

14

**CITY OF SAN ANTONIO** AGENDA ITEM NO. \_\_\_\_\_  
**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; Peter Zanoni; Milo D. Nitschke; file

SUBJECT: Interlocal Agreement – Zarzamora (410 to Applewhite) and Applewhite  
(Zarzamora to Watson)

DATE: May 27, 2004

**SUMMARY AND RECOMMENDATIONS**

This Ordinance authorizes the City Manager or her designee to execute an "Interlocal Agreement for Improvements to Zarzamora Road and Applewhite Road in Connection with Toyota Roadway Infrastructure" between the City of San Antonio and Bexar County, in the amount of \$1,094,646, to provide funding for a collaborative effort between Bexar County, the City of San Antonio and the Texas Department of Transportation (TxDOT) to upgrade the roadways that will service the Toyota Plant. This ordinance also ratifies the City's approval of design services.

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

**BACKGROUND INFORMATION**

This Ordinance authorizes the execution of a "Interlocal Agreement for Improvements to Zarzamora Road and Applewhite Road in Connection with Toyota Roadway Infrastructure" whereby the City will provide funding in an estimated amount of \$1,094,646 to Bexar County for the Bexar County/TxDOT roadway project which will be modified to accomplish a portion of the City's project. The County has designed, and TxDOT will oversee, the construction of the Bexar County/TxDOT project. This roadway improvement, as currently designed, provides for an uncurbed five-lane road, with two traffic lanes in each direction, a continuous center turn lane and appropriate drainage ditches.

The City's November 4, 2003 Bond election authorized funds for the City project in the amount of \$2,632,230 for the installation of curbed and landscaped medians, signage, lighting and pavement markings to be installed in conjunction with, and following, the completion of the Bexar County/TxDOT improvement project. Only the installation of the medians and irrigation and electrical conduits portions of the City's project are being constructed as part of the Bexar County/TxDOT project in order to meet Bexar County's commitment to complete construction by July 2005. The remainder of the City's project will be completed under a separate City contract after completion of the Bexar County/TxDOT project. This Interlocal Agreement provides City funds to Bexar County to fund the design, using Bexar County's consultants, and construction of the City's modifications to the Bexar County/TxDOT project. These modifications to the project will be accomplished through TxDOT change orders and will include median installation, fill material, hydro seed, and the installation of irrigation electrical conduits. For the remaining portion of the City project, a separate contract will be solicited, initiated and managed by the City following the completion of the Bexar County/TxDOT construction that will include the installation of lighting, irrigation, brick bands and landscaping.

This TxDOT managed project will be constructed through the cooperative efforts of two contractors, E.E. Hood and Sons, Inc. and Acme Bridge Construction, Inc. This project was let by TxDOT in February of 2004, the Pre-construction Conference was held May 10, 2004, and project construction will begin shortly thereafter.

This ordinance also ratifies the approval of the additional design services of Lockwood, Andrews & Newnam, Inc. (LAN), the consultant for the Zarzamora section of the project, and Turner, Collie & Braden, Inc., the consultant for the Applewhite section of the project currently under contract with Bexar County and, upon execution of this Interlocal Agreement, authorizes payment to Bexar County in the amount of \$94,646 for these services. Professional Engineering services provided by LAN and Turner, Collie & Braden, Inc. include basic design services such as changes to schematics for the raised medians on Zarzamora from Applewhite Road to IH 410, attendance at Kick-off Meetings, coordination efforts for median design, determination of irrigation conduit locations, and the design of a French Drain concept for the median area as well as additional services to include changes to required environmental documents, assistance with public meetings, and the realignment of driveways consistent with the proposed medians. The proposals submitted by LAN and Turner, Collie & Braden, Inc. are included herein as Attachments 3 and 4.

### **POLICY ANALYSIS**

Approval of this ordinance will be a continuation of City Council's commitment to public safety and to the Southside Initiative.

### **FISCAL IMPACT**

This project was approved as a result of the November 4, 2003 bond election. Although this project was not included in the FY04-09 Capital Improvement Program Budget, approval of this ordinance will appropriately modify the Capital Budget in the amount of \$1,094,646.00.

Funds in the amount of \$1,094,646.00 are available from 2003-2007 General Obligation Street Improvement Bond funds and are authorized payable to Bexar County, Texas upon execution of the Interlocal Agreement as follows:

\$ 94,646.00

Payable for design services

\$1,000,000.00

Payable for construction expenses as they are incurred

### **COORDINATION**

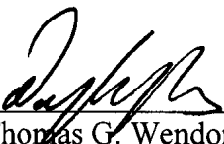
This action was coordinated with the Office of Management and Budget, the Finance Department and the City Attorney's Office.


### **SUPPLEMENTARY COMMENTS**

A Discretionary Contracts Disclosure Form is not required.

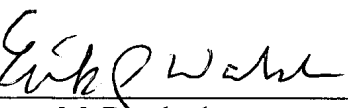
### **ATTACHMENTS**

1. Project Location Map
2. Interlocal Agreement
3. Proposal of LAM
4. Proposal of Turner, Collie & Braden, Inc.

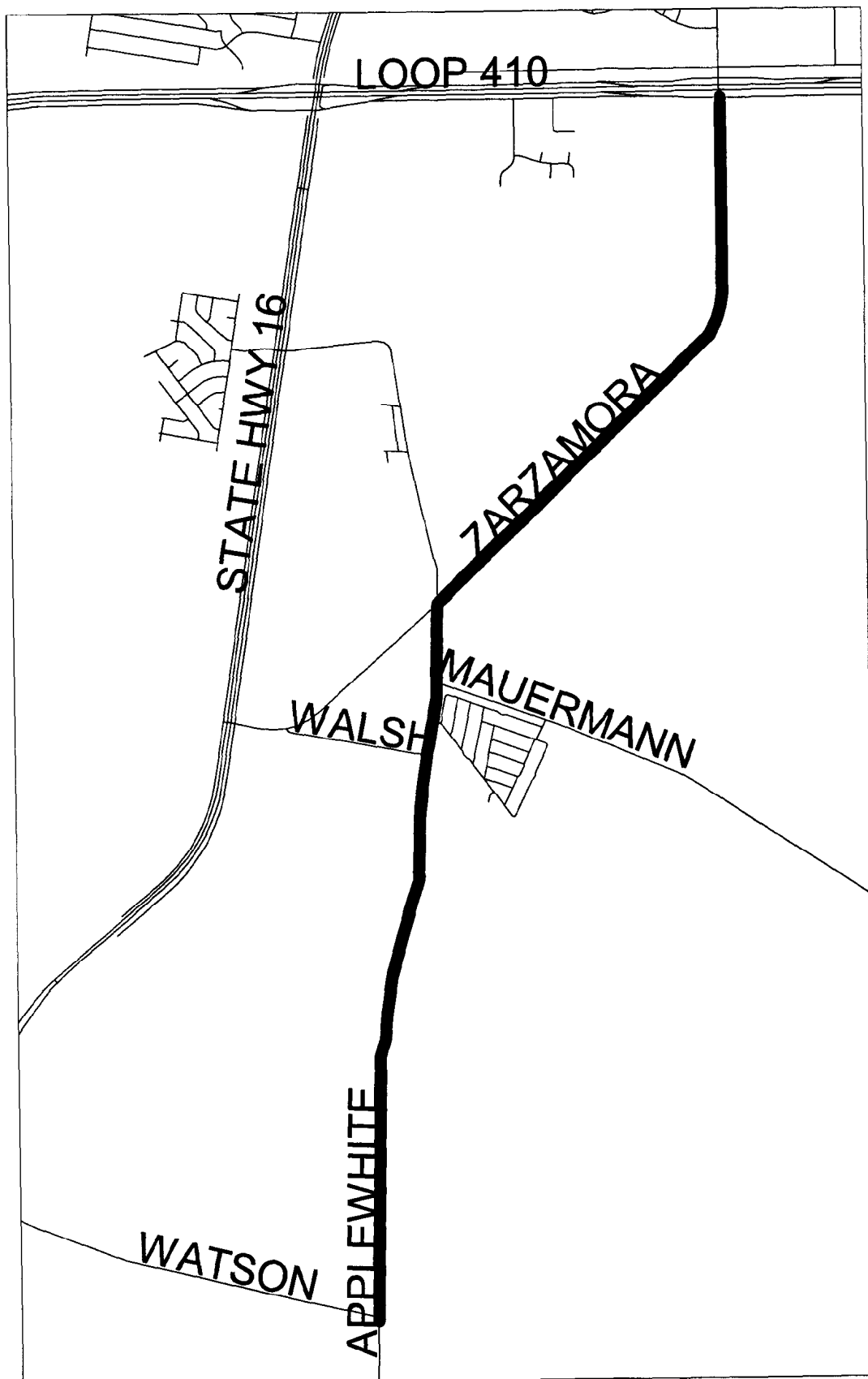
*for*  P.E. 5/18/04  
Thomas G. Wendorf, P.E.  
Director of Public Works

  
Melissa Byrne Vossmer  
Assistant City Manager

### **APPROVED:**

*for*   
Terry M. Brechtel  
City Manager

# ZARZAMORA: LOOP 410 - APPLEWHITE & APPLEWHITE: ZARZAMORA - WATSON



**PROFESSIONAL SERVICES CONTRACT**

§

**STATE OF TEXAS**

**PROGRAMMING**

§

**COUNTY OF BEXAR**

**CONSULTING SERVICES**

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**CITY OF SAN ANTONIO**

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**CONTRACT FOR**

**EMERGENCY OPERATIONS CENTER PROGRAMMING SERVICES, PHASE A**

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

**Facility Programming, Ltd.,  
dba Facility Programming and Consulting  
100 West Houston Street, Suite 1100  
San Antonio, Texas 78205**

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

**I.**

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

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

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

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

## **II. Scope of Services - Completion Schedule**

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

## **III. Liquidated Damages**

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

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

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

## **IV. Coordination with the City.**

- A. The Consultant shall hold periodic conferences with the City or its representatives to the end that the Project as developed shall have the full benefit of the City's experience and knowledge of existing needs and facilities, and be consistent with its current policies and standards. To assist the Consultant in this coordination, the City shall make available for the Consultant's use all existing plans, statistics, computations and other data in its possession relative to this particular Project at no cost to the Consultant. However, any and all such information shall remain the property of the City and shall be returned if so instructed.
- B. The City may be represented by the Director of a City Department and will act on behalf of the City with respect to the work to be performed under this Agreement. A Director shall have complete authority to transmit instructions, receive information, interpret and define the City's policies and decisions with respect to materials, equipment, elements and systems pertinent to the Consultant's services.

- C. The City will give prompt written notice to the Consultant whenever the City observes or otherwise becomes aware of any defect in the Consultant's services or any development that affects the scope or timing of the Consultant's services.
- D. The City shall furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for the completion of the Project. The Consultant will provide the City reasonable assistance in connection with such approvals and permits such as the furnishing of data compiled by the Consultant pursuant to other provisions of the contract, but shall not be obligated to develop additional data, prepare extensive reports or appear at hearings or the like unless compensated therefor under other provisions of this contract.

## **V. Compensation**

For and in consideration of the services to be rendered by the Consultant in this Agreement, the City shall pay and the Consultant shall receive the fee set forth in attachment hereto which is made a part hereof and identified as Exhibit 1.

## **VI. Revisions**

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

## **VII. Ownership of Documents**

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

## **VIII. Termination and/or Suspension of Work**

### **A. Right of Either Party to Terminate**

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

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

### **B. Right of City to Terminate**

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

## **IX. Consultant's Warranty**

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

## **X. Equal Employment Opportunity/Minority Business Advocacy**

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

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

Where applicable:

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

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

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

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

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

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

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

#### **XI. Assignment or Transfer of Interest**

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

#### **XII. Insurance requirements**

- A. Prior to the commencement of any work under this Agreement, Consultant shall furnish a completed Certificate of Insurance to the City and City Clerk's Office, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The City shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to the City and the City Clerk's Office, and no officer or employee shall have authority to waive this requirement.

- B. The City reserves the right to review the insurance requirements of this section during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance will the City allow modification whereupon the City may incur increased risk.
- C. A Consultant's financial integrity is of interest to the City, therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by the City, Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence except professional liability basis, by companies authorized and admitted to do business in the State of Texas and rated A – or better by A.M. Best Company and/or otherwise acceptable to the CITY, in the following types and amounts:

1. Workers' Compensation ** Employers' Liability **	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General (Public) Liability Insurance to include coverage for the following: a. Premises operations *b. Independent contractors c. Products/completed operations d. Personal Injury e. Contractual Liability *f. Explosion, collapse, underground *g. Broad form property damage, to include fire legal liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage  \$50,000
3. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
4. Professional Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
* If Applicable	
** Alternate Plans Must Be Approved by Risk Management	

The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided in

contract provision XV. herein within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

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

Name the City and its officers, employees, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the Workers' compensation and professional liability policies;

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

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

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

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

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

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

### **XIII. INDEMNIFICATION**

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

### **XIV. Severability**

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

## **XV. Notices**

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

### **If intended for CITY, to:**

City of San Antonio (and)  
Public Works Department  
City Architect's Office  
P.O. Box 839966  
San Antonio, Texas 78283-3966

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

### **If intended for CONSULTANT, to:**

Facility Programming Ltd., dba  
Facility Programming and Consulting  
100 West Houston Street, Suite 1100  
San Antonio, Texas 78205

## **XVI. Interest in City Contracts Prohibited**

No officer or employee of the City shall have a financial interest, directly or indirectly, in any contract with the City, or shall be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or service, except on behalf of the City as an officer or employee. This prohibition extends to the City Public Service Board, the City Water Board, and City boards and commissions other than those which are purely advisory.

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

## **XVII. Entire Agreement**

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

IN WITNESS WHEREOF, the City of San Antonio has lawfully caused these presents to be executed by the hand of the City Manager of said City, and the corporate seal of said City to be hereunto affixed and this instrument to be attested by the City Clerk, and the said Consultant, acting by the hand of Douglas H. Lowe, thereunto authorized President, does now sign, execute and deliver this document.

DONE at San Antonio, Texas, on this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 2004.

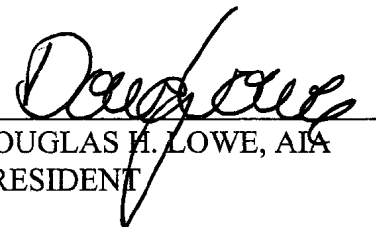
**CITY:**

**CITY OF SAN ANTONIO**

**CONSULTANT:**

**FACILITY PROGRAMMING Ltd., dba  
FACILITY PROGRAMMING AND  
CONSULTING, by  
FACILITY PROGRAMMING AND  
CONSULTING, INC., its General Partner**

By: \_\_\_\_\_  
CITY MANAGER Date

By:  5/21/04  
DOUGLAS H. LOWE, AIA  
PRESIDENT

**ATTEST BY:**

\_\_\_\_\_  
CITY CLERK Date

**APPROVED AS TO FORM:**

\_\_\_\_\_  
CITY ATTORNEY Date



**EXHIBIT "1"**

**SCOPE OF SERVICES – COMPLETION SCHEDULE**

**EOC PROGRAMMING, PHASE A  
WORKPLAN AND FEE PROPOSAL**

## **EXHIBIT 1**

### **SCOPE OF SERVICES – COMPLETION SCHEDULE**

#### General Services

The Consultant shall:

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

The Consultant shall:

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

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

The Consultant shall:

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

#### Specific Services

The City and the Consultant agree that Phase A is a factfinding and discovery effort and will not result in a complete program. Some of the above listed work, including for example, but not limited to, preparing detailed specifications, will occur in future Phases of this project. Specific tasks to be performed in Phase A are only those listed on the following three pages:

(Pages 15, 16, & 17 have been added to Exhibit 1)

# Exhibit 1

## *EOC Programming Phase A*

### *Workplan & Fee*

*Revised, May 20, 2004*

After considerable discussion about what tasks should be included in the programming phase for the new Emergency Operations Center, we respectfully suggest that we and the City first undertake what we are calling Phase A, a series of preliminary workshops to more clearly define the project and who will participate in the decision making.

#### **Workplan**

1. Conduct a kickoff meeting with the project team.
2. Arrange and accompany the project team on a two-day benchmarking trip to visit other similar projects.
3. Review the project budget and construct a preliminary cost model during each of the following four workshops.
4. Conduct a one-day workshop with the project team to discuss site issues.
5. Conduct a one-day workshop with the project team to discuss and agree on a preliminary business model and identify who would participate in the rest of the planning.
6. Conduct a one-day workshop with the project team on general facility space needs, adjacencies, and zones within the building (i.e. 24 hour activity, levels of security, etc.).
7. Conduct a one-day workshop with the project team to identify technical issues that will have an impact on the design and budget.
8. Prepare a clear definition of what work still needs to be done. Agree on a schedule and workplan for the remainder of programming and other tasks.
9. Organize all of the data and issues and produce graphic exhibits that illustrate the concepts discussed in the workshops.
10. Prepare a PowerPoint presentation.
11. Facilitate one meeting with the larger group of stakeholders and give the PowerPoint presentation, outlining what has been decided in Phase A and laying the groundwork for the rest of the project.

Note: The "project team" consists of key representatives from the City, the County, and Brooks City Base. For planning and scoping purposes, the project team shall not exceed 18 individuals.

# **Exhibit 1**

*EOC Programming Phase A*

*Workplan & Fee*

*Revised, May 20, 2004*

## **Schedule of Core Team Tasks**

### **Week One:**

- Prepare for and conduct a kickoff meeting.
- Collect and review existing information.

### **Week Two:**

- Arrange the logistics associated with the benchmarking tour.

### **Week Three:**

- Take the benchmarking tour.
- Review the existing project budget and create a cost model for programming the EOC.

### **Week Four:**

- Prepare for the upcoming workshops.
- Conduct two planning workshops.
- Summarize the data and produce graphic exhibits.

### **Week Five:**

- Summarize the data and produce graphic exhibits.

### **Week Six:**

- Prepare for the upcoming workshops.
- Conduct two planning workshops.
- Summarize the data and produce graphic exhibits.

### **Week Seven:**

- Summarize the data and produce graphic exhibits.
- Define the scope and fee to complete the programming tasks.
- Prepare a PowerPoint presentation.

### **Week Eight:**

- Prepare for and facilitate the large group workshop.

Phase A will not result in a complete program for the EOC. A second phase, addressing much more detail will be required to program this project; however, the fee expended during Phase A will not be lost or repeated in the subsequent phase.

## Exhibit 1

EOC Programming Phase A

Workplan & Fee

Revised, May 20, 2004

### Fee and Expenses

Core Team..... \$72,000

SBEDA Participation..... \$28,000

*Specific ancillary tasks and specific MBE/AABE/WBE/SBE firms will be determined later according to the following goals:*

MBE @ 20%

AABE @ 3%

WBE @ 10%

SBE @ 50%

### Expenses

Travel and per diem

*(including the benchmarking trip)*..... \$15,000

Reproduction of workshop materials..... \$3,000

Other expenses..... \$500

Total expenses..... \$18,500

*Expenses will be reimbursed based on actual expenses and receipts provided. Expenses associated with the project team traveling on the benchmarking trip are not included.*

<b>Total Fee and Expenses..... \$118,500</b>
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Tasks we are asked to perform that are not listed above, and schedule changes, will be additional services and billed at the hourly rates listed below:

### Principal:

Facility Programming and Consulting..... \$200

Ross & Baruzzini ..... \$225

### Senior Staff:

Sr. Systems Analyst..... \$175

Sr. Architect, Engineer or Programmer..... \$150

Technical Staff..... \$115

Support Staff..... \$75