

**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, Deputy City Manager; Andrew Martin, City Attorney; Trey Jacobson, Assistant Director; Manuel Longoria, Jr., Assistant Director; Susan Rios, CPA, Economic Development Manager; Ed Davis, Economic Development Manager; File

SUBJECT: Acceptance of Defense Economic Adjustment Assistance Grants (DEAAG)

DATE: May 27, 2004

SUMMARY AND RECOMMENDATIONS:

This ordinance authorizes the City Manager to accept two grant awards from the Texas Military Preparedness Commission (TMPC) in the total amount of \$369,778. The two infrastructure grant projects are for KellyUSA in the amount of \$184,889 and Brooks City-Base in the amount of \$184,889. This ordinance also authorizes the City Manager to execute the associated grant contracts with TMPC and enter into subgrant contracts with the Greater Kelly Development Authority (GKDA) and the Brooks Development Authority (BDA) for each grant project.

Staff recommends approval.

BACKGROUND INFORMATION:

The 75th State Legislature initially appropriated \$20 million for the DEAAG program in 1997 to assist defense dependent communities adversely impacted by base realignment and closure decisions. The program provides affected municipalities, counties or regional planning commissions access to state funding for the purpose of acquiring federal grant assistance or for sharing in the costs of property purchases, construction, rehabilitation, or renovation of facilities or infrastructure, purchase of capital equipment or insurance. The City of San Antonio has utilized the DEAAG Program two other times in the last seven years.

In 1997, the City received four grants totaling \$8 million for the following KellyUSA redevelopment projects: (1) modification/renovation of an aircraft hangar for Boeing; (2) construction of an Administration Building; (3) construction of a new aircraft hangar for Boeing; and (4) construction of an alternate potable water distribution system by Bexar Metropolitan Water District. These projects have been completed and state grant dollars disbursed.

In 2001, the 77th State Legislature appropriated an additional \$1 million in DEAAG funds. In response, the City of San Antonio submitted two grant applications and received two grants totaling \$357,000; a grant of \$157,000 for a rail infrastructure project at KellyUSA and \$200,000 grant for a water-infrastructure project at Brooks City-Base. These two projects are underway and should be completed by June 2004.

On November 10, 2003 the TMPC notified all Texas defense communities of the availability of \$1 million in FY 2004 DEAAG funds, and requested grant applications by December 22, 2003. Staff worked with the GKDA and the BDA to submit two applications totaling \$400,000 in support of redevelopment efforts at KellyUSA and Brooks City-Base. (City Council authorized grant submission by Ordinance No. 98585, approved December 18th, 2003.)

GKDA requested \$200,000 in grant assistance to help fund a \$1 million jet engine test cell project that will make necessary modifications and improvements to buildings in the KellyUSA Jet Engine Testing Complex. These facility improvements will not only benefit existing tenants, such as Lockheed Martin and General Electric, but will also allow GKDA to attract new jet engine business opportunities and increase aviation maintenance-repair-overhaul jobs at KellyUSA. GKDA was awarded \$184,889. The project is scheduled to commence within 60 days of contract execution.

BDA submitted a grant application for \$200,000 to partially fund a \$1.2 million utility infrastructure project that includes the replacement of the undersized primary water main through the center of Brooks City-Base. The project will replace multiple sections of deteriorated and undersized water lines that will bring the existing infrastructure up to commercial standards and increase water flow to levels necessary for adequate fire protection, thus accommodating future economic development. BDA was also awarded \$184,889. The project is scheduled to commence within 60 days of contract execution.

POLICY ANALYSIS:


These grants support the City's Strategic Plan For Enhanced Economic Development by: (1) promoting development in targeted areas in the southern sector of the community; (2) promoting the development of KellyUSA as an international, multi-modal investment grade business and industrial park; (3) facilitating the creation and growth of technology businesses at Brooks City-Base; (4) leveraging resources for a more vibrant economy by identifying matching sources of public investment in infrastructure; and (5) supporting growth in the targeted aerospace industry.

FISCAL IMPACT:


There is no fiscal impact to the City related to these grants. The City will monitor contract compliance and manage disbursement of any awarded grant dollars to the GKDA and the BDA through the execution of separate subgrant contracts. The GKDA and the BDA will provide the required local match for their respective grants.

COORDINATION:

This item was coordinated with the Finance Department, the City Attorney, GKDA, BDA and TMPC.




Ramiro A. Cavazos, Director
Economic Development Department



J. Rolando Bono
Deputy City Manager

Approved:



Terry M. Brechtel
City Manager

Attachments

COPY

CONTRACT FOR DEFENSE ECONOMIC ADJUSTMENT ASSISTANCE GRANT

BETWEEN

OFFICE OF THE GOVERNOR,
ECONOMIC DEVELOPMENT AND TOURISM OFFICE

AND

CITY OF SAN ANTONIO

STATE OF TEXAS §

COUNTY OF TRAVIS §

SECTION 1. PARTIES TO CONTRACT

This contract (hereinafter referred to as "Contract") is made and entered into by and between the Office of the Governor, Economic Development and Tourism Office, an agency of the State of Texas, (hereinafter referred to as "EDT"), and the City of San Antonio (hereinafter referred to as "Contractor"). The parties hereto have severally and collectively agreed and by the execution hereof are bound to the mutual obligations and to the performance and accomplishment of the tasks described herein.

SECTION 2. CONTRACT PURPOSE

Contractor shall conduct, in a satisfactory manner as determined by EDT, an economic development project (hereinafter referred to as the "Project") to replace deteriorated and undersized water supply piping in order to comply with local development standards for water supply and to provide necessary water flow for fire protection at Brooks City Base, San Antonio, Bexar County, Texas (hereinafter referred to as the "Facility"). EDT will support the Project through a Defense Economic Adjustment Assistance Grant (DEAAG), as created by the 75th Texas Legislature to provide state funding for the purpose of acquiring federal grant assistance or sharing the cost of redevelopment of communities that have been adversely affected by defense downsizing. Senate Bill 227 of the 75th Texas Legislature, which adds Chapter 486 to the Texas Government Code, authorizes the grant program. Chapter 174, *et seq.*, of the Texas Administrative Code contains the rules under which the program is implemented.

SECTION 3. PROJECT REQUIREMENTS

A. Both Contractor and EDT understand and agree that this Contract is to be executed pursuant to a letter of authorization, signed by Edward D. Garza, Mayor, dated December 18, 2003, and approval of the San Antonio City Council given on December 18, 2003.

B. The total number of new, direct, permanent, full-time jobs to be created as a result of the Project shall be no less than fifty (50).

C. The total cost of the Project is \$1,184,889.00, which is to be funded as follows:

| Funding Type | Specific Source Name | Amount of Funding |
|--|------------------------------|-----------------------|
| Texas Defense Economic Adjustment Assistance Grant | Office of the Governor | \$184,889.00 |
| Assistance Requested from Federal Agencies | | \$0 |
| Assistance from Other Sources | | \$0 |
| Local Community Funding | Brooks Development Authority | \$1,000,000.00 |
| Total Project Cost | | \$1,184,889.00 |

D. If Contractor's proposal for funding from any of the other sources named in Section 3(C) is rejected, the commitment of funds under this Contract will be withdrawn and the funding amount reallocated to other applicants. Contractor shall have thirty (30) days to renegotiate financial arrangements prior to withdrawal of the commitment of funds under this Contract.

SECTION 4. CONTRACT PERIOD

This Contract shall commence upon execution and shall terminate upon Contractor's satisfaction of all Special Conditions set forth in Section 17 of this Contract or no later than five (5) years after execution date.

SECTION 5. CONTRACTOR PERFORMANCE

A. Contractor shall conduct and complete the Project in a satisfactory manner as determined by EDT.

B. Contractor shall comply with all applicable laws and regulations, and shall perform all activities in accordance with the terms of the Special Conditions specified in Section 17 of this Contract, and with all other terms, provisions, and requirements set forth herein.

C. No more than ten percent (10%) of Contract funds disbursed pursuant to this Contract may be applied towards administrative costs. The acceptability of costs incurred for performances rendered hereunder shall be determined in accordance with Federal Office of Management and Budget Circular No. A-87 - *Cost Principles for State, Local, and Indian Tribal Governments*, and in accordance with this Contract. Both Contractor and EDT understand and agree that by referring to said Circular, there is no intent to expand on the eligible use of grant funds other than as permitted under Chapter 486 of the Texas Government Code.

D. Contractor shall comply with the provisions of the Uniform Grant Management Standards (UGMS) for State Agencies, developed by the Office of the Governor under the authority of Chapter 783 of the Texas Government Code.

SECTION 6. EDT OBLIGATIONS

A. In consideration of full and satisfactory performance of activities required by Section 3 of this Contract, EDT will disburse DEAAG funds to Contractor in the amounts and at the times specified by the Special Conditions detailed in Section 17 of this Contract, and subject to the limitations set forth in this Section 6. Notwithstanding any other provision of this Contract, the total of all payments and other obligations incurred by EDT under this Contract will not exceed the sum of One Hundred Eighty-Four Thousand Eight Hundred Eighty-Nine and No/100 Dollars (\$184,889.00).

1. EDT will not be liable to Contractor for any costs incurred by Contractor or for any performances rendered by Contractor which are not strictly in accordance with the terms of this Contract.
2. EDT will not be liable for costs incurred or performances rendered by Contractor before commencement of this Contract or after termination of this Contract, except as may be specifically set forth in Section 16(C).

B. Contractor shall refund to EDT any sum of money paid to Contractor by EDT, which EDT determines is an overpayment to Contractor, or in the event EDT determines funds spent by Contractor were not an allowable cost of this Project. Allowable costs will be determined in accordance with Federal Office of Management and Budget Circular No. A-87, *Cost Principles for State, Local, and Indian Tribal Governments*, and in accordance with this Contract. No refund payment(s) may be made from local, state, or federal grant funds unless statute or regulation specifically permits repayment with grant funds. Such refund shall be made by Contractor to EDT within ninety (90) calendar days after such refund is requested in writing by EDT, or within thirty (30) calendar days of a notice from EDT indicating the request is the result of a final determination that the refund is owed.

SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

A. Contractor shall maintain fiscal records and supporting documentation for all expenditures of funds made under this Contract in a manner that conforms to this Contract. Such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this Contract. Contractor shall retain such records, and any supporting documentation, for the greater of four (4) years from the end of the contract period, or the period required by other applicable laws and regulations.

B. Contractor shall give EDT, its designee, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or property belonging to or in use by Contractor pertaining to this Contract, including records concerning the past use of DEAAG funds. Such rights to access shall continue as long as the records are retained by Contractor. Failure to provide reasonable access to authorized EDT representatives shall give EDT the right to suspend or terminate the Contract as provided for in Section 15 and 16, or any portion thereof, for reason of default. All records and other information shall be retained by Contractor for a period of four (4) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters, including but not limited to investigations, lawsuits, administrative inquiries and open record requests, are

completed. Contractor agrees to maintain such records in an accessible location and to provide citizens reasonable access to such records consistent with the Texas Public Information Act.

C. Contractor shall include the substance of this Section 7 in all sub-grant agreements.

SECTION 8. MONITORING

- A. EDT reserves the right to perform periodic on-site monitoring of Contractor's compliance with the terms and conditions of this Contract and of the adequacy and timeliness of Contractor's performance. After each monitoring visit, EDT will provide Contractor with a written report of the monitor's findings. If the monitoring report notes deficiencies in Contractor's performances under the terms of this Contract, the monitoring report shall include requirements for the timely correction of such deficiencies by Contractor. Failure by Contractor to take action specified in the monitoring report may be cause for suspension or termination of this Contract, in accordance with Sections 15 and 16 herein.
- B. During the course of the Project, Contractor shall provide on a semi-annual basis, a certified engineering or architectural assessment of the Project.
- C. During the course of the Project, Contractor shall provide on a semi-annual basis, information evidencing the number of jobs generated during the construction phase of the Project.

SECTION 9. INDEPENDENT CONTRACTOR

It is expressly understood and agreed by the parties hereto that EDT is contracting with Contractor as an Independent Contractor, and that Contractor, its employees and subcontractors are not employees of EDT.

SECTION 10. CONFLICT OF INTEREST

A. Contractor shall ensure that no employee, officer, or agent of Contractor shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract. Contractor shall comply with Chapter 171, Texas Local Government Code.

B. Except for eligible administrative or personnel costs, no employee, agent, consultant, officer, or elected or appointed official, of either Contractor or of a subcontractor, who exercises or has exercised any functions or responsibilities or is in a position to participate in decision-making or gain inside information in regard to the activities involved in the Project, shall be permitted to have or obtain a financial interest in or benefit from the Project or any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties. This prohibition shall remain in effect for the duration of the prohibited relationship plus one calendar year thereafter.

C. Contractor shall include the substance of this Section 10 in all sub-grant agreements.

SECTION 11. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. Contractor shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age, or handicap, be excluded from participation in, be denied the benefits of, be

subjected to discrimination under or be denied access to any program or activity funded in whole or in part with funds made available under this Contract.

B. None of the performances rendered by Contractor under this Contract shall involve, and no portion of the funds received by Contractor under this Contract, shall be used in support of any sectarian or religious activity, nor shall any facilities used in the performance of this Contract be used for sectarian instruction or as a place of religious worship.

C. Contractor shall include the substance of this Section 11 in all sub-grant agreements.

SECTION 12. LEGAL AUTHORITY

A. Contractor assures and guarantees that Contractor possesses the legal authority to enter into this Contract, receive funds authorized by this Contract, and to perform the services Contractor has obligated itself to perform hereunder.

B. The person or persons signing and executing this Contract on behalf of Contractor, or representing themselves as signing and executing this Contract on behalf of Contractor, do hereby guarantee that he, she or they have been duly authorized by Contractor to execute this Contract on behalf of Contractor and to validly and legally bind Contractor to all terms, performances, and provisions herein set forth.

C. EDT will have the right to suspend or terminate this Contract in accordance with Section 15 and 16 herein, if there is a dispute as to the legal authority of either Contractor or the person signing this Contract to enter into this Contract, any amendments hereto or failure to render performances hereunder. Contractor is liable to EDT for any money it has received from EDT for performance of the provisions of this Contract, if EDT has suspended or terminated this Contract for reasons enumerated in this Section 12.

SECTION 13. LITIGATION AND CLAIMS

A. Contractor shall give EDT immediate notice in writing of any action, including any proceeding before an administrative agency, filed against Contractor arising out the performance of any subcontract hereunder. Except as otherwise directed by EDT, Contractor shall furnish immediately to EDT copies of all pertinent papers received by Contractor with respect to such action or claim. Contractor shall notify EDT immediately of any legal action filed against the Contractor or any subcontractor, or of any proceeding filed under the federal bankruptcy code. Contractor shall submit a copy of such notice to EDT within 30 calendar days after receipt. No funds provided under this Contract may be used in the payment of any costs incurred from violations or settlements of or failure to comply with federal and state regulations.

B. EDT and Contractor acknowledge that they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 *et. seq.*, and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. This Contract shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Contract shall be in Travis County, Texas.

SECTION 14. CHANGES AND AMENDMENTS

A. Except as specifically provided in Section 14(C) of this Contract, any alterations, additions, or deletions to the terms of this Contract shall be by amendment hereto in writing and executed by both parties to this Contract upon EDT approval and authorization of Contractor's governing body.

B. It is understood and agreed by the parties hereto that performances under this Contract shall be rendered in accordance with the laws and rules governing Defense Economic Adjustment Assistance Grants, and the terms and conditions of this Contract. EDT may, during the contract period, issue policy directives which serve to establish, interpret, or clarify performance requirements under this Contract. Such policy directives will be promulgated by EDT, shall have the effect of qualifying the terms of this Contract and shall be binding upon Contractor, as if written herein, provided however that said policy directives and any amendments shall not alter the terms of this Contract so as to release EDT from any obligation specified in Section 6 of this Contract to reimburse costs incurred by Contractor prior to the effective date of said amendments or policy directives.

C. Any alterations, additions, or deletions to the terms of this Contract required by changes in state law or regulations are automatically incorporated into this Contract without written amendment hereto, and shall become effective on the date designated by such law or regulation.

SECTION 15. SUSPENSION

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event Contractor fails to comply with the terms of this Contract, EDT shall provide Contractor with written notification as to the nature of the non-compliance. EDT shall grant Contractor a sixty (60) day period from the date of EDT's written notification to cure any issue of non-compliance under this Contract. Should Contractor fail to cure any default within this period of time, EDT may, upon written Notice of Suspension to Contractor, suspend this Contract in whole or in part and withhold further payments to Contractor, and prohibit Contractor from incurring additional obligations of funds under this Contract. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Contract to be suspended.

B. In the case of default for causes beyond Contractor's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, EDT may, in its sole discretion, extend the cure period provided that Contractor shall (1) immediately upon receipt of Notice of Suspension advise EDT of Contractor's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. A suspension under this Section 15 may be lifted only at the sole discretion of EDT upon a showing of compliance with or written waiver by EDT of the term(s) in question.

D. With the exception of payment for work in progress or materials ordered prior to receiving a Notice of Suspension, EDT will not be liable to Contractor or to Contractor's creditors for costs incurred during any term of suspension of this Contract.

SECTION 16. TERMINATION

A. EDT shall have the right to terminate this Contract for non-compliance, in whole or in part, at any time before the date of completion specified in Section 4 of this Contract whenever EDT determines that Contractor has failed to comply with any term of this Contract. EDT will provide

Contractor with written notification as to the nature of the non-compliance, and grant Contractor a sixty (60) day period from the date of EDT's written notification to cure any issue of non-compliance under this Contract. Should Contractor fail to cure any default within this period of time, EDT may, upon issuance to Contractor of a written Notice of Termination, terminate this Contract in whole or in part and withhold further payments to Contractor, and prohibit Contractor from incurring additional obligations of funds under this Contract. Such notification shall include: (1) the reasons for such termination; (2) the effective date of such termination; and, (3) in the case of partial termination, the portion of the Contract to be terminated.

B. In the case of default for causes beyond Contractor's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, EDT may, in its sole discretion, extend the cure period provided that Contractor shall (1) immediately upon receipt of Notice of Termination advise EDT of Contractor's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. Except as provided in Section 16(A), awards may be terminated in whole or in part only as follows:

1. By EDT (with the consent of the Contractor) in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated; or
2. By the Contractor upon written notification to EDT, setting forth the reasons of such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of partial termination, EDT determines in its sole discretion that the remaining portion of the award will not accomplish the purpose for which the award was made, EDT may terminate the award in its entirety under Section 16(A).

D. Upon receipt of Notice of Termination for non-compliance under Section 16(A), Contractor shall, to the extent possible under its other contractual obligations, cancel, withdraw, or otherwise terminate any outstanding orders or subcontracts related to the performance of this Contract or the part of this Contract to be terminated and shall cease to incur costs thereunder. Any other work or materials under or part of this Contract shall be terminated and EDT will not be liable to Contractor or to Contractor's creditors for any costs incurred subsequent to receipt of a Notice to Terminate.

E. Notwithstanding any exercise by EDT of its right of suspension under Section 15 of this Contract, or of early termination pursuant to this Section 16, Contractor shall not be relieved of any liability to EDT for damages due to EDT by virtue of any breach of this Contract by Contractor. EDT may withhold payments to Contractor until such time as the exact amount of damages due to EDT from Contractor is agreed upon or is otherwise determined.

SECTION 17. SPECIAL CONDITIONS

A. EDT will release the initial disbursement of contract funds, which shall equal Ninety-Two Thousand Four Hundred Forty-Four and 50/100 Dollars (\$92,444.50), or fifty percent (50%) of the total amount of funds provided by EDT under this Contract (hereinafter "Contract Funds"), upon submission by Contractor of the following within (nine) 9 months of the execution of this Contract:

1. Specific plans and specifications for the construction of the Facility, as set out in Section 2, are on file with the Contractor;
2. A copy of the administration contract (if applicable);
3. A letter identifying individuals authorized to request and receive funds from EDT on the Contractor's behalf;
4. Proof of local funding supporting the Project in the amount of \$1,000,000.00;
5. Documentation indicating that the plans and specifications for the Facility's construction and renovation, to the extent required by law or regulation, have been reviewed and when applicable, approved by the Texas Commission on Environmental Quality (TCEQ) prior to construction. Where TCEQ approval is required, necessary applications and materials shall be sent by Contractor to the Texas Commission on Environmental Quality, P. O. Box 12100, Park 35 Circle, Austin, Texas 78783, and shall be identified as activities being financed through EDT; and
6. Documentation indicating that the plans and specifications for the Facility's construction and renovation, to the extent required by law or regulation, have been reviewed and approved by the Texas Department of Licensing and Regulation (hereafter referred to as "TDLR") with regard to the elimination of architectural barriers encountered by persons with disabilities as specified in Article 9102 of the Texas Revised Civil Statutes Annotated and the rules promulgated thereunder. In the event TDLR has not issued approval within thirty (30) days of its receipt of the plans and specifications, the operation of this condition may be temporarily suspended pending such approval by submitting proof of mailing and a legible photocopy of both sides of a canceled check. The plans and specifications shall be sent to the Texas Department of Licensing and Regulation, Architectural Barriers Division, P.O. Box 12157, Austin, Texas 78711, and shall be identified as a Project being financed through EDT.

B. EDT will release the second disbursement of Contract Funds, which shall equal Seventy-Three Thousand Nine Hundred Fifty-Five and 60/100 Dollars (\$73,955.60), or forty percent (40%) of the Contract Funds, contingent upon satisfying the forgoing Special Conditions in Section 17(A) and providing a copy of an invoice showing fifty per cent (50%) completion of the Project, with an "Architect's Certificate for Payment" stamped and signed by the Architect.

C. EDT will release the final disbursement of Contract Funds, which shall equal Eighteen Thousand Four Hundred Eighty-Eight and 90/100 Dollars (\$18,488.90), or ten percent (10%) of the Contract Funds, upon Project completion as demonstrated by the following:

1. Completion of the construction of the Facility as described in the plans and specifications referred to in Section 17 (A)(1); and
2. Submission by Contractor of a Certificate of Completion, signed by the architect/engineer and the highest elected City official, to EDT no later than sixty (60) calendar days after the conclusion of Facility modifications and construction. The Certificate of Completion shall include a final Project Completion Report of all activities performed under this Contract;

D. The Contractor shall provide the following milestones and updates, including photographs where appropriate, after completion of the Project (as marked by the release of the final ten percent (10%) installment of Contract Funds by EDT):

1. Base line and semi-annual data on the impact of the Project on the local economy over a four (4) year period beginning with the completion of the Project;
2. Base-line and semi-annual data on any jobs generated by the Project, confirmed by certified company payroll records as requested and data on the employment of dislocated defense and economically disadvantaged workers beginning with initial occupancy of the Facility for a period of four (4) years;
3. Upon completion of the Project, Contractor shall provide documentation evidencing the number of jobs created over the course of the construction phase of the Project.

E. In addition to the limitations on liability otherwise specified in this Contract, it is expressly understood and agreed by the parties hereto that if Contractor fails to submit to EDT in a timely and satisfactory manner any report required by this Contract, EDT may, at its sole option and in its sole discretion, withhold any or all payments otherwise due or requested by Contractor hereunder. If EDT withholds such payments, it will notify Contractor in writing of its decision and the reasons therefor. Payments withheld pursuant to this paragraph may be held by EDT until such time as the delinquent obligations for which funds are withheld are fulfilled by Contractor.

F. In the event Contractor fails to complete the Project or comply with any provision as specified in this Contract, the Contractor may be liable for damages under this Contract and barred from applying for or receiving additional funding under the DEAAG program until repayment is made and any other compliance or audit findings are resolved and/or any issue of non-compliance is cured to the satisfaction of EDT pursuant to Sections 15 and 16 of this Contract.

G. The total number of new, direct, permanent, full-time jobs to be created as a result of this Project shall be no less than fifty (50). These jobs must be created within two (2) years of the completion date of the Project. The Director of the Economic Development Department of the Contractor may request and EDT staff may consider, subject to approval of EDT's Governing Board, an extension beyond these two (2) years upon demonstration of reasonable grounds for Contractor's failure to meet the job requirements.

1. In the event the Contractor fails to ensure the creation and retention of new jobs as required by this Section 17(G), EDT shall receive a recoupment of funds from Contractor equal to the lesser of:
 - (a) A prorated share of the total Contract Fund amount of One Hundred Eighty Four Thousand Eight Hundred Eighty-Nine and No/100 Dollars (\$184,889.00) for each of the minimum number of new, direct, permanent full-time jobs required in this Contract (50) not created and in existence on the second anniversary of the completion of the Project; or

(b) Fifty percent (50%) of the total Contract Fund in the amount of One Hundred Eighty Four Thousand Eight Hundred Eighty-Nine and No/100 Dollars (\$184,889.00).

2. For purposes of this Contract, job creation and retention rates must be evidenced by satisfactory documentation, such as copies of payroll documents, as required by EDT.

H. Contractor shall provide EDT with copies of all reports required by the federal agencies pursuant to the terms of individual federal grants received, within 30 days of their submission to the granting agencies.

SECTION 18. SUBCONTRACTS

A. Contractor shall ensure that the performance rendered under all subcontracts complies with all terms and provisions of this Contract as if such performance were rendered by Contractor. Contractor shall bear full responsibility for performance by all subcontractors.

B. Contractor, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, EDT is in no way liable to Contractor's subcontractor(s).

C. Contractor assures and shall obtain assurances from all of its subcontractors where applicable, that no person shall, on the grounds of race, creed, color, disability, national origin, sex or religion, be excluded from, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part under this Contract.

D. As subcontracts and supplier contracts become necessary to carry out the requirements of this Contract, Contractor covenants to make a good faith effort to contract with historically underutilized (disadvantaged) businesses so certified by the State of Texas, as that term is identified by Section 2161.001, Texas Government Code. Contractor shall make a good faith effort to let at least thirty percent (30%) of the total value of all subcontracts and supplier contracts for the performance of this Contract to historically underutilized (disadvantaged) businesses.

SECTION. 19. DEBARMENT

By signing this Contract, Contractor certifies that it will not award any funds provided under this Contract to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs. Contractor further certifies that it is not ineligible under Section 231.006 of the Texas Family Code to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

SECTION 20. RIGHTS UPON DEFAULT

It is expressly understood and agreed by the parties hereto that any right or remedy provided for in this Contract shall not preclude the exercise of any other right or remedy under this Contract or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

SECTION 21. NON-ASSIGNMENT

This Contract is not assignable. Notwithstanding any attempt to assign the Contract, Contractor shall remain fully liable on this Contract and shall not be released from performing any of the terms, covenants, and conditions herein. Contractor shall be held responsible for all funds received under this Contract.

SECTION 22. ORAL AND WRITTEN AGREEMENTS

All oral and written agreements between the parties to this Contract relating to the subject matter of this Contract that were made prior to the execution of this Contract have been reduced to writing and are contained in this Contract.

SECTION 23. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

EDT may grant relief from performance of the Contract if the Contractor is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault or negligence of the Contractor. The burden of proof for the need for such relief shall rest upon the Contractor. To obtain release based upon *force majeure*, the Contractor must file a written request with EDT.

SECTION 24. SURVIVAL OF CERTAIN CONTRACT PROVISIONS

The following provisions of the Contract, concerning Contractor's obligations, shall survive the termination of the Contract after completion of the Project:

- A. Section 3B (Job Creation)
- B. Section 7 (Records Retention and Accessibility of Records)
- C. Section 17D (Reports Concerning the Project After Completion).

WITNESS OUR HANDS, EFFECTIVE _____, 2004:

Accepted and executed on behalf of the City of San Antonio pursuant to a letter of authorization, signed by Edward D. Garza, Mayor dated _____, 2004, and the Office of the Governor, Economic Development and Tourism Office.

J. Rolando Bono
Deputy City Manager
City of San Antonio

Mike Toomey
Chief of Staff
Office of the Governor

APPROVED AS TO FORM:

Assistant General Counsel

COPY

CONTRACT FOR DEFENSE ECONOMIC ADJUSTMENT ASSISTANCE GRANT

BETWEEN

OFFICE OF THE GOVERNOR,
ECONOMIC DEVELOPMENT AND TOURISM OFFICE

AND

CITY OF SAN ANTONIO

STATE OF TEXAS §

COUNTY OF TRAVIS §

SECTION 1. PARTIES TO CONTRACT

This contract (hereinafter referred to as "Contract") is made and entered into by and between the Office of the Governor, Economic Development and Tourism Office, an agency of the State of Texas, (hereinafter referred to as "EDT"), and the City of San Antonio (hereinafter referred to as "Contractor"). The parties hereto have severally and collectively agreed and by the execution hereof are bound to the mutual obligations and to the performance and accomplishment of the tasks described herein.

SECTION 2. CONTRACT PURPOSE

Contractor shall conduct, in a satisfactory manner as determined by EDT, an economic development project (hereinafter referred to as the "Project") to perform major renovation and modernization of an existing engine test cell facility to accommodate up to seven different jet engine types for testing purposes and to resolve environmental noise issues with the T56 jet engine at KellyUSA, San Antonio, Bexar County, Texas (hereinafter referred to as the "Facility"). EDT will support the Project through a Defense Economic Adjustment Assistance Grant (DEAAG), as created by the 75th Texas Legislature to provide state funding for the purpose of acquiring federal grant assistance or sharing the cost of redevelopment of communities that have been adversely affected by defense downsizing. Senate Bill 227 of the 75th Texas Legislature, which adds Chapter 486 to the Texas Government Code, authorizes the grant program. Chapter 174, *et seq.*, of the Texas Administrative Code contains the rules under which the program is implemented.

SECTION 3. PROJECT REQUIREMENTS

A. Both Contractor and EDT understand and agree that this Contract is to be executed pursuant to a letter of authorization, signed by Edward D. Garza, Mayor, dated December 18, 2003, and approval of the San Antonio City Council given on December 18, 2003.

B. The total number of new, direct, permanent, full-time jobs to be created as a result of the Project shall be no less than eighty (80).

C. The total cost of the Project is \$984,889.00, which is to be funded as follows:

| Funding Type | Specific Source Name | Amount of Funding |
|--|-------------------------------------|---------------------|
| Texas Defense Economic Adjustment Assistance Grant | Office of the Governor | \$184,889.00 |
| Assistance Requested from Federal Agencies | | \$0 |
| Assistance from Other Sources | | \$0 |
| Local Community Funding | Greater Kelly Development Authority | \$800,000.00 |
| Total Project Cost | | \$984,889.00 |

D. If Contractor's proposal for funding from any of the other sources named in Section 3(C) is rejected, the commitment of funds under this Contract will be withdrawn and the funding amount reallocated to other applicants. Contractor shall have thirty (30) days to renegotiate financial arrangements prior to withdrawal of the commitment of funds under this Contract.

SECTION 4. CONTRACT PERIOD

This Contract shall commence upon execution and shall terminate upon Contractor's satisfaction of all Special Conditions set forth in Section 17 of this Contract, or no later than five (5) years after execution date.

SECTION 5. CONTRACTOR PERFORMANCE

A. Contractor shall conduct and complete the Project in a satisfactory manner as determined by EDT.

B. Contractor shall comply with all applicable laws and regulations, and shall perform all activities in accordance with the terms of the Special Conditions specified in Section 17 of this Contract, and with all other terms, provisions, and requirements set forth herein.

C. No more than ten percent (10%) of Contract funds disbursed pursuant to this Contract may be applied towards administrative costs. The acceptability of costs incurred for performances rendered hereunder shall be determined in accordance with Federal Office of Management and Budget Circular No. A-87 - *Cost Principles for State, Local, and Indian Tribal Governments*, and in accordance with this Contract. Both Contractor and EDT understand and agree that by referring to said Circular, there is no intent to expand on the eligible use of grant funds other than as permitted under Chapter 486 of the Texas Government Code.

D. Contractor shall comply with the provisions of the Uniform Grant Management Standards (UGMS) for State Agencies developed by the Office of the Governor under the authority of Chapter 783 of the Texas Government Code.

SECTION 6. EDT OBLIGATIONS

A. In consideration of full and satisfactory performance of activities required by Section 3 of this Contract, EDT will disburse DEAAG funds to Contractor in the amounts and at the times specified by the Special Conditions detailed in Section 17 of this Contract, and subject to the limitations set forth in this Section 6. Notwithstanding any other provision of this Contract, the total of all payments and other obligations incurred by EDT under this Contract will not exceed the sum One Hundred Eighty-Four Thousand Eight Hundred Eighty-Nine and No/100 Dollars (\$184,889.00).

1. EDT will not be liable to Contractor for any costs incurred by Contractor or for any performances rendered by Contractor which are not strictly in accordance with the terms of this Contract.
2. EDT will not be liable for costs incurred or performances rendered by Contractor before commencement of this Contract or after termination of this Contract, except as may be specifically set forth in Section 16(C).

B. Contractor shall refund to EDT any sum of money paid to Contractor by EDT, which EDT determines is an overpayment to Contractor, or in the event EDT determines funds spent by Contractor were not an allowable cost of this Project. Allowable costs will be determined in accordance with Federal Office of Management and Budget Circular No. A-87, *Cost Principles for State, Local, and Indian Tribal Governments*, and in accordance with this Contract. No refund payment(s) may be made from local, state, or federal grant funds unless statute or regulation specifically permits repayment with grant funds. Such refund shall be made by Contractor to EDT within ninety (90) calendar days after such refund is requested in writing by EDT, or within thirty (30) calendar days of a notice from EDT indicating the request is the result of a final determination that the refund is owed.

SECTION 7. RETENTION AND ACCESSIBILITY OF RECORDS

A. Contractor shall maintain fiscal records and supporting documentation for all expenditures of funds made under this Contract in a manner that conforms to this Contract. Such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this Contract. Contractor shall retain such records, and any supporting documentation, for the greater of four (4) years from the end of the contract period, or the period required by other applicable laws and regulations.

B. Contractor shall give EDT, its designee, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or property belonging to or in use by Contractor pertaining to this Contract, including records concerning the past use of DEAAG funds. Such rights to access shall continue as long as the records are retained by Contractor. Failure to provide reasonable access to authorized EDT representatives shall give EDT the right to suspend or terminate the Contract as provided for in Section 15 and 16, or any portion thereof, for reason of default. All records and other information shall be retained by Contractor for a period of four (4) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters, including but not limited to investigations, lawsuits, administrative inquiries and open record requests, are

completed. Contractor agrees to maintain such records in an accessible location and to provide citizens reasonable access to such records consistent with the Texas Public Information Act.

C. Contractor shall include the substance of this Section 7 in all sub-grant agreements.

SECTION 8. MONITORING

- A. EDT reserves the right to perform periodic on-site monitoring of Contractor's compliance with the terms and conditions of this Contract and of the adequacy and timeliness of Contractor's performance. After each monitoring visit, EDT will provide Contractor with a written report of the monitor's findings. If the monitoring report notes deficiencies in Contractor's performances under the terms of this Contract, the monitoring report shall include requirements for the timely correction of such deficiencies by Contractor. Failure by Contractor to take action specified in the monitoring report may be cause for suspension or termination of this Contract, in accordance with Sections 15 and 16 herein.
- B. During the course of the Project, Contractor shall provide on a semi-annual basis, a certified engineering or architectural assessment of the Project.
- C. During the course of the Project, Contractor shall provide on a semi-annual basis, information evidencing the number of jobs generated during the construction phase of the Project.

SECTION 9. INDEPENDENT CONTRACTOR

It is expressly understood and agreed by the parties hereto that EDT is contracting with Contractor as an Independent Contractor, and that Contractor, its employees and subcontractors are not employees of EDT.

SECTION 10. CONFLICT OF INTEREST

A. Contractor shall ensure that no employee, officer, or agent of Contractor shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract. Contractor shall comply with Chapter 171, Texas Local Government Code.

B. Except for eligible administrative or personnel costs, no employee, agent, consultant, officer, or elected or appointed official, of either Contractor or of a subcontractor, who exercises or has exercised any functions or responsibilities or is in a position to participate in decision-making or gain inside information in regard to the activities involved in the Project, shall be permitted to have or obtain a financial interest in or benefit from the Project or any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties. This prohibition shall remain in effect for the duration of the prohibited relationship plus one calendar year thereafter.

C. Contractor shall include the substance of this Section 10 in all sub-grant agreements.

SECTION 11. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. Contractor shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age, or handicap, be excluded from participation in, be denied the benefits of, be

subjected to discrimination under or be denied access to any program or activity funded in whole or in part with funds made available under this Contract.

B. None of the performances rendered by Contractor under this Contract shall involve, and no portion of the funds received by Contractor under this Contract, shall be used in support of any sectarian or religious activity, nor shall any facilities used in the performance of this Contract be used for sectarian instruction or as a place of religious worship.

C. Contractor shall include the substance of this Section 11 in all sub-grant agreements.

SECTION 12. LEGAL AUTHORITY

A. Contractor assures and guarantees that Contractor possesses the legal authority to enter into this Contract, receive funds authorized by this Contract, and to perform the services Contractor has obligated itself to perform hereunder.

B. The person or persons signing and executing this Contract on behalf of Contractor, or representing themselves as signing and executing this Contract on behalf of Contractor, do hereby guarantee that he, she or they have been duly authorized by Contractor to execute this Contract on behalf of Contractor and to validly and legally bind Contractor to all terms, performances, and provisions herein set forth.

C. EDT will have the right to suspend or terminate this Contract in accordance with Section 15 and 16 herein, if there is a dispute as to the legal authority of either Contractor or the person signing this Contract to enter into this Contract, any amendments hereto or failure to render performances hereunder. Contractor is liable to EDT for any money it has received from EDT for performance of the provisions of this Contract, if EDT has suspended or terminated this Contract for reasons enumerated in this Section 12.

SECTION 13. LITIGATION AND CLAIMS

A. Contractor shall give EDT immediate notice in writing of any action, including any proceeding before an administrative agency, filed against Contractor arising out the performance of any subcontract hereunder. Except as otherwise directed by EDT, Contractor shall furnish immediately to EDT copies of all pertinent papers received by Contractor with respect to such action or claim. Contractor shall notify EDT immediately of any legal action filed against the Contractor or any subcontractor, or of any proceeding filed under the federal bankruptcy code. Contractor shall submit a copy of such notice to EDT within 30 calendar days after receipt. No funds provided under this Contract may be used in the payment of any costs incurred from violations or settlements of or failure to comply with federal and state regulations.

B. EDT and Contractor acknowledge that they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 *et. seq.*, and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. This Contract shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Contract shall be in Travis County, Texas.

SECTION 14. CHANGES AND AMENDMENTS

A. Except as specifically provided in Section 14(C) of this Contract, any alterations, additions, or deletions to the terms of this Contract shall be by amendment hereto in writing and executed by both parties to this Contract upon EDT approval and authorization of Contractor's governing body.

B. It is understood and agreed by the parties hereto that performances under this Contract shall be rendered in accordance with the laws and rules governing Defense Economic Adjustment Assistance Grants, and the terms and conditions of this Contract. EDT may, during the contract period, issue policy directives which serve to establish, interpret, or clarify performance requirements under this Contract. Such policy directives will be promulgated by EDT, shall have the effect of qualifying the terms of this Contract and shall be binding upon Contractor, as if written herein, provided however that said policy directives and any amendments shall not alter the terms of this Contract so as to release EDT from any obligation specified in Section 6 of this Contract to reimburse costs incurred by Contractor prior to the effective date of said amendments or policy directives.

C. Any alterations, additions, or deletions to the terms of this Contract required by changes in state law or regulations are automatically incorporated into this Contract without written amendment hereto, and shall become effective on the date designated by such law or regulation.

SECTION 15. SUSPENSION

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event Contractor fails to comply with the terms of this Contract, EDT shall provide Contractor with written notification as to the nature of the non-compliance. EDT shall grant Contractor a sixty (60) day period from the date of EDT's written notification to cure any issue of non-compliance under this Contract. Should Contractor fail to cure any default within this period of time, EDT may, upon written Notice of Suspension to Contractor, suspend this Contract in whole or in part and withhold further payments to Contractor, and prohibit Contractor from incurring additional obligations of funds under this Contract. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Contract to be suspended.

B. In the case of default for causes beyond Contractor's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, EDT may, in its sole discretion, extend the cure period provided that Contractor shall (1) immediately upon receipt of Notice of Suspension advise EDT of Contractor's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. A suspension under this Section 15 may be lifted only at the sole discretion of EDT upon a showing of compliance with or written waiver by EDT of the term(s) in question.

D. With the exception of payment for work in progress or materials ordered prior to receiving a Notice of Suspension, EDT will not be liable to Contractor or to Contractor's creditors for costs incurred during any term of suspension of this Contract.

SECTION 16. TERMINATION

A. EDT shall have the right to terminate this Contract for non-compliance, in whole or in part, at any time before the date of completion specified in Section 4 of this Contract whenever EDT determines that Contractor has failed to comply with any term of this Contract. EDT will provide Contractor with written notification as to the nature of the non-compliance, and grant Contractor

a sixty (60) day period from the date of EDT's written notification to cure any issue of non-compliance under this Contract. Should Contractor fail to cure any default within this period of time, EDT may, upon issuance to Contractor of a written Notice of Termination, terminate this Contract in whole or in part and withhold further payments to Contractor, and prohibit Contractor from incurring additional obligations of funds under this Contract. Such notification shall include: (1) the reasons for such termination; (2) the effective date of such termination; and, (3) in the case of partial termination, the portion of the Contract to be terminated.

B. In the case of default for causes beyond Contractor's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, EDT may, in its sole discretion, extend the cure period provided that Contractor shall (1) immediately upon receipt of Notice of Termination advise EDT of Contractor's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

C. Except as provided in Section 16(A), awards may be terminated in whole or in part only as follows:

1. By EDT (with the consent of the Contractor) in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated; or
2. By the Contractor upon written notification to EDT, setting forth the reasons of such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of partial termination, EDT determines in its sole discretion that the remaining portion of the award will not accomplish the purpose for which the award was made, EDT may terminate the award in its entirety under Section 16(A).

D. Upon receipt of Notice of Termination for non-compliance under Section 16(A), Contractor shall, to the extent possible under its other contractual obligations, cancel, withdraw, or otherwise terminate any outstanding orders or subcontracts related to the performance of this Contract or the part of this Contract to be terminated and shall cease to incur costs thereunder. Any other work or materials under or part of this Contract shall be terminated and EDT will not be liable to Contractor or to Contractor's creditors for any costs incurred subsequent to receipt of a Notice to Terminate.

E. Notwithstanding any exercise by EDT of its right of suspension under Section 15 of this Contract, or of early termination pursuant to this Section 16, Contractor shall not be relieved of any liability to EDT for damages due to EDT by virtue of any breach of this Contract by Contractor. EDT may withhold payments to Contractor until such time as the exact amount of damages due to EDT from Contractor is agreed upon or is otherwise determined.

SECTION 17. SPECIAL CONDITIONS

A. EDT will release the initial disbursement of contract funds, which shall equal Ninety-Two Thousand Four Hundred Forty-Four and 50/100 Dollars (\$92,444.50), or fifty percent (50%) of the total amount of funds provided by EDT under this Contract (hereinafter "Contract Funds"), upon submission by Contractor of the following within (nine) 9 months of the execution of this Contract:

1. Specific plans and specifications for the construction of the Facility, as set out in Section 2, are on file with the Contractor;
2. A copy of the administration contract (if applicable);
3. A letter identifying individuals authorized to request and receive funds from EDT on the Contractor's behalf;
4. Proof of local funding supporting the Project in the amount of \$800,000.00;
5. Documentation indicating that the plans and specifications for the Facility's construction and renovation, to the extent required by law or regulation, have been reviewed and when applicable, approved by the Texas Commission on Environmental Quality (TCEQ) prior to construction. Where TCEQ approval is required, necessary applications and materials shall be sent by Contractor to the Texas Commission on Environmental Quality, P. O. Box 12100, Park 35 Circle, Austin, Texas 78783, and shall be identified as activities being financed through EDT; and
6. Documentation indicating that the plans and specifications for the construction and renovation of the Facility, to the extent required by law or regulation, have been reviewed and approved by the Texas Department of Licensing and Regulation (hereafter referred to as "TDLR") with regard to the elimination of architectural barriers encountered by persons with disabilities as specified in Article 9102 of the Texas Revised Civil Statutes Annotated and the rules promulgated thereunder. In the event TDLR has not issued approval within thirty (30) days of its receipt of the plans and specifications, the operation of this condition may be temporarily suspended pending such approval by submitting proof of mailing and a legible photocopy of both sides of a canceled check. The plans and specifications shall be sent to the Texas Department of Licensing and Regulation, Architectural Barriers Division, P.O. Box 12157, Austin, Texas 78711, and shall be identified as a Project being financed through EDT.

B. EDT will release the second disbursement of Contract Funds, which shall equal Seventy-Three Thousand Nine Hundred Fifty-Five and 60/100 Dollars (\$73,955.60), or forty percent (40%) of the Contract Funds, contingent upon satisfying the forgoing Special Conditions in Section 17(A) and providing a copy of an invoice showing fifty per cent (50%) completion of the Project, with an "Architect's Certificate for Payment" stamped and signed by the Architect.

C. EDT will release the final disbursement of Contract Funds, which shall equal Eighteen Thousand Four Hundred Eighty-Eight and 90/100 Dollars (\$18,488.90), or ten percent (10%) of the Contract Funds, upon Project completion as demonstrated by the following:

1. Completion of the construction of the Facility as described in the plans and specifications referred to in Section 17 (A)(1); and
2. Submission by Contractor of a Certificate of Completion, signed by the architect/engineer and the highest elected City official, to EDT no later than sixty (60) calendar days after the conclusion of Facility modifications and construction. The Certificate of Completion shall include a final Project Completion Report of all activities performed under this Contract;

D. The Contractor shall provide the following milestones and updates, including photographs where appropriate, after completion of the Project (as marked by the release of the final ten percent (10%) installment of Contract Funds by EDT):

1. Base line and semi-annual data on the impact of the Project on the local economy over a four (4) year period beginning with the completion of the Project;
2. Base-line and semi-annual data on any jobs generated by the Project and data on the employment of dislocated defense and economically disadvantaged workers beginning with initial occupancy of the Facility for a period of four (4) years;
3. Upon completion of the Project, Contractor shall provide documentation evidencing the number of jobs created over the course of the construction phase of the Project.

E. In addition to the limitations on liability otherwise specified in this Contract, it is expressly understood and agreed by the parties hereto that if Contractor fails to submit to EDT in a timely and satisfactory manner any report required by this Contract, EDT may, at its sole option and in its sole discretion, withhold any or all payments otherwise due or requested by Contractor hereunder. If EDT withholds such payments, it will notify Contractor in writing of its decision and the reasons therefor. Payments withheld pursuant to this paragraph may be held by EDT until such time as the delinquent obligations for which funds are withheld are fulfilled by Contractor.

F. In the event Contractor fails to complete the Project or comply with any provision as specified in this Contract, the Contractor may be liable for damages under this Contract and barred from applying for or receiving additional funding under the DEAAG program until repayment is made and any other compliance or audit findings are resolved and/or any issue of non-compliance is cured to the satisfaction of EDT pursuant to Sections 15 and 16 of this Contract.

G. The total number of new, direct, permanent, full-time jobs to be created as a result of this Project shall be no less than eighty (80). These jobs must be created within two (2) years of the completion date of the Project. The Director of the Economic Development Department of the Contractor may request and EDT staff may consider, subject to approval of EDT's Governing Board, an extension beyond these two (2) years upon demonstration of reasonable grounds for Contractor's failure to meet the job requirements.

1. In the event the Contractor fails to ensure the creation and retention of new jobs as required by this Section 17(G), EDT shall receive a recoupment of funds from Contractor equal to the lesser of :
 - (a) A prorated share of the total Contract Fund amount of One Hundred Eighty Four Thousand Eight Hundred Eighty-Nine and No/100 Dollars (\$184,889.00) for each of the minimum number of new, direct, permanent full-time jobs required in this Contract (50) not created and in existence on the second anniversary of the completion of the Project; or

(b) Fifty percent (50%) of the total Contract Fund in the amount of One Hundred Eighty Four Thousand Eight Hundred Eighty-Nine and No/100 Dollars (\$184,889.00).

2. For purposes of this Contract, job creation and retention rates must be evidenced by satisfactory documentation, such as copies of payroll documents, as required by EDT.

H. Contractor shall provide EDT with copies of all reports required by the federal agencies pursuant to the terms of individual federal grants received, within 30 days of their submission to the granting agencies.

SECTION 18. SUBCONTRACTS

A. Contractor shall ensure that the performance rendered under all subcontracts complies with all terms and provisions of this Contract as if such performance were rendered by Contractor. Contractor shall bear full responsibility for performance by all subcontractors.

B. Contractor, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, EDT is in no way liable to Contractor's subcontractor(s).

C. Contractor assures and shall obtain assurances from all of its subcontractors where applicable, that no person shall, on the grounds of race, creed, color, disability, national origin, sex or religion, be excluded from, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part under this Contract.

D. As subcontracts and supplier contracts become necessary to carry out the requirements of this Contract, Contractor covenants to make a good faith effort to contract with historically underutilized (disadvantaged) businesses so certified by the State of Texas, as that term is identified by Section 2161.001, Texas Government Code. Contractor shall make a good faith effort to let at least thirty percent (30%) of the total value of all subcontracts and supplier contracts for the performance of this Contract to historically underutilized (disadvantaged) businesses.

SECTION. 19. DEBARMENT

By signing this Contract, Contractor certifies that it will not award any funds provided under this Contract to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs. Contractor further certifies that it is not ineligible under Section 231.006 of the Texas Family Code to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

SECTION 20. RIGHTS UPON DEFAULT

It is expressly understood and agreed by the parties hereto that any right or remedy provided for in this Contract shall not preclude the exercise of any other right or remedy under this Contract or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

SECTION 21. NON-ASSIGNMENT

This Contract is not assignable. Notwithstanding any attempt to assign the Contract, Contractor shall remain fully liable on this Contract and shall not be released from performing any of the terms, covenants, and conditions herein. Contractor shall be held responsible for all funds received under this Contract.

SECTION 22. ORAL AND WRITTEN AGREEMENTS

All oral and written agreements between the parties to this Contract relating to the subject matter of this Contract that were made prior to the execution of this Contract have been reduced to writing and are contained in this Contract.

SECTION 23. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

EDT may grant relief from performance of the Contract if the Contractor is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault or negligence of the Contractor. The burden of proof for the need for such relief shall rest upon the Contractor. To obtain release based upon *force majeure*, the Contractor must file a written request with EDT.

SECTION 24. SURVIVAL OF CERTAIN CONTRACT PROVISIONS

The following provisions of the Contract, concerning Contractor's obligations, shall survive the termination of the Contract after completion of the Project:

- A. Section 3B (Job Creation)
- B. Section 7 (Records Retention and Accessibility of Records)
- C. Section 17D (Reports Concerning the Project After Completion).

WITNESS OUR HANDS, EFFECTIVE _____, 2004:

Accepted and executed on behalf of the City of San Antonio pursuant to a letter of authorization, signed by Edward D. Garza, Mayor, dated _____, 2004, and the Office of the Governor.

J. Rolando Bono
Deputy City Manager
City of San Antonio

Mike Toomey
Chief of Staff
Office of the Governor

APPROVED AS TO FORM:

Assistant General Counsel