

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
ECONOMIC DEVELOPMENT DEPARTMENT**

TO: Mayor and City Council

FROM: Ramiro A. Cavazos, Director, Economic Development Department

THROUGH: Terry M. Brechtel, City Manager

COPIES: J. Rolando Bono; Andrew Martin; Milo Nitschke; Peter Zanon; Trey Jacobson; Jim Campbell; Manuel Longoria, Jr.; Orlando Rodriguez; Ed Davis; File

SUBJECT: Funding for the San Antonio Military Missions Task Force

DATE: February 12, 2004

SUMMARY AND RECOMMENDATIONS:

This ordinance authorizes the use of \$125,000 in City funds, appropriated in the FY 2004 budget, to support the San Antonio Military Missions (SAMM) Task Force in its efforts to develop and implement a community-wide strategy for the next round of military base realignment and closure (BRAC) in 2005. This ordinance also authorizes the City Manager to enter into an Agreement with the Greater San Antonio Chamber of Commerce, as administrative agent for the SAMM, for the expenditure of these funds.

Staff recommends approval of this resolution.

BACKGROUND INFORMATION:

In 2001, the Congress authorized a fifth round of BRAC in 2005. Through BRAC, the Department of Defense (DoD) expects to divest itself of unnecessary installation infrastructure and use the savings for improving operational capabilities and quality of life for military forces. To begin the BRAC process, DoD published draft criteria (attached as Exhibit A) on December 26, 2003, for public comment. The final BRAC 2005 criteria will be provided to Congress by February 16, 2004. The proposed criteria gives priority consideration to the military value of missions and bases and on assessing their impact on operational readiness, jointness, and training. In March 2005, the President will nominate a 9-member BRAC Commission, and in May 2005, the Secretary of Defense will submit his closure commendations to the BRAC Commission. By September 2005, the Commission will submit its recommendations to the President, who will in turn submit the list to Congress for approval in whole by December 2005.

In the San Antonio region, there are currently three active military installations including: Fort Sam Houston and Camp Bullis, Randolph Air Force Base (AFB), and Lackland AFB. The military also continues to maintain a significant presence of missions and personnel in leased facilities at KellyUSA and Brooks City-Base. These military missions and bases collectively provide approximately 73,000 local jobs with an annual economic impact of about \$5 billion.

To prepare for BRAC 2005, the City has partnered with the Greater San Antonio Chamber of Commerce and Bexar County to establish the San Antonio Military Missions (SAMM) Task Force. The Task Force has developed a two-year budget (attached as Exhibit B) and is seeking funding from the City, the Greater S.A. Chamber of Commerce, Bexar County, SAWS, CPS and the private sector to help implement a community-wide BRAC strategy. In Fiscal Year (FY) 2004, the SAMM has requested a \$125,000 contribution from the City. These funds will be used to help fund the costs of employing a full-time SAMM Executive Director and staff.

In November 2003, the SAMM Task Force selected Brigadier General John Jernigan (USAF Retired) to be the Executive Director of SAMM. General Jernigan will be responsible for developing and implementing the community's BRAC 2005 strategy. In this capacity, he will provide the City Council Military Affairs Committee with quarterly updates on BRAC activities and coordinate his efforts with the City's Economic Development Department. In addition, General Jernigan will have access to the services of the City's federal lobbyist regarding BRAC issues in coordination with the City's External Relations Department.

POLICY ANALYSIS:

In San Antonio, the military provides over 73,000 jobs and plays a key role in promoting growth in many of our targeted industries, such as healthcare, the biosciences and information technology. BRAC 2005 poses a serious threat to our local bases and missions. For example, the last round of BRAC in 1995 resulted in the closure of Kelly AFB and the loss of 13,000 good-paying jobs. Therefore, the retention and potential expansion of our military bases and missions is a key element of the City's Strategic Plan for Economic Development.

FISCAL IMPACT:

The City's FY 2004 budget includes \$125,000 to support community planning for BRAC 2005. The City will contract (see attached Exhibit C) with the Greater San Antonio Chamber of Commerce, as the administrative agent for the SAMM, to expend these funds in support of the SAMM Task Force.

COORDINATION:

This item has been coordinated with the City Attorney's Office, External Relations Department, Budget, and the Greater San Antonio Chamber of Commerce.



Ramiro A. Cavazos, Director
Economic Development Department



J. Rolando Bono
Deputy City Manager

Approved:



Terry M. Brechtel
City Manager

Attached Exhibits

EXHIBIT A

DRAFT CRITERIA

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Draft Selection Criteria for Closing and Realigning Military Installations
Inside the United States

AGENCY: Office of the Deputy Under Secretary of Defense (Installations and Environment),
DoD.

ACTION: Notice

SUMMARY: This notice publishes the draft selection criteria that will be used by the
Department of Defense to make closure and realignment recommendations that will be reviewed
by the 2005 Defense Base Closure and Realignment Commission.

DATES: Comments should be submitted to the Department of Defense at the address shown
below by January 28, 2004, to be considered in the formulation of the final criteria.

ADDRESSES: Interested parties should submit written comments to: Office of the Deputy
Under Secretary of Defense (Installations & Environment), ATTN: Mr. Peter Potochney,
Director, Base Realignment and Closure, Room 3D814, The Pentagon, Washington DC, 20301-
3300. Please cite this *Federal Register* announcement in all correspondence. Interested parties
may also forward their comments via facsimile at 703-695-1493.

FOR FURTHER INFORMATION, CONTACT:

Mr. Mike McAndrew, Base Realignment and Closure Office, ODUSD(I&E), (703) 614-5356.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Base Closure and Realignment Act of 1990, as amended (the Act), establishes the authority by which the Secretary of Defense may close or realign military installations inside the United States. Section 2913(a) of the Act requires the Secretary of Defense to publish the selection criteria proposed to be used by the Secretary in making recommendations for the closure or realignment of military installations inside the United States by December 31, 2003, for a 30-day public comment period. Section 2913(e) requires the Secretary of Defense to publish the final selection criteria no later than February 16, 2004. The final selection criteria are subject to Congressional disapproval by Act of Congress until March 15, 2004.

B. Relationship to Previous Criteria

Since the 1991 Base Realignment and Closure (BRAC) round, the Department of Defense (DoD) has used the same, publicly accepted, selection criteria to make its closure and realignment recommendations. The Department first published these criteria for public comment in a November 30, 1990 (55 FR 49678) Federal Register notice. Based on comments received, the proposed criteria were appropriately amended. The February 15, 1991, (56 FR 6374) Federal Register notice contained an analysis of public comments received and a description of the changes DoD made to the draft criteria. Having not been disapproved by Congress, the final

criteria were used to make recommendations to the 1991 Defense Base Closure and Realignment Commission. Subsequently, the DoD, in a December 15, 1992 (57 FR 59334) and a December 9, 1994 (59 FR 63769) Federal Register notice, announced that it would use the same final criteria to make recommendations to the 1993 and 1995 Defense Base Closure and Realignment Commissions, respectively.

The Act specifies that the selection criteria shall ensure that military value is the primary consideration in making closure and realignment recommendations. It also lists specific considerations that military value must include and special considerations that the selection criteria must address. The eight criteria proposed for this round were based on the accepted, tested, and proven criteria used in past BRAC rounds. These criteria now incorporate statutory requirements and stress the Department's capabilities based approach to performing missions.

C. Draft Selection Criteria

It is proposed that the Department of Defense use the following criteria in making recommendations for the closure or realignment of military installations inside the United States:

- In recommending military installations for closure or realignment, the Department of Defense will, giving priority consideration to military value (criteria 1-4), consider:

Military Value

1. The current and future mission capabilities and the impact on operational readiness of the Department of Defense's total force, including the impact on joint warfighting, training, and readiness.
2. The availability and condition of land, facilities and associated airspace (including training areas suitable for maneuver by ground, naval, or air forces throughout a diversity of climate and terrain areas and staging areas for the use of the Armed Forces in homeland defense missions) at both existing and potential receiving locations.
3. The ability to accommodate contingency, mobilization, and future total force requirements at both existing and potential receiving locations to support operations and training.
4. The cost of operations and the manpower implications.

Other Considerations

5. The extent and timing of potential costs and savings, including the number of years, beginning with the date of completion of the closure or realignment, for the savings to exceed the costs.
6. The economic impact on existing communities in the vicinity of military installations.

7. The ability of both the existing and potential receiving communities' infrastructure to support forces, missions, and personnel.
8. The environmental impact, including the impact of costs related to potential environmental restoration, waste management, and environmental compliance activities.

D. Previous Federal Register References

1. 55 FR 49678, November 30, 1990: Proposed selection criteria and request for comments.
2. 55 FR 53586, December 31, 1990: Extend comment period on proposed selection criteria.
3. 56 FR 6374, February 15, 1991: Published selection criteria and analysis of comments.
4. 57 FR 59334, December 15, 1992: Published selection criteria.
5. 59 FR 63769, December 9, 1994: Published selection criteria

L. M. BYNUM

Alternate OSD Federal Register Liaison Officer

Department of Defense

December 18, 2003

EXHIBIT B

BUDGET

San Antonio Military Missions Task Force
Proposed Budget

Sources of Revenue

<u>Revenue Sources</u>	<u>2003 thru 2004</u>
Private Sector	\$125,000
City	125,000
County	50,000
SAWS	25,000
CPS	<u>50,000</u>
Sub-Total	\$375,000

Uses of Funds (Note)

<u>Budget Item</u>	<u>2003 thru 2004</u>
Business Case Development	\$ 90,000
Full-time Employees (2)	
Salary	170,000
Overhead Costs	48,000
Travel/Hearings	35,000
Site Visits	10,000
Contingency Fund	<u>22,000</u>
Sub-Total	\$375,000 (Note)

Note: Includes \$30,100 expended in 2003

EXHIBIT C

CONTRACT AGREEMENT

STATE OF TEXAS

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§
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**AGREEMENT TO USE FUNDS OF
THE CITY OF SAN ANTONIO**

COUNTY OF BEXAR

This Agreement ("AGREEMENT") is hereby made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "CITY"), a Texas municipal corporation acting by and through its City Manager pursuant to Ordinance No. _____, dated February __, 2004 and the Greater San Antonio Chamber of Commerce (hereinafter referred to as "CONTRACTOR"), acting by and through its Board of Directors, and duly authorized Chairman on behalf and as an administrative and financial agent of the San Antonio Military Missions Task Force ("SAMM"). However, when reference is made in this AGREEMENT to "CONTRACTOR" it is understood that the San Antonio Military Missions Task Force is also being named and may be held responsible, jointly and severally with the Greater San Antonio Chamber of Commerce, for any and all obligations, duties, and defaults stated herein.

WHEREAS, the United States Congress has ordered a Base Realignment and Closure ("BRAC") Commission for the year 2005; and

WHEREAS, it is the Commission's charge to select military installations to be reviewed for cost efficiency and management and to eliminate unnecessary infrastructure and costs and generate savings to improve military capabilities and quality of life for troops which includes making recommendations as to whether installations should be closed or its missions realigned and relocated; and

WHEREAS, in preparation for BRAC 2005, the San Antonio Military Missions Task Force ("SAMM") was established by CITY, CONTRACTOR, Bexar County, and community leaders for the purpose of focusing on implementing a community-wide strategy to minimize the impact of BRAC 2005 on the City of San Antonio; and

WHEREAS, CONTRACTOR agrees by the execution of this AGREEMENT to act as SAMM's administrative and financial agent and to act on behalf of SAMM and to ensure SAMM's compliance with all requirements of this AGREEMENT; and

WHEREAS, CITY has provided certain funds from its General Fund for use by CONTRACTOR on behalf of SAMM and has adopted a budget for the expenditure of such funds, including an allocation of funds for use by CONTRACTOR as a one-time allocation from the CITY's adopted budget; and

WHEREAS, CITY designates its Economic Development Department as the City Department, acting for its City Manager, responsible for the evaluation and monitoring of this AGREEMENT (hereinafter referred to as "CITY's RESPONSIBLE DEPARTMENT"). The Department of Finance and other City departments will function in a supporting role; and

WHEREAS, CITY now wishes to engage CONTRACTOR to carry out the purpose and intent of the SAMM on behalf of SAMM meeting such objectives as described in EXHIBIT A of this Contract; **NOW THEREFORE**:

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

I. GENERAL PROVISIONS

1. CONTRACTOR is an organization of San Antonio businesses governed by a Board of Directors with the mission of advocating for all of its members and the area

business community the building and sustaining of a diverse and prosperous economy.

2. CONTRACTOR, along with CITY, community leaders and other area governments, has taken part in the creation of the SAMP for the purpose of preparing the City for the Base Realignment and Closure ("BRAC") Commission of 2005 whose purpose is to implement a community-wide strategy for limiting the effects of the BRAC Commission on area military installations thereby protecting economic interests of the City.
3. CONTRACTOR agrees by the execution of this AGREEMENT to act as the administrative and financial agent for the SAMP, ensuring compliance with any and all provisions of this AGREEMENT and accepting administrative and fiscal responsibility for the use and documentation of expenditures of funds provided by CITY.
4. CONTRACTOR represents, warrants, assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this AGREEMENT and to perform the responsibilities herein required.
5. The signer of this AGREEMENT for CONTRACTOR represents, warrants, assures and guarantees that he or she has full legal authority to execute this AGREEMENT on behalf of CONTRACTOR and to bind CONTRACTOR to all terms, performances and provisions herein contained.
6. In the event that a dispute arises as to the legal authority of either the CONTRACTOR, or the person signing on behalf of CONTRACTOR, to enter into this AGREEMENT, CITY shall have the right, at its option, to either temporarily suspend or permanently terminate this AGREEMENT. Should CITY suspend or permanently terminate this AGREEMENT pursuant to this paragraph, however, CONTRACTOR shall be liable to CITY for any money it has received from CITY for performance of any of the provisions hereof.
7. The CONTRACTOR understands that the funds provided it pursuant to this AGREEMENT are funds which have been made available by CITY's General Fund and CONTRACTOR will, therefore, comply with all rules, regulations, policies and procedures applicable to these funds as directed by CITY.
8. CONTRACTOR and CITY agree that CONTRACTOR is an independent contractor, that CONTRACTOR shall be responsible to all parties for its respective acts and omissions, and that CITY shall in no way be responsible therefore, and that neither has authority to bind the other, or hold out to third parties that it has the authority to bind the other.
9. CONTRACTOR understands and agrees that this AGREEMENT is subject to mutual termination. Therefore, either party shall have the option of terminating this AGREEMENT by giving the second party no less than thirty- (30) days written notice. Such notice shall specify the effective date of termination, which date shall not be sooner than the end of thirty (30) days following the day on which such notice is sent. If either party exercises the option of terminating this AGREEMENT any and all unused funds either allocated and in possession of CONTRACTOR or unallocated and in the possession of CITY shall be the sole property of CITY and CITY shall have the right to: (1) reclaim any and all funds unused but distributed to CONTRACTOR under the terms of this AGREEMENT; or (2) retain any and all funds allocated but not distributed to CONTRACTOR.

10. CONTRACTOR understands and agrees that this AGREEMENT may be revised and updated by and at the discretion of the City Council of the City of San Antonio. Therefore, CONTRACTOR agrees that, at such time as any revisions are so made during the term hereof, this AGREEMENT will be amended to include such revisions. In the event CONTRACTOR does not agree to any changes, CONTRACTOR shall have the option of terminating this AGREEMENT by giving thirty (30) days written notice to CITY. CONTRACTOR shall have the right to exercise such option within thirty (30) days of receipt of notice of any such revisions.
11. CONTRACTOR understands and agrees that this AGREEMENT is subject to a general reduction in funding. If and when CITY implements a reduction in General Fund expenditures, agreements funded by CITY's General Fund, including this AGREEMENT, may, at CITY's option, be reduced in a like manner. CITY will attempt to provide CONTRACTOR with as much advance notice of a potential funding reduction as is possible to allow CONTRACTOR to make budget adjustments.
12. In no event shall CITY be liable for any expense of CONTRACTOR not eligible or allowable hereunder, and in no event shall employees of CONTRACTOR be deemed to be employees of CITY.
13. Should CONTRACTOR fail to fulfill in timely and proper manner obligations under this AGREEMENT, as determined solely by the Director of the City's RESPONSIBLE DEPARTMENT or if CONTRACTOR should violate any of the covenants, conditions, or stipulations of this AGREEMENT, CITY shall have the right to terminate this AGREEMENT by sending written notice to CONTRACTOR of such termination and specifying the effective date thereof, which date shall not be sooner than the end of thirty (30) days following the day on which such notice is sent.
 - a. Previous breach of any of the terms or conditions herein shall not be construed as a waiver of same nor preclude CITY's termination right for successive breach of the same condition.
 - b. Notwithstanding the above, CONTRACTOR shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this AGREEMENT and CITY may withhold funds otherwise due as damages.
 - c. In addition to the above provisions, the City Council shall have the right to terminate this Agreement at any time upon a finding by ordinance that CONTRACTOR's activities, programs or operations no longer are in the best interest of the City of San Antonio or its citizens. Adequate provisions shall be made for CONTRACTOR to be heard by the City Council prior to voting on such an ordinance. The effective date of the termination shall be set in the ordinance.
14. Should this AGREEMENT be terminated by either party for any reason and the program objectives not fully completed as stated in Section II of this AGREEMENT as determined solely by CITY after consultation with CONTRACTOR, CONTRACTOR shall refund any and all sums of money paid by CITY to CONTRACTOR.
15. Except as otherwise provided for pursuant to the provisions hereof, this Agreement shall begin on October 1, 2003 and shall terminate on September 30, 2004.

16. CONTRACTOR shall establish and use internal accounting and administrative controls to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action and to prevent frauds and program abuse. City shall review Contractor's system of internal administrative and accounting controls, as it deems necessary to ensure financial responsibility.
17. CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon any other agreement or understanding for a commission, percentage, brokerage, or contingent fee, and further that no such understanding or agreement exists or has existed, with any employee of CONTRACTOR or CITY.
18. CONTRACTOR may use funds provided hereunder either directly or indirectly as a contribution in order to obtain any federal funds under any federal program that is consistent with the program objectives herein, upon prior written approval by CITY's RESPONSIBLE DEPARTMENT.
19. CONTRACTOR is required to publicly acknowledge that the City of San Antonio is supportive of the objectives as described in EXHIBIT A and has contributed to the cause of realizing such objectives.
20. CONTRACTOR acknowledges that this contract cannot be assigned without the express written consent of CITY.
21. CONTRACTOR shall not use funds from this contract for purposes other than those listed in Section II of this Contract without prior written consent of the CITY's RESPONSIBLE DEPARTMENT.

II. SCOPE OF SERVICES

1. CONTRACTOR shall utilize up to one hundred twenty-five thousand dollars (\$125,000.00) for the funding or partial funding of SAMM staff salaries and benefits. These funds shall be advanced and distributed to CONTRACTOR in two separate amounts, the first in the amount of seventy-five thousand dollars (\$75,000.00) to be distributed soon after the effective date of a duly passed ordinance by the City Council of the City of San Antonio authorizing the execution of this AGREEMENT. The second distribution shall be in the amount of fifty thousand dollars (\$50,000.00) to be distributed by July 31, 2004 provided that CONTRACTOR fulfills the following requirements:
 - a. CONTRACTOR shall provide CITY's RESPONSIBLE DEPARTMENT with proper documentation verifying receipt of year 2004 funding commitments from all other specified sources for SAMM as described in Exhibit 1.
 - b. CONTRACTOR shall provide quarterly updates to the City Council Military Affairs Committee.
 - c. CONTRACTOR shall provide CITY's RESPONSIBLE DEPARTMENT quarterly budget reports outlining contributions and expenditures (to include all sources of funding).
 - d. CONTRACTOR submits all required and requested documents to CITY's RESPONSIBLE DEPARTMENT for proper review of SAMM expenditures and activities. Any requests for Fiscal Year 2005 funding

must be submitted to CITY' s RESPONSIBLE DEPARTMENT by June 1, 2004.

2. In consideration of funds received under this AGREEMENT, CONTRACTOR through SAMM shall accomplish the following goals in preparation for BRAC 2005:
 - a. Develop and implement a BRAC 2005 strategy to include timelines for Fiscal Year 2004
 - b. Facilitate a coordinated community effort to respond to BRAC 2005;
 - c. Promote the military value of installations located in San Antonio;
 - d. Support the privatization efforts of military installations;
 - e. Encourage federal and state agencies to locate on current and former military installations;
 - f. Facilitate progress at Brooks City-Base;
 - g. Promote continued military medical partnerships;
 - h. Help attract new military missions to San Antonio; and
 - i. Coordinate activities with the State of Texas Military Preparedness Commission.

In addition CONTRACTOR agrees to coordinate all BRAC activities with CITY's RESPONSIBLE DEPARTMENT, to include any and all trips made by SAMM for the purpose of preparing for BRAC 2005.

3. In addition to CITY' s monetary contribution it is understood that CONTRACTOR shall have access to CITY' s federal lobbyist, at no cost, provided that such access is coordinated through CITY' s External Relations Office for issues related to BRAC 2005.
4. The City's Economic Development Department is assigned monitoring responsibility of this AGREEMENT. CONTRACTOR will provide CITY's staff, including internal auditors, EEO officers and other persons as designated by CITY, such as independent public accountants and representatives of the federal government, access during regular business hours, as deemed necessary by CITY for the purposes of auditing, monitoring, evaluating, coordinating, investigating and making excerpts and/or copies of any and all of CONTRACTOR's books, records and files on the objectives covered by this AGREEMENT. CONTRACTOR understands that CITY may require any and all books, records and files of CONTRACTOR necessary to ensure CONTRACTOR's compliance and use of generally accepted governmental accounting principles.
 - a. All such records shall continue to be available for inspection and audit for a period of three (3) years after the termination date hereof. However, if during the course of this three-year period, an audit or investigation of the CONTRACTOR begins, then CONTRACTOR is required to maintain said records until such time as the audit or investigation is completely finished.
 - b. CONTRACTOR agrees that during the term of this AGREEMENT, any duly authorized representative of CITY's RESPONSIBLE DEPARTMENT shall have the right to conduct on-site inspections at reasonable times and to interview personnel and clients for the purposes of evaluating and monitoring the objectives for compliance with this AGREEMENT.
 - c. The submission of falsified information or the failure to timely submit all information by CONTRACTOR as requested by CITY is grounds for termination of this AGREEMENT.

- d. CONTRACTOR agrees to provide CITY with the names and license registration of any and all contracting agency employees regulated by State law whose activities contribute towards, facilitate or coordinate the performance of this AGREEMENT.
5. CONTRACTOR agrees to abide by the CITY's current Ethics Code or any amendment or revisions thereto. However, CITY acknowledges that this requirement is only enforceable on CONTRACTOR staff funded by this AGREEMENT. CONTRACTOR will establish safeguards to prohibit anyone whose position is funded or partially funded by this AGREEMENT from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or those with whom they have family, business or other ties. CITY may, at its option, cancel this AGREEMENT for any violation of this section.
6. CONTRACTOR agrees to establish internal procedures that assure employees funded or partially funded by this AGREEMENT of an established complaint and grievance policy.
 - a. Such grievance policy will include procedures to receive, investigate and resolve complaints and grievances in an expeditious manner.
 - b. In the event no complaint and grievance policy has been established, CONTRACTOR will follow the procedures outlined in the San Antonio Municipal Civil Service rules in regards to employees funded or partially funded by this AGREEMENT.

III. FISCAL MANAGEMENT

1. In consideration of services provided, CITY will contribute to CONTRACTOR funds for expenses associated with staffing the SAMM office. Specifically salary and benefits for full-time positions as described in Exhibit A. It is specifically agreed that the contribution hereunder shall not exceed the amount of one hundred and twenty-five thousand dollars (\$125,000.00).
2. An accounting system using generally accepted accounting principles for governmental entities which accurately reflects all costs chargeable (paid and unpaid) to this AGREEMENT is mandatory.
3. CONTRACTOR will establish an account in a commercial bank as a depository for receipt and expenditure of all funds provided hereunder. A separate account shall be maintained for funds under this AGREEMENT to assure separation of funds, unless otherwise approved by the CITY's RESPONSIBLE DEPARTMENT.
4. No fees may be charged to or donations requested from participants in any CITY-funded agreement without the prior written approval of the CITY's RESPONSIBLE DEPARTMENT.
5. **TO THE EXTENT PERMITTED BY LAW, CONTRACTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon the CITY, directly or indirectly arising out of, resulting from or related to**

CONTRACTOR's activities under this AGREEMENT, including any negligent acts or omissions of CONTRACTOR, any agent, officer, director, representative or employee of CONTRACTOR while in the exercise or performance of the rights or duties under this AGREEMENT, all without, however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall promptly advise the CITY in writing of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at CONTRACTOR's expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph 8. Furthermore, CONTRACTOR will, by separate contract or lease restrictions, require any of its subcontractors, consultants and/or future commercial tenants to indemnify the CITY against the consequences of any of said subcontractor's, consultant's and/or future commercial tenant's negligent actions or omissions.

6. Upon completion or termination of the objectives as described in this AGREEMENT any unused funds, rebates or credits must immediately be returned by CONTRACTOR to CITY.
7. CONTRACTOR shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this AGREEMENT and CITY may withhold funds otherwise due as damages.
8. Should any expense or charge that has been paid with funds from this AGREEMENT be subsequently disapproved or disallowed as a result of any site review or audit, CONTRACTOR will immediately refund such amount to CITY. CONTRACTOR further authorizes CITY, if CITY so elects, to deduct such amount or charge as a claim against future payments. The CITY's RESPONSIBLE DEPARTMENT has the express authority to deduct such claims from subsequent reimbursements.
9. Audit Conditions and Requirements:
 - a. CITY, a political entity, unlike a business for profit, is more interested in knowing if agencies have accomplished or achieved the objectives as stipulated in their contracts and/or agreements, as opposed to certifications that the Balance Sheet fairly represents the financial position at a given date. Therefore, it is essential that City is made aware of progress made upon this AGREEMENT. Following 30 days after a written request by City, Contractor shall submit a written report stating what has been accomplished to date and the most current percentage of completion of the total contract that has been performed.
 - b. It is imperative any auditor performing an audit of CONTRACTOR read the entire contract, including all attachments, between the CITY and CONTRACTOR, since the budget and financial compliance of the contract is only a portion of the total contractual obligation.
 - c. All CITY-funded contracts and agreements, including this AGREEMENT, are subject to periodic audits at any reasonable hour of the day by CITY

auditors. This includes the auditing of both the Contractor and subcontractors related to this AGREEMENT.

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

10. CONTRACTOR understands and agrees to abide by and adhere to applicable federal, state and CITY provisions regarding financial accounting..

IV. INSURANCE REQUIREMENTS

1. CONTRACTOR shall furnish a completed Certificate of Insurance to CITY's RESPONSIBLE DEPARTMENT, with a copy sent to Risk Management and the City Clerk's Office, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. CITY shall have no duty to pay or perform under this AGREEMENT until such certificate is delivered to CITY's RESPONSIBLE DEPARTMENT, Risk Management, and the City Clerk's Office. No CITY officer or employee shall have authority to waive this requirement.
2. CITY reserves the right to review the insurance requirements of this section during the effective period of this AGREEMENT and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by the CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance will the CITY allow modification whereupon the CITY may incur increased risk.
3. A CONTRACTOR's financial integrity is of interest to the CITY, therefore, subject to CONTRACTOR's right to maintain reasonable deductibles in such amounts as are approved by the CITY, CONTRACTOR shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at CONTRACTOR's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to the CITY, in the following types and minimum amounts:

<u>TYPE</u>	<u>AMOUNT</u>
a. Workers' Compensation	Statutory
b. Employers' Liability	\$500,000.00/\$500,000.00/\$500,000.00
c. Commercial General (public) Liability Insurance to include coverage for the following:	
(1) Premises/Operations	
(2) Independent contractors	<u>Bodily Injury and</u>
(3) Products/completed operations	<u>Property Damage of</u>
(4) Contractual liability	\$1,000,000.00 per occurrence
(5) Broad form property damage, to include fire legal liability	
(6) Personal Injury	
d. Excess Liability (umbrella form) (Excess liability insurance shall follow the form of the Primary insurance).	\$5,000,000.00 each occurrence and \$5,000,000.00 aggregate
e. Business Automobile Liability	
(1) Owned/leased vehicles	<u>Combined Single Limit for</u>
(2) Non-owned vehicles	<u>Bodily Injury and Property</u>
(3) Hired vehicles	<u>Damage of 1,000,000.00 per</u>
	occurrence or its equivalent.
f. Errors and Omissions Policy	\$1,000,000.00

4. At least annually on the anniversary date of this Agreement, CONTRACTOR and the CITY's Risk Manager will meet to mutually determine the appropriate CONTRACTOR insurance coverage limits based upon actual and anticipated redevelopment implementation activities for the upcoming year. Any unresolved disputes will be referred to the CITY Council for final determination. CITY and its officers, employees and elected representatives individually or collectively will be named as "Additional Insureds" on the CONTRACTOR's commercial general liability policy.
5. The CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by CITY, the CONTRACTOR shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.
6. CONTRACTOR agrees that with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.
 - a. Name CITY and its officers, employees, and elected representatives as "Additional Insureds" as respects to operations and activities of, or on behalf of, the named insured performed under contract with CITY, with the exception of the errors and omissions, workers' compensation, commercial crime policies, and E & L policies;

- b. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where CITY is an additional insured shown on the policy;
 - c. Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of CITY.
7. CONTRACTOR shall notify the CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the CITY at the two (2) following address:

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

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

8. If CONTRACTOR fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under this AGREEMENT; however, procuring of said insurance by the CITY is an alternative to other remedies the CITY may have, and is not the exclusive remedy for failure of CONTRACTOR to maintain said insurance or secure such endorsement. In addition to any other remedies CITY may, upon CONTRACTOR's failure to provide and maintain any insurance or policy endorsements and to the extent and within the time herein required, have the right to order CONTRACTOR to stop work hereunder, and/or withhold any payment(s) which become due, to CONTRACTOR hereunder until CONTRACTOR demonstrates compliance with the requirements hereof.

V. EQUAL EMPLOYMENT OPPORTUNITY POLICY

- 1. CONTRACTOR agrees to post in a conspicuous place available to employees and applicants for employment funded or partially funded under this AGREEMENT, notices to be provided by the contracting officer setting forth the provisions of this Nondiscrimination Clause.
- 2. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive fair consideration for employment without regard to race, color, national origin, religion, sex, age, disability, or political belief or affiliation.
- 3. CONTRACTOR agrees to affirmatively abide by and cooperate in the implementation of the policies and practices set forth in this Nondiscrimination Clause and any additional policies as may be required as a result of local, state or federal initiatives. CONTRACTOR will furnish all information and reports requested by CITY and will permit access to books, records and accounts for purpose of review and investigation to ascertain compliance with such rules and regulations.
- 4. In the event of CONTRACTOR's failure or refusal to comply with this Nondiscrimination Clause, this AGREEMENT may be canceled, terminated or suspended in whole or in part, and CONTRACTOR may be debarred from further contracts with CITY.

VI. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

1. CONTRACTOR further represents and warrants that:
 - a. All information, data or reports heretofore or hereafter provided to CITY shall be and shall remain complete and accurate as of the date shown on the information, data or report, and that since said date shown, shall not have undergone any significant change without written notice to CITY;
 - b. Any supporting financial statements heretofore or hereafter provided to CITY are, shall be and shall remain complete, accurate and fairly reflective of the financial condition of CONTRACTOR on the date shown on said statements and during the period covered thereby, and that since said date shown, except as provided by written notice to CITY, there has been no material change, adverse or otherwise, in the financial condition of CONTRACTOR;
 - c. No litigation or proceedings are presently pending or threatened against CONTRACTOR or if pending have been disclosed by CONTRACTOR in writing to CITY;
 - d. None of the provisions contained herein contravene or in any way conflict with the authority under which CONTRACTOR is doing business or with the provisions of any existing indenture or agreement of CONTRACTOR;
 - e. CONTRACTOR has the legal authority to enter into this AGREEMENT and accept payments hereunder, and has taken all necessary measures to authorize such execution of contract and acceptance of payments pursuant to the terms and conditions hereof; and
 - f. None of the assets of CONTRACTOR are subject to any lien or encumbrance of any character, except as shown in the financial statements provided by CONTRACTOR to CITY.

VII. LEGAL/LITIGATION EXPENSES

1. Under no circumstances will the funds received under this AGREEMENT or any other funds received from CITY be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the CITY. CONTRACTOR must obtain the written approval of the City Attorney's Office before any funds received under this AGREEMENT may be used in any adversarial proceeding against any other governmental entity or any other public entity.
2. During the term of this AGREEMENT, if CONTRACTOR files and/or pursues an adversarial proceeding against the CITY then, at the CITY's option, this Contract and all access to the funding provided for hereunder may terminate if it is found that CONTRACTOR has violated this Article.
3. CONTRACTOR, at the CITY's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the CITY remains unresolved.
4. For purposes of this Article, "adversarial proceedings" include any cause of action filed by the CONTRACTOR in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

VIII. CHANGES AND AMENDMENTS

1. Except when the terms of this AGREEMENT expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and CONTRACTOR.
2. It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.
3. CONTRACTOR agrees to notify CITY in writing of any proposed change in physical location for work to be performed pursuant to the terms of THIS AGREEMENT. Such notice shall be provided by CONTRACTOR to CITY at least thirty (30) calendar days in advance of the proposed change.
4. CONTRACTOR further agrees to notify CITY of any changes in personnel or governing board composition, such notice to be provided within five (5) working days of the change.

IX. SEVERABILITY OF PROVISIONS

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

X. NON-WAIVER OF PERFORMANCE

1. No waiver by CITY of a breach of any of the terms, conditions, covenants or guarantees of this AGREEMENT shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of CITY to insist in any one or more cases upon the strict performance of any of the covenants of this AGREEMENT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this AGREEMENT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged.
2. No act or omission of CITY shall in any manner impair or prejudice any right, power, privilege, or remedy available to CITY hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.
3. No representative or agent of CITY may waive the effect of the provisions of this Article.

XI. SPECIAL CONDITIONS

All CONTRACTOR invoices for eligible expenditures pursuant to this AGREEMENT must be submitted to CITY's RESPONSIBLE DEPARTMENT by CONTRACTOR no later than ninety (90) days after CONTRACTOR incurring the expense.

XII. ENTIRE AGREEMENT

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

XIII. NOTICE

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

CITY:

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

CONTRACTOR:

Director
Greater Chamber of Commerce
602 E. Commerce St.
San Antonio, Texas 78205

and

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

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

XIV. PARTIES BOUND

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

XV. GENDER

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

XVI. RELATIONSHIP OF PARTIES

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

XVII. TEXAS LAW TO APPLY

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

XVIII. CAPTIONS

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

EXECUTED IN DUPLICATE ORIGINALS this _____ day of _____ 2004.

CITY OF SAN ANTONIO

GREATER CHAMBER OF
COMMERCE

Rolando Bono
Deputy City Manager

Joseph R. Krier
President & CEO

ATTEST:

ATTEST:

Acting City Clerk

APPROVED AS TO FORM:

Andrew Martin
City Attorney