

AGENDA ITEM NO. 25

**CITY OF SAN ANTONIO  
INTERDEPARTMENTAL MEMORANDUM  
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, Malcolm Matthews, Aubrey George , Peter Zandoni, Milo D. Nitschke, and file

**SUBJECT:** Julia Yates Semmes Branch Library at Comanche Lookout Park

**DATE:** May 13, 2004

**SUMMARY AND RECOMMENDATIONS**

This ordinance accepts the best qualified responsive offer, awards a construction contract in the negotiated base amount of \$2,846,805, accepts Additive Alternates Numbered 1, 5, 6 and 10 in the total amount of \$176,000 and accepts negotiated Additive Alternates Numbered 3, 4, 7 and 8 in the total amount of \$197,510 for a total contract amount of \$3,220,315 payable to FMG Contracting Company, LLC, a MBE, authorizes \$150,000 for construction contingency expenses, and amends the Professional Architectural Services Agreement of Rehler, Vaughn & Koone, Inc. in the amount of \$75,000 for additional architectural services, for an overall total of \$3,445,315. Of the total amount of \$3,445,315, \$2,733,203 will be funded from General Obligations of the City and \$712,112 are available from the Library Foundation in connection with the Julia Yates Semmes Branch Library at Comanche Lookout Park project located in Council District 10.

This ordinance shall become effective immediately upon eight (8) affirmative votes. Staff recommends approval of this ordinance.

**BACKGROUND INFORMATION**

This ordinance will authorize a contract with FMG Contracting Company, LLC for the construction of a new 15,875 square foot Branch Library and for the completion of the site development and the required utilities. This facility and related improvements will be located on a 6.6-acre site and a portion of the Comanche Lookout Park fronting Judson Road at Nacogdoches.

The design and development of this project included partnering and cooperative funding efforts by various City departments as well as community participation in, and contribution to the planning efforts for the project. The design of the library has been integrated with the Parks and Recreation Department's Comanche Park Improvements, Phase II project. Through the funding efforts of the Library Board of Trustees and the Library Foundation, additional features will be added to the basic project. These enhancements were advertised as Additive Alternates to the project and will include the

extension of the building roof to create covered outdoor educational and recreational space, additional landscaping, courtyard areas, display cabinets to contain donated archeological pieces and collections, and sustainable design engineering and energy conservation measures to include dimmable lighting and specialized HVAC control systems as well as rain and condensation water harvesting systems. The construction contingency includes an allowance for the possible addition of an exterior children's discovery area. The library and the park will share parking areas, as well as a community meeting facility within the library. This project will be completed in July of 2005.

This ordinance also amends the professional services agreement with Rehler Vaughn & Koone, Inc. and provides funds in the amount of \$75,000 for additional design services and construction administration as described in more detail in the consultant's proposal, included herein as Attachment 9. This agreement was approved by Ordinance Number 96782 on November 21, 2002 authorizing \$220,000 for design services and \$20,000 for miscellaneous contingency expenses. This ordinance will increase the total authorized for this professional services contract to \$315,000.

On October 23, 2003, through Ordinance Number 98358, City Council granted authority to the Director of Public Works to implement the Competitive Sealed Proposal project delivery method for certain projects, including the Julia Yates Semmes Branch Library at Comanche Lookout Park project. This award of a construction services contract will be the second under the Competitive Sealed Proposal method of project delivery.

This Project was advertised as requesting Competitive Sealed Proposals in the Commercial Recorder, the San Antonio Informer, and La Prensa in January 2004. In addition, the announcement was made on TVSA, through the SBEDA Office and Dodge Report. Plans were also available for review by potential respondents in the Public Works Office. Thirteen (13) Competitive Sealed Proposals were received and were opened on February 18, 2004.

Under this solicitation method, staff evaluates the proposals and selects the "best qualified" offeror based on price, experience, quality of work, team qualifications and compliance with the City's Small Business Economic Development Advocacy Program. The Contractor Evaluation Review Summary is included herein as Attachment 3. The selection of the contractor/team is based on the discretion and evaluations of the twelve-person committee rather than on the submission of the lowest bid. From this evaluation process the City has realized the following advantages:

- The most qualified firm has been selected for the construction project;
- Involvement of the Economic Development Department's Small Business Outreach Office ensured consideration of small, minority and women-owned businesses;
- As price represented 40% of the evaluation criteria, and through subsequent value engineering and negotiations with the contractor, the City obtained a lower cost than any of the original proposals offered;
- Higher quality proposals were received as submission of a Competitive Sealed Proposal involves more commitment and serious consideration of the project by potential contractors;
- Thirteen proposals were received, an average number of responses for this type of project, enabling the committee members to select from a broad field of proposals.

The Economic Development Department participated in the selection of FMG Contracting Company, LLC, and the contractor was given 17 points out of a maximum score of 20 as a locally headquartered, small and minority-owned business. FMG Contracting Company, LLC currently has no construction contracts with the City of San Antonio through the Public Works Department. From the information submitted regarding the Contractor's previous projects in the Qualification Statement, the project consultant was able to complete a thorough background investigation and past performance indicates that the contractor is capable of completing this project in a satisfactory and timely manner.

### **POLICY ANALYSIS**

Approval of this ordinance will be a continuation of City Council policy to complete previously approved 1999-2004 General Obligation Library Improvement Bond, 1999-2004 General Obligation Park Improvement Bond and Certificates of Obligation funded Capital Improvement Projects.

### **FISCAL IMPACT**

This is a one-time capital improvement expenditure within budget and included in the FY 04-09 Capital Improvement Program Budget. Of the total amount of \$3,445,315, funds in the amount of \$507,315 are available from Certificates of Obligation, funds in the amount of \$2,075,888 are available from 1999-2004 General Obligation Library Improvement Bonds, funds in the amount of \$150,000 are available from 1999-2004 General Obligation Park Improvement Bond funds, and funds in the amount of \$712,112 are available from the Library Foundation and are authorized payable as follows:

\$3,220,315.00	payable to FMG Contracting Company, LLC for construction expenses
\$ 150,000.00	payable for miscellaneous construction contingency
\$ 75,000.00	payable to Rehler Vaughn & Koone, Inc. for additional architectural services

### **COORDINATION**

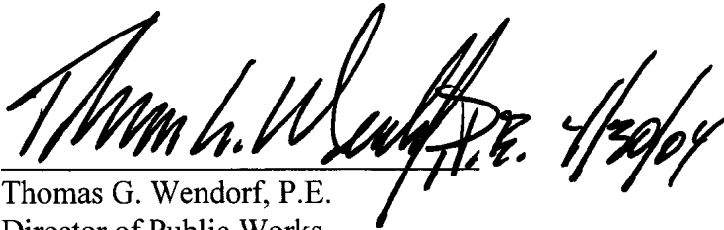
This request for ordinance has been coordinated with the Office of Management and Budget, the Library Department, the Parks and Recreation Department and the Finance Department.

### **SUPPLEMENTARY COMMENTS**

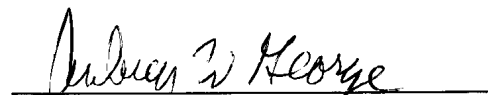
The required Discretionary Contracts Disclosure Forms are attached.

## ATTACHMENTS

1. Project Map
2. Competitive Sealed Proposal Offering Tabulation Matrix
3. Contractor Evaluation Review Summary
4. Description of Alternates
5. Discretionary Contracts Disclosure Forms
6. Litigation Disclosure Form
7. Proposal, FMG Contracting Company, LLC
8. Contract, FMG Contracting Company, LLC
9. Proposal, Rehler Vaughn & Koone, Inc.



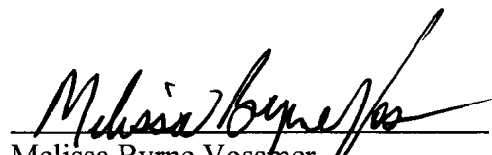
Thomas G. Wendorf, P.E.  
Director of Public Works



Aubrey George  
Acting Library Director




Malcolm Matthews  
Director of Parks and Recreation

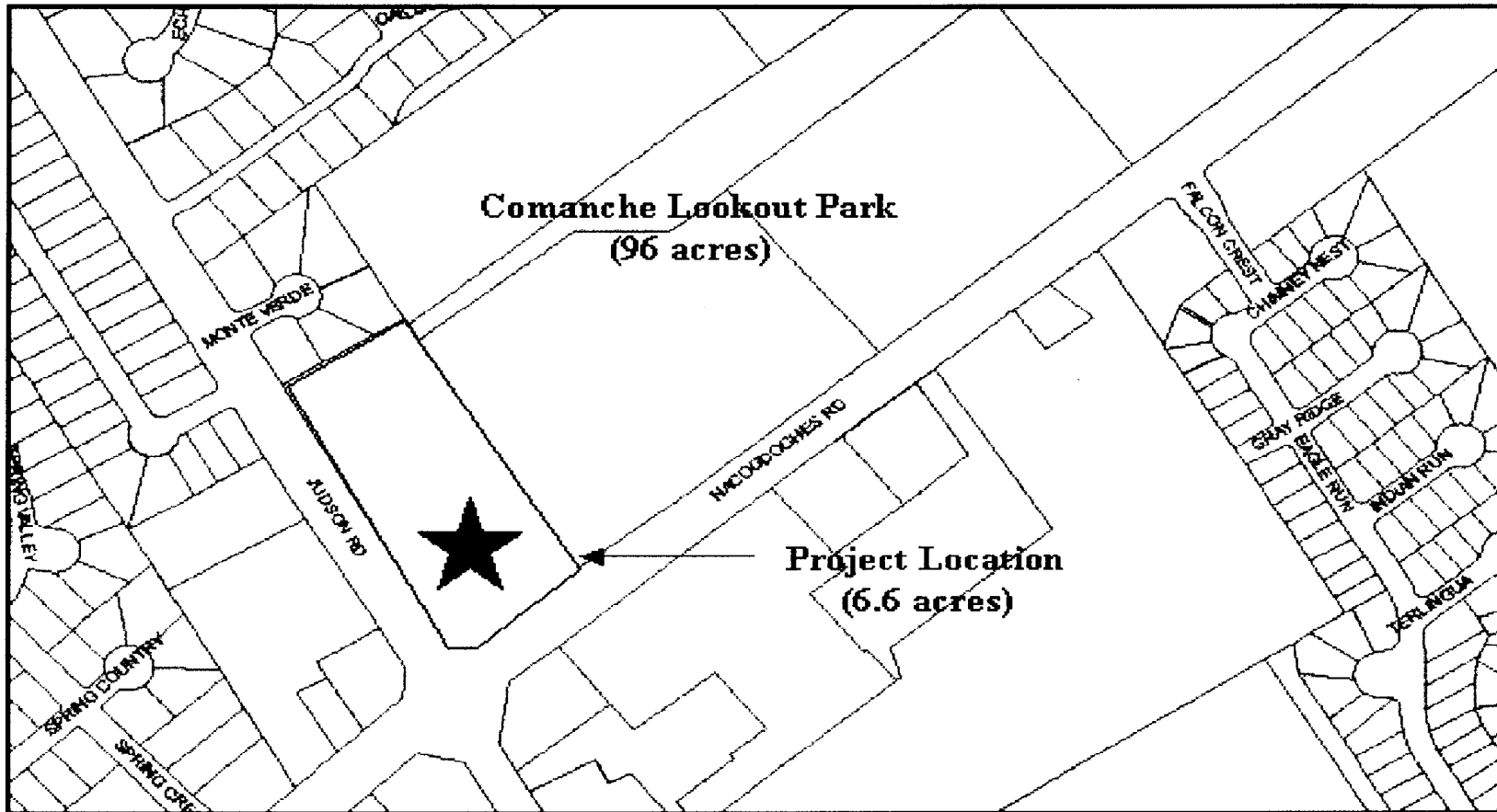


Melissa Byrne Vossner  
Assistant City Manager

Approved:



Terry M. Brechtel  
City Manager



Comanche Lookout Branch Library  
at Comanche Lookout Park  
15800 Nacogdoches Road  
Council District No. 10

G.I.S. Location Map



### Proposal Tabulation for J.L. Semmes Branch Library at Comanche Outlook Park (Feb. 18, 2004)

General Contractor	Base Proposal	Alt. #1 Roof Extension	Alt. #2 Courtyard under roof	Alt. #3 Courtyard extension (includes Alt. #2)	Alt. #4 Extend Landscape	Alt. #5 Light Dimming System	Alt. #6 Water Harvesting System	Alt. #7 Water Condensation System	Alt. #8 HVAC Controls	Alt. #9 Children's Discovery Area	Alt. #10 Display Cabinets	Total of Alternates	Total Base and Alternates
FMG Contracting	\$2,990,000	\$63,000	\$39,000	\$113,000	\$110,000	\$40,000	\$70,000	\$32,000	\$50,000	\$5,000	\$3,000	\$447,000	\$3,437,000
Negotiated Amounts	\$2,846,805	accepted	included in Alt. #3	\$103,500	\$81,510	accepted	accepted	\$7,500	\$5,000	not accepted (included in contingency)	accepted	\$373,510	\$3,220,315
Greco Const.	\$3,085,000	\$65,000	\$52,000	\$152,000	\$50,000	\$52,000	\$65,000	\$11,000	\$44,000	\$5,000	\$4,000	\$396,000	\$3,533,000
Valemas, Inc	\$2,982,000	\$70,670	\$25,905	\$139,991	\$159,019	\$43,298	\$41,429	\$24,840	\$63,193	\$5,750	\$13,012	\$535,297	\$3,543,202
FA Nunnally	\$3,100,000	\$76,000	\$60,000	\$238,000	\$110,000	\$41,000	\$55,000	\$7,500	\$20,000	\$5,500	\$9,200	\$502,200	\$3,662,200
CA Landry Partners	\$3,076,250	\$80,000	\$63,700	\$251,000	\$113,500	\$40,800	\$61,700	\$7,100	\$58,700	\$5,300	\$5,000	\$559,400	\$3,699,350
Constructors Assoc.	\$3,224,000	\$65,000	\$87,000	\$205,000	\$127,000	\$40,000	\$54,000	\$20,000	\$25,000	\$5,000	\$9,000	\$463,000	\$3,774,000
Eaton Contracting	\$3,220,000	\$76,000	\$88,000	\$280,000	\$50,000	\$40,000	\$110,000	\$20,000	\$20,000	\$5,000	\$4,200	\$517,200	\$3,825,200
W.L. Boldt GC	\$3,270,000	\$69,000	\$54,000	\$251,000	\$120,000	\$38,000	\$62,000	\$6,600	\$16,700	\$5,400	\$8,200	\$522,900	\$3,846,900
Affirmed GC	\$3,425,000	\$75,000	\$110,000	\$180,000	\$49,000	\$37,000	\$30,000	\$20,000	\$29,000	\$5,000	\$6,500	\$321,500	\$3,856,500
Suburban Const.	\$3,235,000	\$74,000	\$93,000	\$243,000	\$172,000	\$41,000	\$68,000	\$9,500	\$49,000	\$6,000	\$8,000	\$577,500	\$3,905,500
Amstar, Inc.	\$3,430,000	\$70,500	\$90,000	\$183,000	\$133,750	\$45,000	\$46,800	\$12,950	\$34,500	\$5,000	\$9,350	\$450,850	\$3,970,850
All Constr.	\$3,550,000	\$81,632	\$58,904	\$215,659	\$141,867	\$41,400	\$73,980	\$24,687	\$18,055	\$5,000	\$8,533	\$551,909	\$4,160,813
W.R. Griggs	\$3,720,000	\$66,000	\$53,000	\$169,000	\$110,000	\$44,000	\$133,000	\$8,200	\$49,500	\$14,400	\$10,200	\$551,300	\$4,324,300

**Julia Yates Semmes Branch Library at Comanche Lookout Park  
Competitive Sealed Proposal Process  
CONTRACTOR QUALIFICATIONS EVALUATION SUMMARY  
CITY OF SAN ANTONIO**

[illegible]

## **Accepted Alternates**

**Attachment 4**

Alternate No. 1: Add Roof Extension-this alternate allows for an exterior covered area for multi use learning activities..... \$ 63,000.00

Alternate No. 5: Add Light Dimming System-this alternate allows for computer controlled light dimming system which dims indirect ceiling light fixtures in response to solar intensity from glass wall adjacent to fixtures. .... \$ 40,000.00

Alternate No. 6: Add Water Harvesting System- this alternate provides gutters and downspouts to direct roof drainage to landscaping ..... \$ 70,000.00

Alternate No. 10: Add display cabinets- this alternate provides Wood veneer display cabinets ..... \$ 3,000.00  
**Subtotal** **\$176,000.00**

### **Negotiated Alternates (Initial proposal amount \$305,000.00)**

Alternate No.3, Negotiated: Add Courtyard Extension- this alternate Provides Additional hardscape, retaining wall and landscaping materials. Negotiated scope eliminates one of the two stairs leading down from the library courtyard to the park and associated side walls, lights, handrails and walkways. (deduct \$17,990. From initial proposal amount of \$113,000.)..... \$ 95,010.00

Alternate No. 4, Negotiated: Add Landscaping- this alternate provides Additional landscaping turf, shrubs and trees, boulder walls and Irrigation system. Negotiated scope reduces the amount of landscape material, reduces the caliper size of the trees from 2" to 1-1/2" and reduces the number of stone boulders. (deduct \$20,000. from initial proposal amount of \$110,000.) ..... \$ 90,000.00

Alternate No. 7, Negotiated: Add Condensation Harvesting System-this alternate collects and stores condensation from mechanical units to supplement landscaping watering needs. No reduction in scope. Adjustment of price by contractor, who did not understand what was included in the alternate at the time of initial proposal submittal. (deduct \$24,500. from initial proposal amount of \$32,000.00) \$ 7,500.00

Alternate No. 8: Add HVAC Controls System-this alternate provides for energy efficient control operation of mechanical units. No reduction in scope. Adjustment of price by contractor, who did not understand what was included in the alternate at the time of initial proposal submittal (deduct \$45,000.from initial proposal amount of \$50,000.00)..... \$ 5,000.00

**Subtotal** **\$197,510.00**

**Total for Alternates \$375,510.00**

Note: Alternate No. 2, Courtyard extension scope is included in Alternate No. 3 and Alternate No.9, Children's discovery area \$5,000. allowance will be included in the construction contingency



**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;

N/A

(2) the identity of any business entity that would be a party to the discretionary contract:  
\_\_\_\_\_an  
d the name of:

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

N/A

(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;

N/A

(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.

N/A

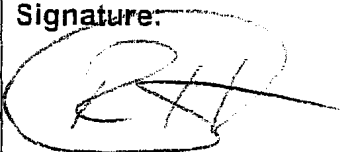
### Political Contributions

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:
N/A		

### 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 question<sup>1</sup> 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: FMG Contracting Co., LLC	Date: 2/18/04

<sup>1</sup> 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.

## 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.

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

N/A

(2) the identity of any business entity<sup>1</sup> that would be a party to the discretionary contract:

Rehler Vaughn & Koone, Inc.

and the name of:

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

Lundy & Franke Engineers, Inc.  
ms2, Inc.

(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;

N/A

<sup>1</sup> A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

**Discretionary Contracts Disclosure**

- (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.

N/A

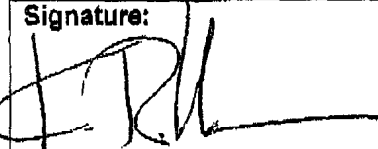
**Political Contributions**

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:
John Clamp Campaign (KMW)	\$100.00	2/21/04
Friends of Toni Moorhouse (DB)	\$100.00	2/28/04
John Clamp Campaign (DB)	\$100.00	2/28/04
Friends of Toni Moorhouse (KMW)	\$100.00	3/04/04
Robert Aguillon (KMW)	\$100.00	3/04/04
Carroll Schubert (KMW)	\$100.00	3/11/04
Thomas Aguillon (DB)	\$100.00	3/16/04
Josh Copeland (DB)	\$100.00	3/16/04
Carroll Schubert (GV)	\$1000.00	2/16/04

**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 question<sup>2</sup> 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.

<b>Signature:</b> 	<b>Title: President</b> Ken Rehler  <b>Company: Rehler Vaughn &amp; Koone, Inc.</b>	<b>Date:</b>  April 20, 2004

<sup>2</sup> 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 careful consideration of whether or not recusal is required.

## LITIGATION DISCLOSURE

Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your proposal from consideration or termination of the contract, once awarded.

1. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Circle One

YES

NO

2. Have you or any member of your Firm or Team been terminated (for cause or otherwise) from any work being performed for the City of San Antonio or any other Federal, State or Local Government, or Private Entity?

Circle One

YES

NO

3. Have you or any member of your Firm or Team been involved in any claim or litigation with the City of San Antonio or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Circle One

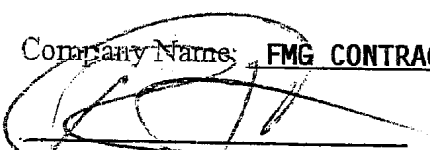
YES

NO

If you have answered "Yes" to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.

TO THE BEST OF MY KNOWLEDGE, THE ABOVE INFORMATION IS TRUE AND CORRECT.

Company Name: FMG CONTRACTING CO., LLC

  
Signature of Principal:

Roland E. Garcia  
Printed Name of Principal:

President  
Title of Principal

5/31/02

Section 00301  
**PROPOSAL FORM TO THE  
CITY OF SAN ANTONIO, TEXAS  
FOR THE CONSTRUCTION OF**

**Julia Yates Semmes Branch Library**

**IN SAN ANTONIO, TEXAS**

The undersigned, as Offeror, declares that the only person or parties interested in this Proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm, corporation; that Offeror has carefully examined the Project Manual, the form of contract, Request for Competitive Sealed Proposal, and the plans therein referred to, and has carefully examined the locations, conditions and classes of materials of the proposed work; and agrees that the Offer will provide all the necessary machinery, tools, apparatus, and other means of construction, and will do all the work and furnish all the materials called for in the Project Manual and plans in the manner prescribed therein and according to the requirements of the Director of Public Works as therein set forth.

It is understood and agreed that the work is to be completed in full on or before **Three Hundred Sixty (360)** calendar days.

Accompanying this Proposal is a Proposal Guaranty in the amount of **Five Percent (5%)** of the total proposal. Said Proposal Guaranty, in the form of a Certified or Cashier's Check on a State or National Bank, or Proposal Bond, is submitted as a guaranty of the good faith of the Offeror and that the Offeror will execute and enter into a written contract to do the work, if his proposal is accepted. The Offeror by submitting this completed form hereby agrees that if he/she fails to execute the written contract and furnish satisfactory bond, within ten (10) calendar days after City Council award, the City of San Antonio shall, in any of such events, be entitled and is hereby given the right to retain said Proposal Guaranty as liquidated damages. It is understood that the City of San Antonio reserves the right to reject any and all proposals whenever the City Council deems it in the interest of the City to do so, and also the right to waive any informalities in a proposal.

In the event of the award of a contract to the undersigned, the undersigned will execute same on Construction Contract (General Form) and make performance and payment bonds for the full amount of the contract, to secure proper compliance with the terms and provisions of the contract, and to insure and guarantee the work until final completion and acceptance or the end of the guarantee period where so stipulated, and to guarantee payment of all lawful claims for labor performed and materials furnished in the fulfillment of the contract.

The work proposed to be done shall be accepted when fully completed and finished to the entire satisfaction of the Director of Public Works.

The undersigned certifies that the proposal prices contained in this proposal have been carefully checked and are submitted as correct and final.

Offeror is:

☐ A sole proprietorship;

☐ A partnership composed of \_\_\_\_\_

and \_\_\_\_\_

**Limited Liability Co.**

☒ A ~~corporation~~ chartered under the laws of the State of Texas, acting by its officers pursuant to its by-laws or a resolution of its Board of Directors. (affix seal)

FMG Contracting Co., LLC by Roland E. Garcia

Name of Bidder

By: \_\_\_\_\_

Signature

Date

ATTEST:

Adrian E. Garcia

Vice- President

Title

**I. BASE BID**

Amount of Base Bid (Insert Amount in Words and Numbers):

\$ 2,990,000.<sup>00</sup> Two million, nine hundred ninety thousand

**II. ALTERNATES**

Amount of each Alternate insert in Numbers:

1. Roof Extension Cost	Amount Added: \$ <u>63,000.<sup>00</sup></u>
2. Courtyard	Amount Added: \$ <u>39,000.<sup>00</sup></u>
3. Courtyard Extension	Amount Added: \$ <u>113,000.<sup>00</sup></u>
4. Extended Landscaping	Amount Added: \$ <u>110,000.<sup>00</sup></u>
5. Light Dimming System	Amount Added: \$ <u>40,000.<sup>00</sup></u>
6. Water Harvesting System	Amount Added: \$ <u>70,000.<sup>00</sup></u>

7. Condensation Harvesting System	Amount Added: \$	<u>32,000.<sup>00</sup></u>
8. HVAC Controls System	Amount Added: \$	<u>50,000.<sup>00</sup></u>
9. Children's Discovery Area	Amount Added: \$	<u>5,000.<sup>00</sup> (FIVE THOUSAND)</u>
10. Display Cabinets	Amount Added: \$	<u>3,000.<sup>00</sup></u>

### III. UNIT PRICES

Amount of each Unit Price insert in Numbers:

#### UNIT PRICE SCHEDULE

##### Drilled Footings

Unit prices for drilled footing shall be based on the difference between actual depth vs. base bid depth (shown on drawings), treating each footing individually. Refer to Section 02362 for additional requirements.

##### 1. Greater Depth

Unit price per linear foot of excavation, steel and concrete in place:

18" diameter shaft: \$ 15.<sup>00</sup> / FOOT

##### 2. Lesser Depth

Unit price per linear foot of excavation, steel and concrete in place:

18" diameter shaft: \$ 11.<sup>00</sup> / FOOT

The unit price for lesser depth shall not be less than 75% of the unit price for greater depth.

##### Casing

Base bid price shall include casing of all piers to depth of 25 feet below grade.

##### 3. Greater Casing Depth

Unit price for each 5 foot increment of casing depth:

18" diameter shaft: \$ 60.<sup>00</sup>

##### 4. Lesser Casing Depth

Unit price for each 5 foot increment of casing depth:

18" diameter shaft: \$ 60.<sup>00</sup>

##### 5. Deletion of Casing

Price deduction for each footing determined not to require casing:

18" diameter shaft: \$ 300.<sup>00</sup>



FMG Contracting Co.,LLC


Official Name of Company (legal)

3401 S. Gevers, #1

Address

San Antonio, TX 78210

City, State and Zip Code

  
2/18/04

(210) 534-4504

Telephone No.

(210) 534-1104

Fax No.

FMG @satx.rr.com

E-mail Address

**Proposal Form Attachment A**

**Certification of Non-Collusion**

"The undersigned affirms that they are duly authorized to execute the proposed contract, that this company, corporation, firm, partnership or individual has not prepared this Proposal in collusion with any other Offeror, and that the contents of this Proposal as to prices, terms or conditions of said Proposal have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this Proposal

By: Roland E. Garcia

(Print or Type Name)

President

(Print or Type Title/Position with Business)



(Signature)

2/10/04

(Date )

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

**CONTRACT FOR  
JULIA YATES SEMMES BRANCH LIBRARY**

**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

**FMG Contracting Co., LLC  
3401 S. Gevers #1  
San Antonio, Texas 78210**

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

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

**A. DEFINITIONS & SCOPE OF CONTRACT**

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

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

3. **INCLUDED INSTRUMENTS.** The notice to Contractors, project manual/specifications including any Special and General Conditions, plans, instructions to offerors, requests for proposals advertisement for proposals, the proposal form, and the construction bond, payment bond, and other bonds, if any, made by the Contractor, the Charter, Ordinances and Resolutions of the City, all in so far as prepared for or relating to said work herein undertaken are hereby made a part of this agreement and are included in this contract as if rewritten or copied in full herein, and shall be deemed "included instruments" when that term is used. This document and the included instruments taken together constitute the contract between the parties and may be referred to herein as the "Contract".

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

5. **SCOPE OF CONTRACT AND SPECIAL PROVISIONS FOR SUPERVISION OF WORK.** It is contemplated that this contract shall be used as a general form of construction contract for public works projects and for some of said work independent consulting Architects or Engineers may be engaged, their identity and capacity shall be

designated herein; however, Contractor understands that City may remove such consultant as provided in the terms of its contract relationship with the latter, and the Director of Public Works shall, in such event, be vested with all powers

formerly exercised by such consultant, provided written notice of such substitution shall be immediately served on the Contractor in writing. Nothing herein shall authorize independent agreements between Contractor and such Engineer or Architect, nor shall the latter be deemed to bear a legal relationship to either Contractor or City other than as evidenced by the City's contract with such consultant.

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

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

**3401 S. Gevers #1      San Antonio, Texas 78210**

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

**8. PREVAILING WAGE RATE AND GENERAL LABOR CONDITIONS.** The Provisions of Chapter 2258, Texas Government Code, are expressly made a part of this contract. In accordance therewith, a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform this contract is included in the project manual and made a part hereof. The Contractor shall forfeit as a penalty to the City sixty dollars (\$60.00) for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the contractor or any sub-contractor under him. The establishment of prevailing wage rates pursuant to Chapter 2258, Texas Government Code shall not be construed to relieve the Contractor from his obligation under any Federal or State Law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed hereunder. The Contractor, in the execution of this project, agrees that he shall not discriminate in his employment practices against any person because of race, color, creed, sex or origin. The Contractor agrees that he/she will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation. In addition, Contractor agrees that he/she will abide by all applicable terms and provisions of the Nondiscrimination Clause and the City of San Antonio's Small Business Economic Development Advocacy (SBEDA) Program on file in the City Clerk's Office.

9. **ASSIGNMENTS AND SUBLETTING.** Contractor shall not assign, transfer, convey, sub-let or otherwise dispose of this contract, or any portion thereof, or any right, title or interest in, to or under the same, without previous consent in writing of the City, to be endorsed hereon or hereto attached; and Contractor shall not assign by power of attorney or otherwise any of the monies or other considerations to become due and payable by the City under this contract; unless by and with the consent signified in like manner. And in any event whatsoever, whether by such consent, by operation or law or otherwise, any and all such assignments, transfers or sub-letting, and the entire subject matter thereof, shall be and remain subject to all rights of the City herein or otherwise provided, and no waiver of this stipulation can be invoked against the City. In no event shall the City be liable in excess of the consideration of this contract in the case of any such assignment, transfer, conveyance or sub-letting of the work or performance which is the subject hereof. The City reserves the right to withhold any monthly payment hereafter provided for in the event of an assignment or sub-letting of a portion of the work without the consent and knowledge of the City and by reserving such right, the City shall not be deemed to have waived its right to declare a full breach of this contract for Contractor's failure to comply with provisions hereof, such remedy being alternative only and exercisable at the option of the City.

## **B. SCOPE OF WORK**

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

**JULIA YATES SEMMES BRANCH LIBRARY  
15060 Judson Rd. San Antonio, Texas 78247**

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

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

**REHLER VAUGHN & KOONE, INC.**

and now on file in the Public Works Department; and according to field interpretations to be furnished Contractor by the City upon request. If figures or quantities of materials, supplies or other items needed for this project are furnished in the plans and project manual/specifications, same shall be understood to be estimates only and the Contractor shall be responsible for any discrepancies between such estimates and the quantities required.

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

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

5. **INCIDENTAL WORK, CONNECTIONS AND PASSAGEWAYS.** The Contractor shall do and perform all implied or incidental work necessary to completion of this contract including, but not by way of limitation, the following:

- a) make and provide all suitable connections with existing improvements as are necessarily implied herein for proper completion of the project;
- b) provide passageways or leave open such thoroughfares in the work area as may be required by the City;
- c) protect and guard same at his own risk as more specifically detailed in Paragraph E-1 hereof;

- d) continuously maintain the work area in a clean and workman-like manner; and
- e) prior to final acceptance of the work, restore the site to its prior condition to the extent permitted by the improvement.

All of said incidental work to be done to the satisfaction of the City at Contractor's own cost and expense.

**6. WORK AND MATERIALS.** All materials used by the Contractor shall conform to the project manual/specifications. However, if the project manual/specifications are silent, only the best quality materials shall be used, and in the event of dispute as to the relative quality of materials, the selection of the Director of Public Works shall be final. All of said work shall be executed in a good, thorough and workman-like manner, to the satisfaction of the Director of Public Works, who, together with all assistants and inspectors under his direction, or in the employ of the City for the purpose of said work, shall at all times have free access to the project site, stores and materials, and shall be privileged to take such samples of all materials and to cause tests of materials or of any part of the work to be made except as otherwise provided in the specifications. Contractor shall render all assistance required of him by the Director of Public Works or his aforementioned assistants or inspectors in connection with any such tests, and if any part of the work or the materials used shall be found unsuitable or improper, either wholly or in part, Contractor shall correct or remove such defective work or materials from the project site. In connection with the visual inspection or materials testing contemplated herein, it is clearly understood that the City exercises no right to control the means of accomplishing the end product of the work and no approval of any phase of the construction project by any of the City's agents or inspectors shall relieve the Contractor from full compliance with the specifications regarding the ultimate work product and any additional cost or delay occasioned by defects in the work or failure to meet specifications at any such phase shall be borne by the Contractor.

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

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

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

#### **2. COMPLETION OF WORK.**

a. Calendar Day Contract -- After beginning work as outlined in Paragraph C-1 above, the Contractor shall prosecute same continuously and diligently for and during the period of **THREE HUNDRED SIXTY (360) CALENDAR DAYS**, during which period of time Contractor binds and obligates himself at all times to employ sufficient force and diligence to complete said structures, work and improvements, and to deliver same over to the City in a completed, undamaged, and clean condition; and the time of beginning, rate of progress and time of completion of said work are hereby declared and understood to be of the essence of this contract; provided, however, said Director of Public Works may suspend said work wholly or in part by his written order whenever in his opinion the interests of the City require the suspension of such work, such orders not to continue in effect longer than one week at any one time. The City may, at its discretion, establish phases of the project or areas of the work to be performed and in such order or sequence as the City shall deem best in the public interest.

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

**3. DAMAGES FOR DELAY.** If Contractor shall fail to complete the work within the time herein specified or otherwise allowed therefor, he shall be liable for the wages of any inspector or inspectors employed by the City on said

4. work at the rate of one hundred dollars (\$100.00) per day per inspector from the end of said time allowed for the completion of the work, until actual completion thereof; and in addition to said wages of inspectors, the following sums per day for the period of such delay shall be paid or allowed by Contractor to City or be deducted by the City on final estimate and settlement, not as a penalty, but as liquidated damages due to City for expense, loss and public inconvenience resulting from failure to complete said work within the time allowed, such time of completion being an essential element and consideration, as a result of such delay:

<u>For Amount of Contract</u>	<u>Amount of Liquidated Damages per Day</u>
\$1,000,001 or over	\$700.00
\$ 750,001 to \$1,000,000	\$600.00
\$ 500,001 to \$ 750,000	\$500.00
\$ 250,001 to \$ 500,000	\$400.00
\$ 100,001 to \$ 250,000	\$300.00
\$ 50,001 to \$ 100,000	\$200.00
\$ 1 to \$ 50,000	\$100.00

The amount of all such damage shall be fixed and determined by the written certificate of Director of Public Works, whose judgment shall be final disposition thereof.

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

5. **NO WAIVER OF CITY'S RIGHTS.** Neither the inspection nor approval by said Director of Public Works or any inspector, officer or employee of the City, nor any order, measurement or certificate by said Director of Public Works, nor any estimate or payment by the City for any part of said work, or material or method or equipment, nor any extension of time, nor any possession of the work or place taken by the City, or any officer or employee thereof at any time before final acceptance, shall operate as a waiver of any provision or obligation of this contract or of any right or power herein given or reserved to said City, or of any right to claim any indemnity or damages herein provided for; nor shall any waiver of any breach of this contract be deemed as a waiver of any other or subsequent breach; and every right or remedy under this contract or included instruments shall be cumulative, and in addition to all other rights and remedies.

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

#### D. PAYMENT

1. **PRICES AND CONSIDERATIONS.** In consideration of the faithful performance of this contract and the construction, completion, and delivery of said structures, work and improvements, the City of San Antonio agrees and shall be and is hereby bound and obligated to pay at the office of the Director of Finance of the City of San Antonio, in Bexar County, Texas, to the Contractor as hereinafter provided out of its fund \_\_\_\_.

the following sum or amount or amounts, or prices, to-wit:

MATERIAL:	_____	DOLLARS (\$
SERVICES :	_____	DOLLARS (\$
TOTAL :	THREE MILLION, TWO HUNDRED TWENTY THOUSAND, THREE HUNDRED FIFTEEN	
	AND 00/100	DOLLARS (\$3,220,315.00)

*This amount includes negotiated Base Proposal, accepted and negotiated Alternates as identified in Attachment A.*

the same being the amount or amounts or prices for said work named in the proposal of Contractor, attached hereto as an included instrument.

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

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

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

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

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



## **E. INDEMNIFICATION**

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

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

## **F. INSURANCE**

1. The following types of insurance shall be furnished for the duration of the project, and two copies of Certificates of Insurance showing compliance with the provisions of this paragraph shall be furnished to the Department of Public Works prior to or at the time this contract is executed by the Contractor and before a Notice to Proceed (Work Order) is issued.

a. General Insurance, Commercial General (Public) Liability, Builder's Risk and Business Automobile, Builder's Risk Insurance Coverage shall be carried as specified in the Included Documents.

b. Worker's Compensation Insurance Coverage -- Statutory, \$500,000.00 each occurrence.

### **A. Definitions:**

Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services"

does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) obtain from each other person with whom it contracts, and provide to the Contractor:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

The City shall be named as an additional insured in all coverage described above in paragraph a, above.

In the submission of the Certificates of Insurance, the insurance company in every case must agree to providing notice of cancellation of any insurance to the City ten (10) days prior to such cancellation of policies covered by the certificates.

#### **G. BONDS**

1. **PERFORMANCE BOND.** Contractor hereby agrees to execute with sureties and deliver to the City, at once, a "Performance Bond" in accordance with Chapter 252, Texas Local Government Code, in the total amount of the contract price, \$3,220,315.00, approved by the City as to form and sufficiency, conditioned that Contractor shall faithfully perform, observe and comply with all the terms, conditions and stipulations, undertakings and provisions of the contract, said Performance Bond to be attached hereto as an included instrument.

2. **PAYMENT BOND.** Contractor hereby agrees to execute with sureties and to delivery to the City, at once, a "Payment Bond" in accordance with Chapter 252, Texas Local Government Code, in an amount at least equal to the contract price, such as shall be satisfactory to the City as to form and sufficiency, as security for the payment of all persons supplying labor and material in the prosecution of the work provided for in this contract; said Payment Bond to be attached hereto as an included instrument.

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

## **H. COMPLIANCE WITH FEDERAL REGULATIONS**

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

## **I. INTEREST IN CITY CONTRACT PROHIBITED**

1. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or service, except on behalf of the City as an officer or employee. Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the City and/or City agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of Land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity; a business entity in which any individual or entity above-listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

## **J. GENERAL PROVISIONS**

1. **MERGER.** This document and included instruments is the entire contract and recites the full consideration between the parties, there being no other written or parol agreement; it being understood that the Charter of the City of San Antonio requires all of its contracts to be written and made by ordinance.
2. **CHOICE OF LAWS, VENUE.** This Contract shall be construed under the laws of the State of Texas.
3. **CONSTRUCTION OF TERMS.** The headings preceding the text of the paragraphs hereof are inserted solely for the convenience of reference and shall not constitute a part of this Contract, nor shall they affect its meaning, construction or effect. The use herein of the singular number shall be deemed to include the plural and vice versa, and the use hereof of the masculine shall be deemed to mean the feminine or neuter and vice versa, wherever the sense of this contract so requires.
4. **SEVERABILITY.** If any term or provisions of this contract, or the application thereof, shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this contract, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, but rather shall be enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, said City of San Antonio has lawfully caused these presents to be executed by 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 Contractor, acting by **Roland E. Garcia** thereunto duly authorized **President** does now sign, execute and deliver this instrument.

EXECUTED in San Antonio, Texas on \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_.

(CITY SEAL)

**CITY OF SAN ANTONIO**

ATTEST: \_\_\_\_\_  
City Clerk

(CORPORATE SEAL)

ATTEST: \_\_\_\_\_  
Secretary

BY: \_\_\_\_\_  
City Manager

**FMG CONTRACTING CO., LLC**

BY:  4/30/04  
\_\_\_\_\_  
**ROLAND E. GARCIA, PRESIDENT**

PERFORMANCE BOND

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

Know all men by these presents:

1. That we **FMG Contracting Co., LLC**, a Limited Liability Co. under the State of Texas, acting by and through **Roland E. Garcia, President**, as Principal, and \_\_\_\_\_

as Sureties, do hereby acknowledge ourselves to be held and firmly bound unto the City of San Antonio, a municipal corporation of the County of Bexar and State of Texas in the sum of **\$3,220,315.00** for payment of which sum well and truly to be made in and unto said City of San Antonio, we do hereby bind and obligate ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally:

2. THE CONDITIONS OF THIS BOND, HOWEVER, ARE SUCH THAT WHEREAS, the said **FMG CONTRACTING CO., LLC**

hereinafter called Contractor or Principal, has made and does this day make and enter into a certain contract in writing with said City of San Antonio, for the construction and completion for said City of certain structures, work and improvements generally described as **JULIA YATES SEMMES BRANCH LIBRARY** and for the performance and observance of diverse other matters and things in connection with said work; all as more fully described in said contract and its included instruments which are expressly made a part of this obligation.

3. NOW THEREFORE, if Contractor, the principal party to this obligation shall faithfully construct and complete said structures, work and improvements, and shall observe, perform and comply with all the terms, conditions, stipulations, undertakings and provisions of said contract and all included instruments, according to their intent and purpose insofar as the same relate to or are incident to the construction and completion of said structures, work and improvements then and thereupon this obligation shall be and become null and void, but otherwise to remain in full force and effect; and it is hereby further understood and agreed that this bond shall be a continuous obligation against the principal and each member of said principal party hereto, and each and all sureties hereon, and that successive recoveries may be had hereon for each and every breach of this bond until the full amount thereof shall have been exhausted; and the liability of the sureties on this bond shall not be in any manner released or diminished by any changes in the work which may be authorized or directed by the City, nor by the exercise or failure to exercise by or on behalf of the City any right or remedy provided by the contract or specifications or by any law or ordinance.

4. It is further understood that this obligation is incurred pursuant to Chapter 2253 of the Texas Government Code, and that this obligation is for the benefit and sole protection of all persons supplying labor and materials in the prosecution of said contract.

5. IN TESTIMONY WHEREOF, witness our hands and the seal of any incorporated surety hereon this

\_\_\_\_\_ day of \_\_\_\_\_ A.D. 20 \_\_\_\_\_.

5. The foregoing bond is approved and accepted

**FMG CONTRACTING CO., LLC**

this \_\_\_\_\_ day of \_\_\_\_\_  
20 \_\_\_\_\_

By

\_\_\_\_\_  
**ROLAND E. GARCIA, -PRESIDENT**

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Surety

(SEAL)

By

\_\_\_\_\_  
Address of Surety for Service

PAYMENT BOND

STATE OF TEXAS )  
COUNTY OF BEXAR ) Know all men by these presents:  
CITY OF SAN ANTONIO )

1. That we **FMG Contracting Co., LLC**, a Limited Liability Co. under the State of Texas, acting by and through **Roland E. Garcia, President**,

as Principal, and \_\_\_\_\_  
as Sureties, do hereby acknowledge ourselves to be held and firmly bound unto the City of San Antonio, a municipal corporation of the County of Bexar and State of Texas in the sum of **\$3,220,315.00** for payment of which sum well and truly to be made in and unto said City of San Antonio, we do hereby bind and obligate ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally:

2. THE CONDITIONS OF THIS BOND, HOWEVER, ARE SUCH THAT WHEREAS, the said  
**FMG CONTRACTING CO., LLC**

hereinafter called Contractor or Principal, has made and does this day make and enter into a certain contract in writing with said City of San Antonio, for the construction and completion for said City of certain structures, work and improvements generally described as

**JULIA YATES SEMMES BRANCH LIBRARY**

and for the performance and observance of diverse other matters and things in connection with said work, and, interalia, therein entered into covenants and agreements to promptly pay all persons supplying labor, materials and services in the prosecution of the work provided for in said contract; all as more fully described in said contract and its included instruments which are expressly made a part of this obligation;

3. NOW THEREFORE, if Contractor, the Principal party to this obligation shall promptly make payment to all persons supplying labor and materials in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation shall be and become null and void, but otherwise to remain in full force and effect: and it is hereby further understood and agreed that this bond shall be a continuous obligation against the principal and each member of said principal party hereto, and each and all sureties hereon, and that successive recoveries may be had thereon for each and every breach of this bond until the full amount thereof shall have been exhausted; and the liability of the sureties on this bond shall not be in any manner released or diminished by any changes in the work which may be authorized or directed by the City, nor by the exercise or failure to exercise by or on behalf of the City any right or remedy provided by the contract or specifications or by any law or ordinances.

4. It is further understood that this obligation is incurred pursuant to Chapter 2253 of the Texas Government Code, and that this obligation is for the benefit and sole protection of all persons supplying labor and materials in the prosecution of said contract.

5. IN TESTIMONY WHEREOF, witness our hands and the seal of any incorporated surety hereon this \_\_\_\_\_  
day of \_\_\_\_\_ A.D. 20 \_\_\_\_\_.

6. The foregoing bond is approved and accepted  
this \_\_\_\_\_ day of \_\_\_\_\_,  
20 \_\_\_\_.

**FMG CONTRACTING CO., LLC**

By \_\_\_\_\_  
**ROLAND E. GARCIA, PRESIDENT**

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Surety

(SEAL)

By \_\_\_\_\_

\_\_\_\_\_  
Address of Surety for Service Purposes

## **Attachment A**

### **Negotiation Supplement**

The scope of work and the construction amount for the construction contract for the Julia Yates Semmes Branch Library has been negotiated between FMG contracting Co., LLC and the City of San Antonio. The following is a summary of the accepted negotiated conditions. The negotiated items will be identified in detail in the revised set of construction drawings dated April 30, 2004 which become part of this contract.





Architects  
Interior Designers  
Landscape Architects

**JULIA YATES SEMMES BRANCH LIBRARY at COMANCHE LOOKOUT PARK**  
**Accepted Negotiated Value Engineering Items**  
**April 27, 2004**

**FMG CONTRACTING CO. ORIGINAL PROPOSAL**

**\$2,990,000.00**

**A. BASE PROPOSAL VALUE ENGINEERING ITEMS**

**CIVIL**

1. Raise grade at NE corner of building to a consistent 18" below finish floor. **\$1,000.00**

**STRUCTURAL**

2. Reduce wing walls (concrete and piers). **(\$9,300.00)**  
3. Raise grade and reduce deep beams. **(\$8,500.00)**  
4. Delta rather than Mero for space frame. **(\$16,000.00)**  
5. Delete interior curved tube steel. **(\$5,000.00)**

**ARCHITECTURAL**

6. Remove copper ceilings at entry canopy. **(\$50,000.00)**  
7. Add horizontal mullion and change to clear glass/non-tempered. **(\$8,500.00)**  
8. Change limestone to random coursing. **(\$25,000.00)**  
9. Raise grade and delete limestone. (see Item 3). **(\$3,200.00)**  
10. Doors D123A, D123B, D127, D128, and D107A to remain as drawn. All remaining doors are flush wood doors. **(\$6,710.00)**

**ELECTRICAL**

11. Allow overhead primary electrical line to come into the property to a point across from mechanical yard. This would reduce the incoming underground secondary from 130' in length to about 50'; save 80' worth of trenching and conduit and cable. **(\$7,000.00)**  
12.a. Change indirect light fixtures to standard finish rather than custom copper finish; savings in non-custom made fixture.  
12.b. For indirect light fixtures, utilize 40% downlight type (instead of 100% uplight type) and lower height to help attain adequate FC levels; savings in more affordable standard fixture type with standard T-8 lamps.  
12.c. Reduce quantity of exterior fixtures (wall washers and parking lot poles); savings in reduced number of costly exterior fixtures.  
12.d. Change the K-rated transform to standard type transformer; savings in utilizing off-the-shelf equipment.  
12.e. Replace abundance of strip lights over hanging copper sheets, with standard fluorescent downlights; savings in reduced quantity of fixtures.  
12.f. Eliminate floor outlets; savings in high cost brass floor housing.

**Total Item 12 Estimate (\$19,000.00)**

### MECHANICAL

13. Change from aluminum to steel air devices; savings in using less expensive air devices. (\$1,200.00)

### LANDSCAPE

14. Delete limestone boulders at end of screen wall. (\$1,200.00)

15. Delete metal edger, buffalograss, and irrigation from parking lot islands and replace w/ compacted decomposed granite. (\$600.00)

16. Delete (11) 1-1/2" cal. shade trees. (\$1,925.00)

17. Delete approximately 15% of container shrubs. (\$560.00)

18. Downsize agave, agarito, cotol, cenizo, Indian hawthorn, and yucca from 5-gal. to 1-gal. (\$1,400.00)

19. 3" of base under granite trails in lieu of 5" (\$600.00)

20. Spread 2" of topsoil in lieu of 4" (\$7,000.00)

21. Voluntary savings for irrigation (\$1,500.00)

Value Engineering Deduction Subtotal (\$173,195.00)

B. CONTRACTOR'S ADJUSTMENT DUE TO CURRENT STEEL MARKET \$30,000.00

Base Proposal Subtotal (\$143,195.00)

II. TOTAL NEGOTIATED ALTERNATE BEFORE DEDUCTION \$305,000.00

### A. ADDITIVE ALTERNATE VALUE ENGINEERING ITEMS

1. Delete limestone veneer at retaining walls and replace with plaster (Alt. 3). (\$9,500.00)

2. Deletion of additional landscaping (Alt. 3). Adjusted price \$95,010. (\$8,490.00)

3. Negotiated price of water condensation to cistern (Alt. 7). Adjusted price \$7,500. (\$24,500.00)

4. Negotiated price of HVAC controls (Alt. 8). Adjusted price \$5,000. (\$45,000.00)

5. Place \$20,000 of Alt. 4 into contingency. Adjusted price \$90,000. (\$20,000.00)

Total Negotiated Alternate Before Deduction (\$107,490.00)

### III. ACCEPTED ALTERNATES

1. Alt. 1: Roof Extension Cost

2. Alt. 5: Light Dimming System

3. Alt. 6: Water Harvesting System

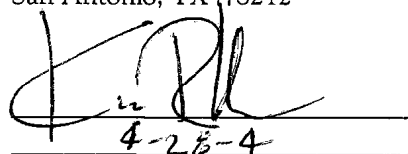
4. Alt. 10: Display Cabinets

Total Accepted Alternates \$176,000.00

TOTAL \$3,220,315.00

### PROPOSED BY

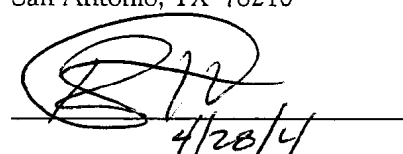
Rehler Vaughn & Koone, Inc.  
745 E. Mulberry, Ste. 601  
San Antonio, TX 78212

  
4-28-4

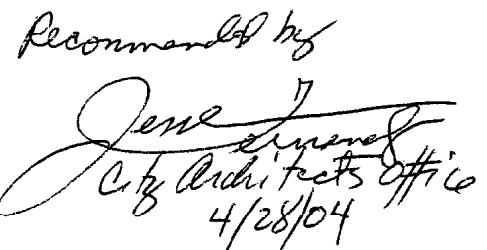
Date

### ACCEPTED BY

FMG Contracting Co., LLC  
3401 S. Gevers, Suite 1  
San Antonio, TX 78210

  
4/28/4

Date

Recommended by  
  
City Architects Office  
4/28/04



Architects  
Interior Designers  
Landscape Architects

April 29, 2004

Proposal for  
Julia Yates Semmes Branch Library  
San Antonio, Texas

### PROJECT SCOPE

The project consists of a new one-story public library of approximately 15,000 sq. ft. on a 6.6 acre site located at Comanche Lookout, San Antonio, Texas.

### SERVICES / COMPENSATION

Design of Alternates	\$25,000.00
Construction Administration Services	<u>50,000.00</u>
Total Compensation	\$75,000.00

Ken Rehler, President  
Rehler Vaughn & Koone, Inc.

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