FHWA), and the U.S. Office of the Inspector General, or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this contract or until any impending litigation, or claims are resolved.

Additionally, the State, the Local Government, and the FHWA and their duly authorized representatives shall have access to all the governmental records that are directly

applicable to this Agreement for the purpose of making audits, examinations, excerpts, and transcriptions.

23. Office of Management and Budget (OMB) Audit Requirements

The parties shall comply with the requirements of the Single Audit Act of 1984, P.L. 98-502, ensuring that the single audit report includes the coverage stipulated in OMB Circular A-133.

24. Civil Rights Compliance

The Local Government shall comply with the regulations of the Department of Transportation as they relate to nondiscrimination (49 CFR Chapter 21 and 23 CFR §710.405(B)), and Executive Order 11246 titled "Equal Employment Opportunity," as amended by Executive Order 11375 and supplemented in the Department of Labor Regulations (41 CFR Part 60).

25. Disadvantaged Business Enterprise Program Requirements

The parties shall comply with the Disadvantaged/Minority Business Enterprise Program requirements established in 49 CFR Part 26.

26. Debarment Certifications

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." The parties to this contract shall require any party to a subcontract or purchase order awarded under this contract to certify its eligibility to receive Federal funds and, when requested by the State, to furnish a copy of the certification in accordance with Title 49 CFR Part 29 (Debarment and Suspension).

27. Lobbying Certification

In executing this Agreement, the signatories certify to the best of his or her knowledge and belief, that:

- a. No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with federal contracts, grants, loans, or cooperative agreements, the signatory for the Local Government shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- c. The parties shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Submission of this certification is a prerequisite imposed by Title 31 U.S.C. §1352 for making or entering into this transaction. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

28. Signatory Warranty.

The signatories to this Agreement warrant that each has the authority to enter into this Agreement on behalf of the party represented.

IN TESTIMONY HEREOF, the parties hereto have caused these presents to be executed in duplicate counterparts.

| THE LOCAL GOVERNMENT | |
|----------------------|--|
| By: | |
| Title: | |
| Date: | |

| THE STATE OF TEXAS |
|--|
| Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission. |
| By: |
| Carlos A. Lopez, P.E., Director |
| Traffic Operations Division |
| Date: |

ATTACHMENT A

RESOLUTION OF LOCAL GOVERNMENT

ATTACHMENT B

PROJECT LOCATION MAP

ATTACHMENT C **PROJECT BUDGET ESTIMATE AND SOURCE OF FUNDS**

ITEMIZED BUDGET

| | Quantity | Unit Price | Cost |
|--|----------|------------|--------|
| Preliminary Engineering: | | | |
| Environmental | | | 0 |
| PS&E | | | 47,978 |
| | | | |
| | | | |
| Total Preliminary Engineering Costs | | | |

| | | | |
|---------------------------------|--|--|---|
| Right of Way: | | | |
| Right of Way | | | 0 |
| Utilities | | | 0 |
| | | | |
| Total Right of Way Costs | | | |

| | | | |
|--|--|--|---------|
| Construction: | | | |
| Construction | | | 417,195 |
| Construction Engineering | | | 19,405 |
| Mobilization & Barricades, Signs, Traffic Handling | | | 48,510 |
| | | | |
| | | | |
| Total Construction Costs | | | 485,110 |

Total Itemized Budget \$533,088

| | |
|--|---------------|
| Total Itemized Budget | 1. \$533,088 |
| In-Kind Contributions (If applicable): | |
| Real Property | 2. \$0 |
| Materials | 3. \$0 |
| Preliminary Engineering (limited to 10% of Line 6, Total Value of Project) | 4. \$18,400 |
| Total In-Kind Contributions (Add lines 2 through 4) | 5. \$18,400 |
| Total Value of Project (Line 1 + Line 5) | 6. \$551,488 |
| Local Match: | |
| 20% of Total Value of Project (Line 6) | 7. \$116,400 |
| Less In-Kind Contributions (Line 5) | 8. \$18,400 |
| Local Match (Line 7 less Line 8) | 9. \$98,000 |
| Federal Funds Requested (Line 6 less Line 7) cannot exceed 80% of Line 6 or \$500,000, whichever is less | 10. \$435,088 |



M.W. CUDE ENGINEERS, L.L.C.
CIVIL ENGINEERS & SURVEYORS

September 5, 2003

City of San Antonio
Maria Valero
Public Works Department
114 W. Commerce, 6th Floor
San Antonio, Texas

Ref: Safe Routes to School Program
Job No. 195701 – 100

Dear Ms. Valero:

M.W. Cude Engineers, LLC is pleased to have been selected as the engineering firm of choice by the City of San Antonio for the "SAFE ROUTES TO SCHOOL PROGRAM". We understand that the scope of work for this project will involve the preparation of construction plans, specifications, and construction cost estimates for the designated school sites involved in this program. We propose to perform these tasks for a fee of \$47,900.00. We are prepared to start the design within 5 days of receiving a notice to proceed and have the project complete within 16 weeks.

We look forward to the prospect of working with the City of San Antonio on this project. M.W. Cude Engineers, LLC is committed to providing a quality product in an efficient and timely manner. If you have any questions, please feel free to contact us.

Very truly yours,

Ron Ramirez, P.E.
Vice President

PROFESSIONAL SERVICES CONTRACT

CONSULTING SERVICES

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§
§
§
§

ATTACHMENT 6
STATE OF TEXAS

COUNTY OF BEXAR

CITY OF SAN ANTONIO

CONTRACT FOR

SAFE ROUTES TO SCHOOL

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

M.W. Cude Engineers, LLC

10325 Bandera Rd.

San Antonio, TX 78250

hereinafter termed "Consultant", said Agreement being executed by the City pursuant to the City Charter, Ordinances, and Resolutions of the City Council, and by said Consultant for Civil Engineering Design services hereinafter set forth in connection with the above designated Project for the City of San Antonio.

I.

The Consultant shall not commence work on this proposed Project until being thoroughly briefed on the scope of the project and notified in writing to proceed. The scope of the project and the Consultant's services required shall be reduced to a written summary and included as a product of this Agreement. Should the scope subsequently change, either the Consultant or the City may request a review of the anticipated services, with an appropriate adjustment in fees.

The Consultant, in consideration for the compensation herein provided, shall render the professional services necessary for the development of the Project to substantial completion.

Where applicable, Consultant shall be represented by a registered professional licensed to practice in the State of Texas at meetings of any official nature concerning the Project, including but not limited to scope meetings and review meetings.

Where applicable, all completed documents submitted for final approval or issuance of a permit shall bear the seal with signature and date adjacent thereto of a registered professional.

II. Scope of Services - Completion Schedule

The scope of services and time period in which such services are to be performed and/or completed by the Consultant is set forth in attachment hereto which is made a part hereof and identified as Exhibit 1.

III. Liquidated Damages

If the Consultant fails to furnish the completed work as herein required, or fails to comply with an attached completion schedule, to the extent Consultant fails to comply, for each day Consultant exceeds the schedule, the Consultant by the execution of this Agreement acknowledges that the City will sustain damages and hereby agrees to forfeit to the City, as liquidated damages and not as a penalty, the amount of \$250.00 per each calendar day.

The Consultant further acknowledges the said amount of liquidated damages is fixed and agreed upon by and between the Consultant and the City because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages the City would in such event sustain, and said amount is agreed to be the amount of damages which the City would sustain and said amount shall be retained by the City. These liquidated damages will be implemented following notification of the City to consultant of said failure to furnish completed work.

The Consultant shall not be liable or responsible for, and there shall be excluded from the computation of the aforesaid periods of time, any delays due to strikes, riots, acts of God, national emergency, acts of the public enemy, governmental restrictions, laws or regulations, or any other causes beyond Consultant's reasonable control. Within thirty (30) days from the occurrence of any event for which time for performance by Consultant shall be significantly extended under this provision, Consultant may give written notice thereof to the City stating the reason for such extension and the actual or estimated time thereof.

IV. Coordination with the City.

- A. The Consultant shall hold periodic conferences with the City or its representatives to the end that the Project as developed shall have the full benefit of the City's experience and knowledge of existing needs and facilities, and be consistent with its current policies and standards. To assist the Consultant in this coordination, the City shall make available for the Consultant's use all existing plans, statistics, computations and other data in its possession relative to this particular Project at no cost to the Consultant. However, any and all such information shall remain the property of the City and shall be returned if so instructed.
- B. The City may be represented by the Director of a City Department and will act on behalf of the City with respect to the work to be performed under this Agreement. A Director shall have complete authority to transmit instructions, receive information, interpret and define the City's policies and decisions with respect to materials, equipment, elements and systems pertinent to the Consultant's services.
- C. The City will give prompt written notice to the Consultant whenever the City observes or otherwise becomes aware of any defect in the Consultant's services or any development that affects the scope or timing of the Consultant's services.
- D. The City shall furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for the completion of the Project. The Consultant will provide the City reasonable assistance in connection with such approvals and permits.

such as the furnishing of data compiled by the Consultant pursuant to other provisions of the contract, but shall not be obligated to develop additional data, prepare extensive reports or appear at hearings or the like unless compensated therefor under other provisions of this contract.

V. Compensation

For and in consideration of the services to be rendered by the Consultant in this Agreement, the City shall pay and the Consultant shall receive the fee set forth in attachment hereto which is made a part hereof and identified as Exhibit 2.

VI. Revisions

The Consultant shall make without expense to the City such revisions to reports or other documents as may be required to meet the needs of the City which are within the Scope of the Project, but any revisions, additions, or other modifications made at the City's request which involves extra services and expenses to the Consultant shall be subject to additional compensation to the Consultant for such extra services and expenses.

VII. Ownership of Documents

All documents including original drawings, estimates, specifications, and data, will remain the property of the Consultant as instruments of service. However, it is to be understood that the City shall have free access to all such information with the right to make and retain copies of drawings and all other documents and data. Any reuse without specific written verification or adaptation by Consultant will be at City's sole risk and without liability or legal exposure to the Consultant.

VIII. Termination and/or Suspension of Work

A. Right of Either Party to Terminate

This Agreement may be terminated by either party for substantial failure by the other party to perform (through no fault of the terminating party) in accordance with the terms of this Agreement.

The terminating party must issue a signed, written notice of termination (citing this paragraph) to the other party. Upon receipt of such written notice of termination, the party in receipt shall have a period of ten (10) days to cure any failure to perform under this Agreement. Upon the completion of such ten day period commencing upon receipt of notice of termination, if such party has not cured any failure to perform, such termination shall become effective.

B. Right of City to Terminate

The City of San Antonio reserves the right to terminate this Agreement for reasons other than substantial failure by the Consultant to perform by issuing a signed, written notice of termination (citing this paragraph) which shall take effect on the twentieth day following receipt of said notice.

C. Right of City to Suspend Giving Rise to Right of Consultant to Terminate

The City of San Antonio reserves the right to suspend this Agreement for the convenience of the City by issuing a signed, written notice of suspension (citing this paragraph) which shall outline the reasons for the suspension and the duration of the suspension but in no way will guarantee the total number of days of suspension. Such suspension shall take effect immediately upon receipt of said notice of suspension by the Consultant (effective date of suspension).

The Consultant is hereby given the right to terminate this Agreement in the event such suspension extends for a period in excess of one hundred twenty (120) days. Consultant may exercise this right to terminate by issuing a signed, written notice of termination (citing this paragraph) to the City after the expiration of one hundred twenty (120) days from the effective date of the suspension. Termination (under this paragraph) shall become effective immediately upon receipt of said written notice by the City.

D. Procedures Consultant to follow upon Receipt of Notice of Termination

Upon receipt of a notice of termination and prior to the effective date of termination, unless the notice otherwise directs or Consultant immediately takes action to cure a failure to perform under the cure period set out herein above, Consultant shall immediately begin the phase-out and the discontinuance of all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after receipt of such notice of termination (unless Consultant has successfully cured a failure to perform) the Consultant shall submit a statement showing in detail the services performed under this Agreement prior to the effective date of termination. The City shall have the option to grant an extension to the time period for submittal of such statement.

Copies of all completed or partially completed specifications and reproducibles of all completed or partially completed plans prepared under this Agreement prior to the effective date of termination shall be delivered to the City as a pre-condition to final payment. These documents shall be subject to the restrictions and conditions set forth in VII above.

Upon the above conditions being met, the City shall promptly pay the Consultant that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less previous payments of the fee.

Failure of the Consultant to comply with the submittal of the statement and documents as required above shall constitute a waiver by the Consultant of any and all rights or claims to collect monies that Consultant may rightfully be entitled to for services performed under this Agreement.

E. Procedures Consultant to Follow upon Receipt of Notice of Suspension

1. Upon receipt of written notice of suspension, which date shall also be the effective date of the suspension, the Consultant shall, unless the notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement.

Consultant shall prepare a statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

Copies of all completed or partially completed plans and specifications prepared under this Agreement prior to the effective date of suspension shall be prepared for possible delivery to the City but shall be retained by the Consultant until such time as Consultant may exercise the right to terminate.

2. In the event that Consultant exercises the right to terminate thirty (30) days after the effective suspension date, within thirty (30) days after receipt by the City of Consultant's notice of termination, Consultant shall submit the above referenced statement showing in detail the services performed under this Agreement prior to the effective date of suspension.

Additionally, any documents prepared in association with this Agreement shall be delivered to the City as a pre-condition to final payment.

Upon the above conditions being met, the City shall promptly pay the Consultant that proportion of the prescribed fee which the services actually performed under this Agreement bear to the total services called for under this Agreement, less previous payments of the fee.

The City, as a public entity, has a duty to document the expenditure of public funds. Consultant acknowledges this duty on the part of the City. To this end, Consultant understands that failure of Consultant to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by the Consultant of any portion of the fee for which Consultant did not supply such necessary statements and/or documents.

IX. Consultant's Warranty

The Consultant warrants that he has not employed or retained any company or person other than a bona fide employee working solely for the Consultant to solicit or secure this Contract, and that he has not for the purpose of soliciting or securing this Contract paid or agreed to pay any company or person, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach of this warranty, the City shall have the right to terminate this contract under the provisions of VIII above.

X. Equal Employment Opportunity/Minority Business Advocacy

The Consultant agrees not to engage in employment practices which have the effect of discriminating against any employee or applicant for employment; and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, the Consultant agrees to abide by all applicable provisions of the Nondiscrimination Clause and the Small Business Economic Development Advocacy Program as contained in the City of San Antonio's current Affirmative Action Plan on file in the City Clerk's Office. In the event non-compliance occurs, the Consultant, upon written notification by the City, will commence compliance procedures within thirty (30) days.

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

Where applicable:

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

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

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

In all events, Consultant shall comply with the City's Small, Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 77758, and the amendments thereto. Said ordinances are incorporated herein for all purposes, as if fully set forth herein.

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

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

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

XI. Assignment or Transfer of Interest

The Consultant shall not assign or transfer Consultant's interest in this Agreement without the written consent of the City.

XII. Insurance requirements

- A. Prior to the commencement of any work under this CONTRACT, CONSULTANT shall furnish a completed Certificate of Insurance to the CITY and 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 CONTRACT until such certificate shall have been delivered to the CITY and the City Clerk's Office, and no officer or employee shall have authority to waive this requirement.
- B. The CITY reserves the right to review the insurance requirements of this section during the effective period of this CONTRACT 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.
- C. A CONSULTANT's financial integrity is of interest to the CITY, therefore, subject to CONSULTANT's right to maintain reasonable deductibles in such amounts as are approved by the CITY, CONSULTANT shall obtain and maintain in full force and effect for the duration of this CONTRACT, and any extension hereof, at CONSULTANT's sole expense, insurance coverage written on an occurrence except professional liability 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 amounts.

| | |
|---|---|
| 1. Workers' Compensation ** Employers' Liability ** | Statutory \$500,000/\$500,000/\$500,000 |
| 2. Commercial General (Public) Liability Insurance to include coverage for the following: a. Premises operations *b. Independent contractors c. Products/completed operations d. Personal Injury e. Contractual Liability *f. Explosion, collapse, underground *g. Broad form property damage, to include fire legal liability | For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage \$50,000 |
| | |

| | |
|--|--|
| 3. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles | Combined <u>Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence |
| 4. Professional Liability (Claims Made Form) | \$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services. |
| * If Applicable | |
| ** Alternate Plans Must Be Approved by Risk Management | |

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 require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). CONSULTANT shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to CITY at the address provided in contract provision XV. herein within 10 days of the requested change. CONSULTANT shall pay any costs incurred resulting from said changes.

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

Name 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 Workers' compensation and professional liability policies;

Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the CITY is an additional insured shown on the policy;

Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the CITY

When there is a cancellation, non-renewal or material change in coverage which is not made pursuant to a request by CITY, CONSULTANT shall notify the CITY of such and shall give such notices not less than thirty (30) days prior to the change, if CONSULTANT knows of said change in advance, or ten (10) days notice after the change, if the CONSULTANT did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance (SEE provision XV. Notices).

If CONSULTANT 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 CONSULTANT to maintain said insurance or secure such endorsement. In addition to any other remedies the CITY may have upon CONSULTANT'S failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order CONSULTANT to stop

work hereunder, and/or withhold any payment(s) which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof. (Note: This is not applicable to Tenants.)

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

It is agreed that CONSULTANT'S insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this contract.

XIII. INDEMNIFICATION

- A. CONSULTANT, whose work product is the subject of this AGREEMENT for professional services agrees to INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may ARISE OUT OF OR BE OCCASIONED OR CAUSED BY CONSULTANT'S NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.
- B. CONSULTANT shall advise CITY in writing within 24 hours of any claim or demand against CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT.
- C. The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.
- D. Acceptance of final plans by CITY shall not constitute nor be deemed a release of the responsibility and liability of CONSULTANT, its employees, associates, agents or subcontractors for the accuracy and competency of their designs, drawings, specifications or other documents and work; nor shall such acceptance be deemed an assumption of responsibility or liability by CITY for any defect in the designs, drawings, specifications or other documents and work prepared by said CONSULTANT, its employees, subcontractors, and agents.

XIV. Severability

If for any reason, any one or more paragraphs of this contract are held invalid, such judgment shall not affect, impair or invalidate the remaining paragraphs of this contract but shall be confined in its operations to the specific section, sentences, clauses or parts of this contract held invalid and invalidity of any section, sentence, clause or parts of this contract in any one or more instance shall not affect or prejudice in any way the validity of this contract in any other instance.

XV. Notices

Unless otherwise expressly provided elsewhere in this AGREEMENT, any election, notice or communication required or permitted to be given under this AGREEMENT shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier.

If intended for CITY, to:

City of San Antonio
Public Works Department
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

If intended for CONSULTANT, to:

M.W. Cude Engineers, LLC
10325 Bandera Rd.
San Antonio, Texas 78250
ATTN: M.W. Cude, P.E., President

XVI. Interest in City Contracts Prohibited

No officer or employee of the City shall have a financial interest, directly or indirectly, 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, the City Water Board, and City boards and commissions other than those which are purely advisory.

All Consultants must disclose if they are associated in any manner with a City Official or employee in a business venture or business dealings. Failure to do so will constitute a violation of the City's Ethics Ordinance (#76933). To be "associated" in a business venture or business dealings Includes being in a partnership or joint venture with the officer or employee, having a contract with the officer or employee, being joint owners of a business, owning at least 10% of the stock in a corporation in which a city officer or employee also owns at least 10%, or having an established business relationship as client or customer.

XVII. Entire Agreement

This Agreement represents the entire and integrated Agreement between the City and Consultant and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by both the City and Consultant.

IN WITNESS WHEREOF, the City of San Antonio has lawfully caused these presents to be executed by the hand of the 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 Consultant, acting by the hand of M.W. Cude, P.E., thereunto authorized President, does now sign, execute and deliver this document.

DONE at San Antonio, Texas, on this _____ day of _____, A. D. 20_____.

CITY:

CONSULTANT:

CITY OF SAN ANTONIO

M.W. CUDE ENGINEERING, LLC

CITY MANAGER Date

Michael W. Cude P.E.
President 10/31/03
Official Title Date

APPROVED AS TO FORM:

CITY ATTORNEY Date

ATTEST BY:

CITY CLERK Date

EXHIBIT 1

SCOPE OF SERVICES – COMPLETION SCHEDULE

General Services

The Consultant shall:

Review the scope of services furnished by the City to ascertain the requirements of the Project and shall review the understanding of such requirements with the City. Provide a preliminary evaluation of the program and the Project budget requirements, each in terms of the other, subject to the limitations such as inflation, competitive market prices, negotiations, etc. Review with the Director alternative approaches to initiation, progression and completion of the Project.

The Consultant shall:

Furnish when necessary all data required by the City for the development of any applications or supporting documents for State or Federal Government permits, grants or planning advances, provided that such data shall not extend beyond that actually developed in the performance of other provisions of this contract.

Prepare detailed specifications, developed as applicable, to the particular project. Advise the Director of any adjustments to previous Statements of Probable Cost indicated by changes in requirements or general market conditions.

The Consultant shall:

Review and take other appropriate action (approve with modifications, reject, etc.) product data and samples, but only for conformance with the concept of the Project and compliance with the information given by the Consultant to the Director. Such action shall be taken with reasonable promptness so as to cause no delay.

Specific Services

1. **Provide a complete set of Plans, Specifications and Estimates (PS&E) for the construction of school flashers, signing and pavement marking to be constructed by City Forces under agreement with the Texas Department of Transportation (TxDOT).**
2. **Prepare individual plan sheets for each location of construction. It is anticipated that approximately twenty (20) locations will be designed.**
3. **Prepare Quantity Summaries, Location Map, General Notes, Index Sheet(s) and Title Sheet in accordance with City and TxDOT standards.**
4. **Incorporate standard detail sheets as provided by the City and required by TxDOT.**
5. **The Consultant shall provide eight (8) sets of plans for the 60 percent and 95 percent review phases and eight (8) copies and one complete mylar original plan set of the final plans.**

EXHIBIT 1 (continued)

SCOPE OF SERVICES – COMPLETION SCHEDULE

The Consultant shall:

Submit plans in accordance with the following schedule:

- **60 percent completion reflecting all individual plan sheets and preliminary quantity estimates within ten (10) weeks following Notice to Proceed**
- **95 percent completion reflecting all required elements of the PS&E package except general notes and final signatures/seals within four (4) weeks of receiving 60 percent plan comments**
- **Final plans within two (2) weeks of receiving 95 percent review comments.**

EXHIBIT 2

COMPENSATION FOR PROFESSIONAL SERVICES

Fee for these services will be an amount not to exceed \$47,900.00 for preparation of the entire PS&E. The Consultant may submit invoices for partial payment prior to submittal of review documents for cumulative amounts not to exceed the percentage of PS&E completion to be submitted and no more frequently than monthly.

City of San Antonio
Discretionary Contracts Disclosure*

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

Attach additional sheets if space provided is not sufficient.

State Not Applicable for questions that do not apply.

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

Disclosure of Parties, Owners, and Closely Related Persons

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

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

NONE

(2) the identity of any **business entity** that would be a party to the discretionary contract;
and the name of: **N/A**

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

NONE

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

NONE

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

NONE

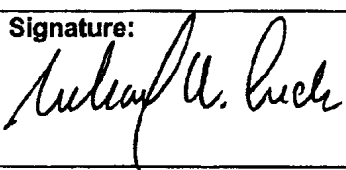
Political Contributions

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

| To Whom Made: | Amount: | Date of Contribution: |
|---------------|---------|-----------------------|
| NONE | NONE | NONE |

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question¹ as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

| | | |
|---|---|-----------------------|
| | | |
| Signature:  | Title: PRESIDENT Company: M.W. CUDE ENGINEERS, L.L.C. | Date: 07-31-03 |

¹ For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

LIST OF SUBCONTRACTORS/SUPPLIERS

The Bidder/Proposer, M.W. CUDE ENGINEERS, L.L.C., as part of the procedure for the submission of bid/proposals on a project known as SAFE ROUTES TO SCHOOL PEDESTRIAN IMPROVEMENTS, submits the following list of subcontractors or proposed subcontracting areas (use additional sheets if necessary) to be used in the performance of work to be done on said project.

| NAME OF SUBCONTRACTOR | MBE-WBE-AABE CERTIFICATION NUMBER | SBE (Y/N) | PERCENT AND DOLLAR AMOUNT OF SUBCONTRACT |
|-----------------------|---|--------------|--|
| N/A | | | |
| | | | |
| | | | |

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

| NAME OF COMPANY PERFORMING WORK | MBE-WBE-AABE CERTIFICATION NUMBER | SBE (Y/N) | REASON FOR REJECTION |
|------------------------------------|---|--------------|-------------------------|
| N/A | | | |
| | | | |
| | | | |

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

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

AFFIRMATION

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

NAME AND TITLE OF AUTHORIZED OFFICIAL: MICHAEL W. CUDE, PRESIDENT

SIGNATURE: *Michael W. Cude, P.E.* DATE: 07-31-03