

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
PARKS AND RECREATION DEPARTMENT**

TO: Mayor and City Council

FROM: Malcolm Matthews, Director, Parks and Recreation Department
Thomas G. Wendorf, P.E., Director, Public Works Department

THROUGH: Terry M. Brechtel, City Manager

COPIES: Christopher J. Brady; Management and Budget; Legal; File

SUBJECT: District 5 Park Improvements Package

DATE: June 3, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance accepts the proposal and selects Beaty & Partners Architects, Inc., a SBE firm, to provide architect services associated with the District 5 Park Improvements Package Project in City Council District 5; authorizes the negotiation and execution of a professional services contract in an amount not to exceed \$25,200.00; authorizes \$2,500.00 for contingency expenses, \$2,000.00 for bid advertising/printing and \$4,000.00 for mandatory project fees, for a total amount of \$33,700.00 from 2003-2007 General Obligation Park Improvement Bond funds; appropriates funds and provides for payment.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

This ordinance authorizes compensation to Beaty & Partners Architects, Inc. for architect services to include design, plan preparation and bid documents, construction phase services and additional services, including required inspections and surveys, as shown in the proposal included in Attachment 3.

This project will provide for the installation of park improvements for Father Benavides Park (1500 Saltillo) and Las Palmas Park (503 Castroville Road) located in City Council District 5, which have been combined into one project to achieve economy of scale. The scope of work at both parks will include ADA modifications and general upgrade of the existing park facilities.

The architect will begin design work in July 2004 and is estimated to be finished in November 2004. Construction is anticipated to occur from March 2005 until June 2005.

POLICY ANALYSIS

This project is in accordance with the 2003 Bond Program approved in November 2003. The consultant was selected through the City's RFQ consultant selection process. This ordinance is also a declaration of the City's official intent to reimburse itself from the proceeds derived from the sale of the City of San Antonio, General Obligation Park Improvement Bonds.

FISCAL IMPACT

The 2003 authorized Parks and Recreation capital improvements for Father Benavides Park Improvements has total approved funds of \$100,000 and Las Palmas Park Improvements has total approved funds of \$200,000, for a total project amount of \$300,000.

This is a one-time capital improvement expenditure within budget and included in the authorized 2003 Capital Improvements Bond Program. Funds in the amount of \$33,700.00 will be appropriated from authorized 2003-2007 General Obligation Park Improvement Bonds for the following:

| | |
|-------------|--|
| \$25,200.00 | design services by Beaty & Partners Architects, Inc. |
| \$ 2,500.00 | design contingency expenses |
| \$ 2,000.00 | bid advertising/printing |
| \$ 4,000.00 | mandatory project fees |

COORDINATION

This item has been coordinated with the Finance Department, the Public Works Department and the Office of Management and Budget.

SUPPLEMENTARY COMMENTS

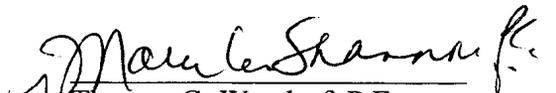
Discretionary Contract Disclosure Forms from Beaty & Partners Architects, Inc. and its subcontractors are attached.

ATTACHMENTS

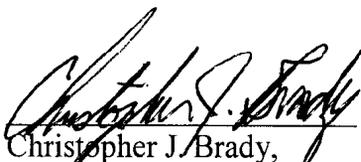
1. Project Map
2. Discretionary Contracts Disclosure Form
3. Consultant Proposal
4. Professional Services Agreement



Malcolm Matthews,
Director of Parks and Recreation

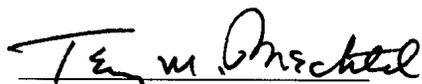


Thomas G. Wendorf, P.E.
Director of Public Works



Christopher J. Brady,
Assistant City Manager

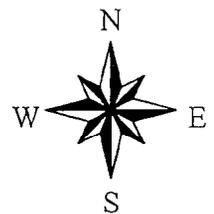
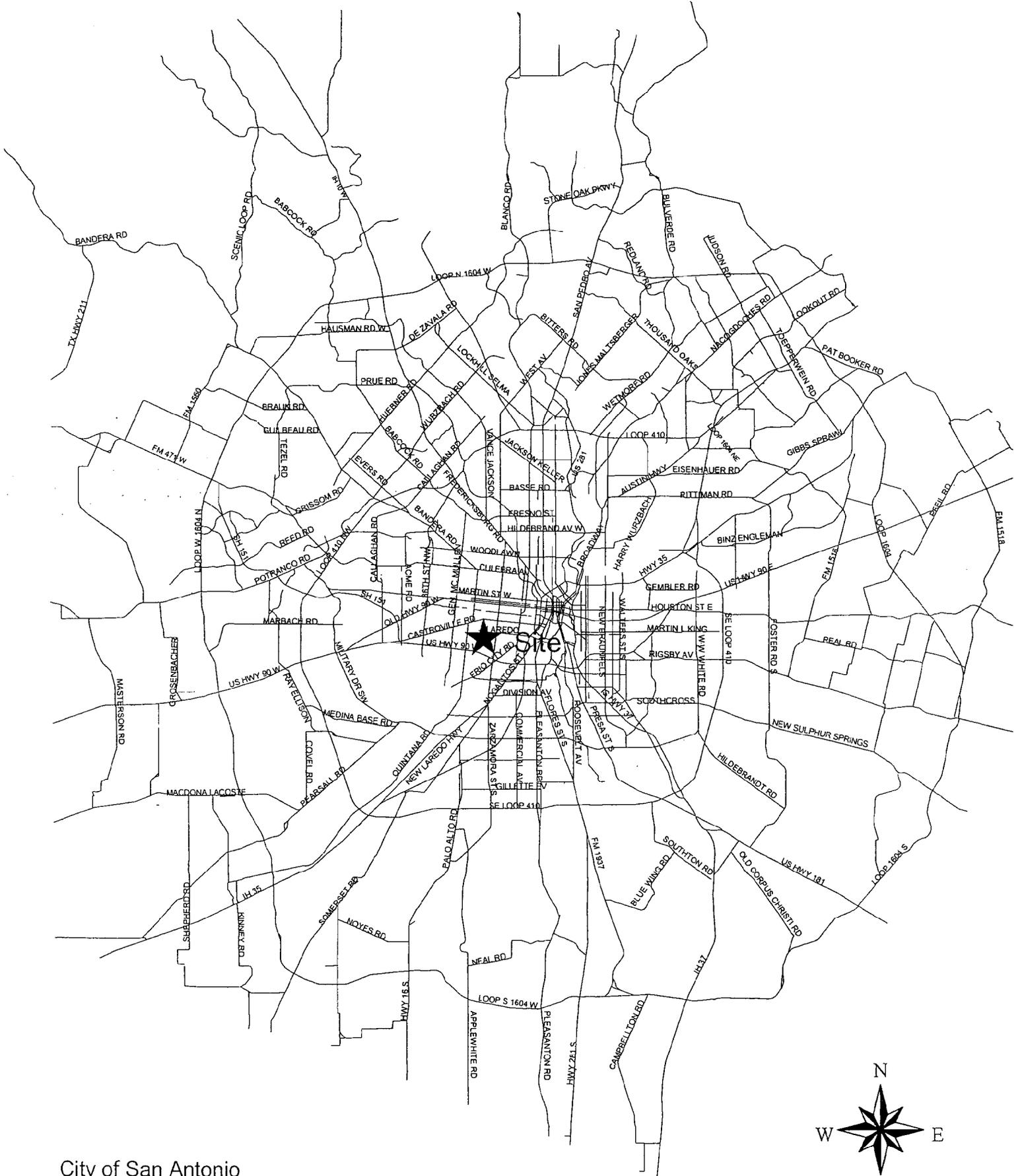
Approved:



Terry M. Brechtel
City Manager

Site Map

Father Benavides Park

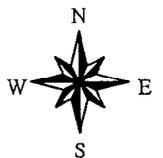
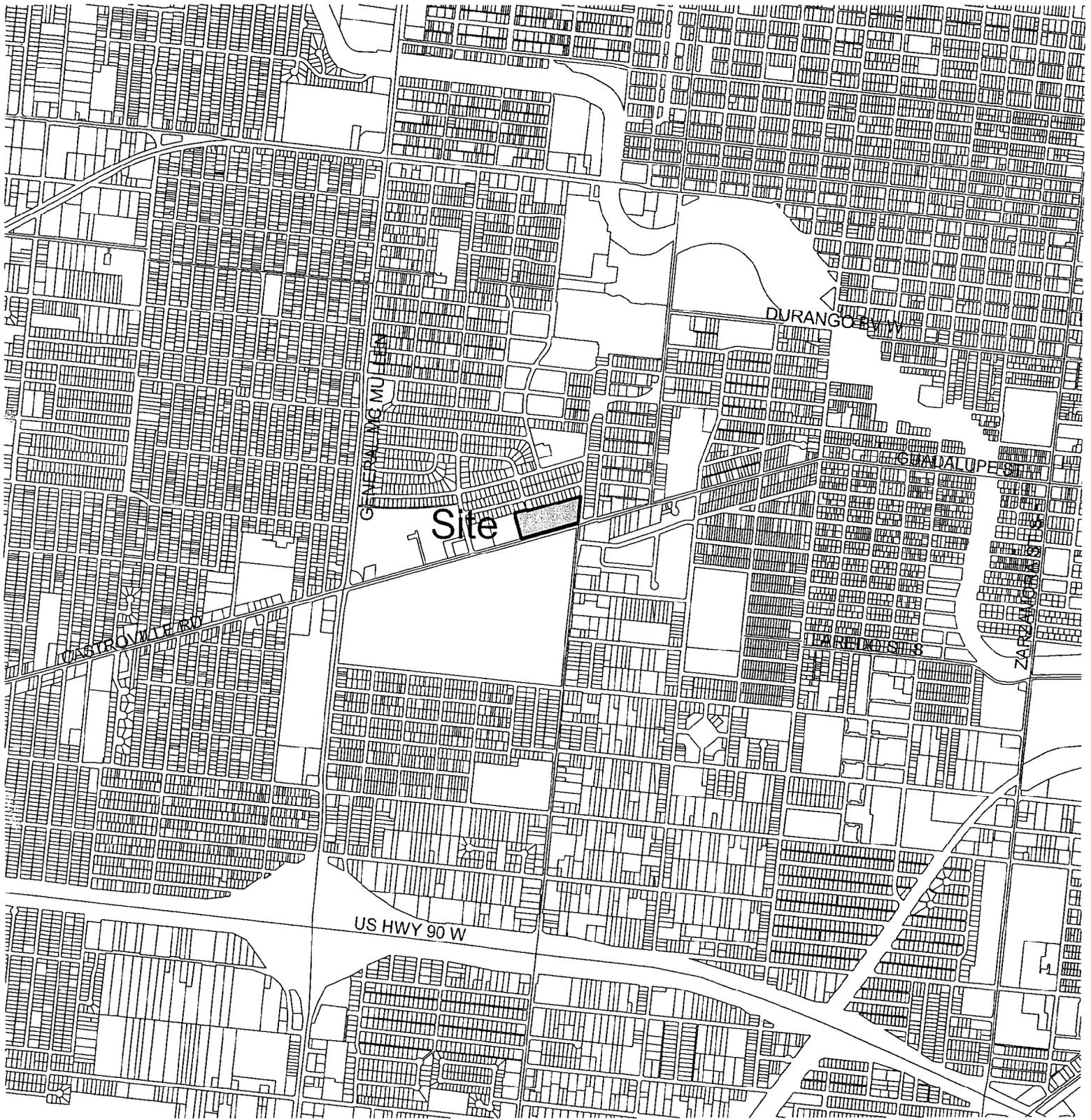


Site Map

Father Benavides Park



Site Map Las Palmas Park



City of San Antonio

Discretionary Contracts Disclosure*

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

Attach additional sheets if space provided is not sufficient.

State "Not Applicable" for questions that do not apply.

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

Disclosure of Parties, Owners, and Closely Related Persons

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

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

None

(2) the identity of any business entity¹ that would be a party to the discretionary contract: Beuty & Partners Architects, Inc. and the name of

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

Bain Medina Bain, Inc.
James T. Rodriguez Consulting Engineers, Inc.
Bill Reiffert & Associates, Inc.
Garza Consulting

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

None

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

None

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

Political Contributions

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

| To Whom Made: | Amount: | Date of Contribution: |
|---|---------|-----------------------|
| See attached for contributions made by Bain Medina Bain, Inc. | | |

Disclosures in Proposals

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

| | | |
|--|--|--------------------------|
| Michael Beaty AIA | | |
| Signature:  | Title: Principal Company: Beaty & Partners Architects | Date: 05.20.04 |

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

City of San Antonio

Discretionary Contracts Disclosure*

*For use of this form, see City of San Antonio Ethics Code, Part D, Section 1& 2
Attach additional sheets if space provided is not sufficient.
State "Not Applicable" for questions that do not apply.*

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

Disclosure of Parties, Owners, and Closely Related Persons

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

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

(2) the identity of any business entity that would be a party to the discretionary contract:

Bain Medina Bain, Inc.

and the name of:

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

and the name of:

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

Not Applicable

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

Not Applicable

Political Contributions

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

| To Whom Made: | Amount: | Date of Contribution: |
|---|---------------|----------------------------|
| David Carpenter | \$140.00 | April 2001 |
| CECPAC | \$360.00 | March 2001 |
| Friends of Ed Garza and Nelson Wolff | \$150.00/each | September and October 2002 |
| Friends of Bonnie Conner, Robert Tejada, Carroll Schubert, Bobby Perez, Toni Moorehouse, Lyle Larson, David Carpenter, Julian Castro, Paul Elizondo and Enrique Barrera | \$50.00/each | July thru October 2002 |
| Toni Moorehouse, Enrique Barrera and Carroll Schubert | \$70.00/each | May 2003 |

Disclosure in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

| | | |
|---|---|----------------------|
| | | |
| Signature:  | Title: President Company: Bain Medina Bain, Inc. | Date: May 5, 2004 |

05.14.04

Rodney Dziuk, Park Design Superintendent
San Antonio Parks and Recreation Dept.
P.O. Box 839966
San Antonio, Texas 78283-3966

Re: District 5 Park Improvements Package, San Antonio

RODNEY, thank you for the opportunity to offer this proposal for Landscape Architectural Services. We outline below our understanding of the project scope, proposed services, compensation, and other matters:

PROJECT SCOPE

Improvements to Las Palmas Park, as prioritized by SAPAR and as allowable by budget constraints, including:

- Relocation of vegetable garden and addition of new gazebo;
- Removal of basketball court and replacement with sod;
- Addition of "picnic units" consisting of table, grill and waste receptacle, per SAPAR standard, near pavilion;
- Installation of higher, regulation backstop fencing with angled top section to reduce foul balls in street;
- Installation of pipe and cable fencing to prevent parking on grass;
- Relocation of concession stand and associated power;
- Installation of portable toilets with metal guards per SAPAR standards;
- Explore possibility of removal of tennis courts for replacement with one or two basketball courts as budget allows;

Excluding:

- Geotechnical and topographic survey work are not anticipated and are therefore excluded from services.

Improvements to Father Benevides Park, as prioritized by SAPAR and as allowable by budget constraints, including:

- Redesign of parking at primary entrance on Saltillo to provide one accessible parking space and redesign park entrance walk;
- Replacement of sidewalk sections and regrade of surrounding areas as required;
- Addition of "picnic units" consisting of table, grill and waste receptacle per SAPAR standards;
- Reconfiguration of concrete pad and bleacher locations at baseball field, extension of chain link fencing for player protection from foul balls;
- Replacement of pavilion surface.

Excluding:

- Lighting and electrical work are not anticipated and are therefore excluded from services;
- Geotechnical and topographic survey work are not anticipated and are therefore excluded from services.

SERVICES TO BE PROVIDED BY THE ARCHITECT

As detailed on the Service Schedule attached as Exhibit "A" to this proposal and summarized below:

- **Design Services** for the design and documentation of the project, including architectural and landscape architectural, mechanical and electrical systems;
- **Contract Procurement Services** to assist you in obtaining a construction contract;
- **Contract Administration Services** to administer the construction process;
- **General Project Administration Services** to manage our work and that of our consultants and to interface with you throughout the project;
- **Construction Cost and Scheduling Services**, including opinions of probable construction cost, scheduling of our work;
- **Post Construction Services**, including Record Drawings.

COMPENSATION

For the Services indicated in the Services Schedule:

A stipulated fixed fee of twenty-five thousand two hundred dollars (\$25,200).

Progress Payments will be billed by the Architect and paid by the Client monthly according to the percentage of the Architect's Services completed. The fee will be allocated to the Architect's Services as follows:

Design Services

- | | |
|------------------------------------|----------|
| • Schematic design documents | \$ 8,820 |
| • Construction documents | \$11,340 |
| • Contract Administration Services | \$ 5,040 |

Other services listed above are pro-rated to these percentages.

The Architect's compensation allocated to Contract Administration services shall be due as equal monthly payments during the construction phase established in the Schedule of Services or in the contract for construction, whichever is less.

For Changes in Service, if any:

On an hourly rate basis at the Architect's and the Architect's Consultants' standard hourly rates in effect at the time the services are performed. The Architect's current standard hourly rate compensation schedule is attached as Exhibit "B" to this proposal.

For Reimbursable Expenses:

Reimbursable expenses, excluding review documents as listed below, such as plotting and reproduction of documents (exclusive of interoffice and interdisciplinary coordination prints), preparation and transmission of electronic files (exclusive of interdisciplinary transmission of files between the Architect and the Architect's consultants), fees for governmental reviews, auto travel mileage, delivery charges, long distance communication, freight, and expenses incurred in travel and lodging will be billed monthly at 1.15 times the Architect's cost and will be in addition to the above compensation. A current schedule of standard reimbursable expense rates is available from the Architect upon request.

Review documents provided to the Owner:

- Schematic Design Documents up to 5 sets
- Construction Documents up to 9 sets

Invoices:

Invoices for the work performed will be submitted each month. Payment is due upon receipt. If payment is overdue beyond thirty (30) days billing date, carrying charges are guaranteed by the Client to be paid at the rate of one percent (1.0%) per month of the amount past due, plus any legal fees or expenses necessary for collection of the account. If payment becomes more than thirty (30) days past due, the Architect reserves the right to stop work on the project, and any liabilities and/or additional expenses caused by the Architect's termination of activity will be assumed by the Client.

OTHER PROVISIONS

We propose the following production schedule (in calendar days):

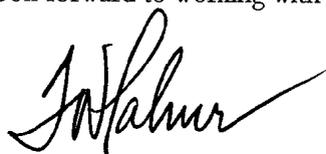
Design Services

- Schematic Design Documents 30 days
- Construction Documents 45 days

Base drawings are to be provided by Owner. The Architect shall be entitled to rely on the accuracy of the information provided by the Client.

This proposal is subject to change or withdrawal if a Client-Architect Agreement has not been accepted and executed within sixty (60) days.

If this proposal is acceptable, please allow it to serve as the basis for our Client-Architect Agreement for this project. Again, we appreciate this opportunity to be of service and we look forward to working with you.



Terry Palmer AIA
vice president

TP:sw

xc: contract file

Attachments: Exhibit A, Services Schedule
Exhibit B, Hourly Rate Compensation Schedule

The Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard, Suite 107, Austin, Texas, 512.458.4126, has jurisdiction over individuals licensed as Architects or Landscape Architects under the Architect's Registration Laws, Articles 249a and 249c, VTCS.

SERVICES SCHEDULE

for

**District 5 Park Improvements Package
San Antonio, Texas**

EXHIBIT A TO ARCHITECT'S PROPOSAL

dated: 05.14.04

CHECKLIST OF SERVICES PROVIDED BY THE ARCHITECT

Services checked are provided by the Architect; services not checked are not provided by the Architect and are to be provided by the Client and/or Client's Consultants or are deemed by the Client to not be necessary for this project.

I. PRE-DESIGN SERVICES

- Site Survey
- Geotechnical Testing and Evaluation
- Site Analysis
- Master Planning
- Programming
- Alternate Design Studies
- Existing Facilities Survey
- Measured Drawings
- Existing Tree/Landscape Analysis
- Arborist Services
- Ordinance/Code Evaluation

II. DESIGN SERVICES

- Architectural Design and Construction Documents
- Interior Architecture
- Landscape Architecture
- Site Furnishings Selection
- Special Landscape/Site Design Features
- Conceptual Site Lighting Design
- Landscape Irrigation System Design
- Basic Area Calculations
- Exterior Color Selections
- Interior Color/Finish Selections
- Color/Finish Selection Display Board/s
- Sign Design and Construction Documents
- Color Elevation Rendering/s of the Project
- Color Site Plan Rendering of the Project
- Color Floor Plan Rendering/s of the Project
- Preliminary Building Finish-Out Design and Documentation
- Basic Space Planning
- Custom Lease Space Design
- Custom Lease Space Color/ Finish Selections
- Furnishings, Fixtures, and Equipment (FF&E) Selection
- Structural Engineering
- Mechanical-Electrical Engineering
- Energy Efficiency Analysis
- Civil Engineering
- Traffic Impact Study
- Drainage Study
- Pervious Cover Calculations

- III. CONTRACT PROCUREMENT SERVICES
 - General Contract Procurement Services
 - Competitive Bidding
 - Negotiated Proposals
 - Assistance in Value Engineering

- IV. CONTRACT ADMINISTRATION SERVICES
 - General Administration
 - Site Visits/ Construction Site Meetings
 - Certifications of Payments to Contractor
 - Submittal Review
 - Administration of Changes in the Work
 - Substantial and Final Completion Inspection

- V. GENERAL PROJECT ADMINISTRATION SERVICES
 - Management of Services of Architect and Consultants
 - Assessment of Alternative Materials and Systems
 - Client Presentations / Meetings
 - Special Presentations / Meetings
 - Preliminary Plan Review Conference
 - Assistance in Texas Department of Licensing and Regulation (TDLR) Accessibility (ADA) Approval
 - Assistance in San Antonio Historic and Design Review Commission (HDRC) Approval
 - Assistance in City Building Permitting Approval

- VI. CONSTRUCTION COST AND SCHEDULING SERVICES
 - Opinions of Probable Construction Cost
 - Project Schedule

- VII. POST CONSTRUCTION SERVICES
 - One-Year Warranty Inspection
 - Record Drawings

- VIII. SPECIAL SERVICES
 - None.

CHECKLIST OF INFORMATION / SERVICES PROVIDED BY THE CLIENT

Services checked are provided by the Client and/or Client's Consultants; services not checked are provided by the Architect as noted on the preceding checklist, or are deemed by the Client to not be necessary for this project.

- Site Selection
- Platting/ Zoning
- Hazardous Material Assessment and/or Abatement
- Environmental Impact Studies
- Building Permit Affidavit/s
- Tree Affidavit
- Vested Rights Permit/s
- Move-in/ Start up
- Post Construction Accessibility Inspection
- Site Survey (including, but not limited to, metes and bounds, zoning, platting, utilities, topography, easements, encroachments, existing construction and vegetation)
- Geotechnical Testing and Evaluation
- Master Planning
- Programming
- Existing Facilities Survey
- Measured Drawings
- Civil Engineering
- Traffic Impact Study
- Drainage Study
- Pervious Cover Calculations
- Structural Engineering
- Mechanical Electrical Engineering
- Energy Efficiency Analysis
- Landscape Architecture
- Arborist Services
- Existing Landscape Analysis
- Landscape Irrigation System Design
- Furnishings, Fixtures, and Equipment (FF&E) Selection
- Estimates/Evaluations of the Cost of the Work
- Project Schedule
- Building Permit Application
- Record Drawings
- Post-Contract Evaluations

SERVICES PROVIDED BY THE ARCHITECT

I. PRE-DESIGN SERVICES

None.

II. DESIGN SERVICES

ARCHITECTURAL DESIGN AND CONSTRUCTION DOCUMENTS

SCHEMATIC DESIGN DOCUMENTS: The Architect shall provide Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget for the Cost of the Work. The documents shall establish the conceptual design of the Project, illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, preliminary plans, and exterior elevation/s studies. At the Architect's option, the Schematic Design Documents may also include sections, study models, electronic modeling or combinations of these media.

CONSTRUCTION DOCUMENTS: The Architect shall provide Construction Documents setting forth the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish the selection, composition, and quality levels of materials and systems required for the Project.

During the development of the Construction Documents, the Architect shall assist the Client in the development and preparation of: (1) bidding and procurement information which describes the time, place and conditions of bidding; bidding or proposal forms, and the form of agreement between the Client and the Contractor; and (2) the Conditions of the Contract for Construction (General Conditions, and Supplementary/Special Conditions if applicable).

If, through no source delay caused by the Architect, the Schematic Design and Construction Documents have not been completed within twelve (12) months from the date of execution of the Client-Architect agreement, services of the Architect beyond this limit shall be provided by the Architect as a Change in Services.

LANDSCAPE ARCHITECTURE

The Architect shall provide design, construction documents, and contract administration for the normal exterior plantings of the Project.

SITE FURNISHINGS SELECTION

The Architect shall select appropriate site furnishings, which may include seating, waste receptacles, and related accessories.

SPECIAL LANDSCAPE/ SITE DESIGN FEATURES

The Architect shall provide design, construction documents, and contract administration for new gazebo.

MECHANICAL-ELECTRICAL ENGINEERING

For the Client's convenience, the Architect shall engage a Consultant to provide design, construction documents, and contract administration services for normal mechanical-electrical elements of the Project. The Consultant shall be solely responsible for the accuracy and timeliness of consulting services provided.

III. CONTRACT PROCUREMENT SERVICES

GENERAL CONTRACT PROCUREMENT SERVICES

The Architect shall assist the Client in obtaining either competitive bids or negotiated proposals and shall assist the Client in awarding and preparing a Contract for Construction.

The Architect shall assist the Client in establishing a list of prospective bidders or contractors.

The Architect shall assist the Client in bid or proposal evaluation and determination of the successful bid or proposal, if any. If requested by the Client, the Architect shall notify all prospective bidders or contractors of the bid or proposal results. If requested by the Client, the Architect shall arrange for procuring the reproduction of Bidding Documents for distribution to prospective bidders/proposers.

If requested by the Client, the Architect shall distribute the Bidding Documents to prospective bidders/proposers and request their return upon completion of the bidding/pricing process. The Architect shall maintain a log of distribution and retrieval, and the amounts of deposits, if any, received from and returned to prospective bidders/proposers.

The Architect shall consider requests for substitutions, if permitted by the Bidding or Proposal Documents, and shall prepare and distribute addenda identifying acceptable substitutions to all prospective bidders/proposers.

The Architect's Contract Procurement Services, whether for competitive bidding or negotiation, shall be provided for a single procurement process. Should the Client elect for any reason to re-bid, re-negotiate, or to change from a bid-to-negotiation or negotiation-to-bid process, the Architect's services shall be provided as a Change in Services.

IV. CONTRACT ADMINISTRATION SERVICES

GENERAL ADMINISTRATION

The Architect shall provide administration of the Contract between the Client and the Contractor as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this document. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Architect.

The Architect's responsibility to provide the Contract Administration Services commences with the award of the initial Contract for Construction and terminates at the issuance to the Client of the final Certificate for Payment.

Should the Architect's Contract Administration Services be required beyond sixty (60) days after the date of Substantial Completion of the Work, the Architect's services beyond this time shall be provided as a Change in Services.

The Architect shall be a representative of and shall advise and consult with the Client during the provision of Contract Administration Services. The Architect shall have authority to act on behalf of the Client only to the extent provided in this Agreement unless otherwise modified by written amendment.

Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Client and Architect.

The Architect shall review properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Architect and shall include a detailed written statement that indicates the specific Drawings and/or Specifications in need of clarification and the nature of the clarification requested.

If deemed appropriate by the Architect, the Architect shall on the Client's behalf prepare, reproduce and distribute supplemental Drawings and/or Specifications in response to requests for information by the Contractor.

If the Architect is required to respond to Contractor's requests for information when such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Client-provided information, or prior Project correspondence or documentation, such response shall be provided by the Architect as a Change in Services.

The Architect shall interpret and decide matters concerning performance of the Client and Contractor under the requirements of the Contract Documents on written request of either the Client or Contractor. The Architect's response to such requests shall be made in writing with reasonable promptness.

Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Client and Contractor, and shall not show partiality to either. The Architect shall not be liable for the results of interpretations or decisions so rendered in good faith.

The Architect shall render initial decisions on claims, disputes or other matters in question between the Client and Contractor as provided in the Contract Documents. However, the Architect's decision on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

During the Architect's performance of Contract Administration Services, the Architect shall review the project from time to time and may recommend design changes, additions, or corrections. Changes and additions approved by the Client and corrections as necessary shall be added to the work by Change Order. **A contingency fund, in an amount established by the Client in consultation with the Architect, shall be provided by the Client to be used for such changes, additions, and corrections.**

If the contractor has not achieved Substantial Completion of the Project within ten (10) months from the Notice to Proceed, services of the Architect beyond this limit shall be provided by the Architect as a Change in Services.

SITE VISITS/ CONSTRUCTION SITE MEETINGS

The Architect, as a representative of the Client, shall visit the site at intervals appropriate to the stage of the Contractor's operations, (1) to become generally familiar with and to keep the Client informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Client against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner

indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities.

The Architect shall attend routine construction progress meetings with the Contractor at the construction site. The Architect shall conduct such meetings, record minutes of the meetings' activities, and distribute minutes to the Client and Contractor.

The Architect shall attend other special site meetings when required for review of mock-ups, pre-construction conferences, and the like.

Site visits to conduct field observations and/or to attend routine construction progress meetings or other site meetings required of the Architect beyond a total of ten (10) visits over the duration of construction shall be provided by the Architect as a Change in Services.

The Architect shall report to the Client known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

The Client shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

The Architect shall have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have the authority to require inspection or testing of the Work, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

CERTIFICATION OF PAYMENTS TO CONTRACTOR

The Architect shall review and certify the amounts due the Contractor and shall issue Certificates for Payment in such amounts. The Architect's certification for payment shall constitute a representation to the Client, based on the Architect's evaluation of the Work and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Client to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

SUBMITTALS

The Architect shall review and take appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences or procedures. The Architect's acceptance of a specific item shall not indicate acceptance of an assembly of which the item is a component.

If more than two (2) reviews of any Shop Drawing, Product Data item, Sample or similar submittal are required of the Architect, such additional reviews shall be provided by the Architect as a Change in Services.

If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

ADMINISTRATION OF CHANGES IN THE WORK

The Architect shall prepare Change Orders and/or Construction Change Directives for the Client's approval and execution in accordance with the Contract Documents. The Architect may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents by issuing an Architect's Supplemental Instruction (ASI).

The Architect shall review properly prepared, timely requests by the Client or Contractor for Changes in the Work, including adjustments to the Contract Sum and/or Contract Time. A properly prepared request for a Change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested Changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may issue an ASI and recommend to the Client that the requested change be denied. If the Architect determines that implementation of the requested change would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Client, who may authorize a Change Order to be prepared.

Should preparation of Change Orders or Construction Change Directives require extensive evaluation of Contractor proposals and/or revisions or additions to the Construction Documents not occasioned by an error or omission of the Architect,

such services shall be provided by the Architect as a Change in Services. The Architect will review and take appropriate action on Contractor's proposed substitution of materials or products, where such substitutions are permitted by the Contract Documents.

If the Architect is required to review more than one (1) request for substitution of any material or product or if the Architect is required to review any substitution requested when such substitution is not permitted by the Contract Documents, such review shall be provided by the Architect as a Change in Services.

SUBSTANTIAL AND FINAL COMPLETION INSPECTION

The Architect shall conduct inspections to determine the date of Substantial Completion and the date of Final Completion, shall receive from the Contractor and forward to the Client, for the Client's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

The Architect's Substantial Completion inspection shall be conducted to check conformance of the Work with the requirements of the Contract Documents and to prepare a list of items to be corrected or completed. The Architect shall distribute copies of the list of items to be corrected or completed to the Client and Contractor.

When the Work is found to be substantially complete, the Architect shall inform the Client about the balance of the Contract Sum remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the Work. When the Architect receives the Contractor's final application for payment, indicating the Final Completion of the Work, the Architect shall conduct a Final Completion inspection. The Architect's Final Completion inspection shall be conducted to determine the Contractor's satisfactory completion of the list of items to be corrected or completed. When the work is found to be finally complete, the Architect shall certify and forward to the Client the Contractor's final application for payment.

The Architect shall receive from the Contractor and forward to the Client: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Client against liens.

Should the Architect be required to make more than one (1) inspection for Substantial Completion and/or more than one (1) inspection for Final Completion, such services shall be provided by the Architect as a Change in Services.

V. GENERAL PROJECT ADMINISTRATION SERVICES

MANAGEMENT OF SERVICES OF ARCHITECT AND CONSULTANTS

The Architect shall manage the Architect's services, consult with the Client, research applicable design criteria, and communicate with members of the Project team. The Architect shall coordinate the services provided by the Architect and the Architect's consultants with those services provided by the Client and the Client's consultants, if any.

CLIENT PRESENTATIONS / MEETINGS

The Architect shall make presentations to explain the design of the Project to representatives of the Client. The Architect shall attend meetings periodically with the Client to review the status of the Project and as needed to provide the Architect's services. The Architect shall be entitled to rely on approvals from the Client at such meetings/presentations in the further development of the design.

Should the Architect be required to attend more than three (3) total such meetings/presentations, exclusive of periodic construction progress meetings with the Contractor which the Client may also attend, such attendance shall be provided by the Architect as a Change in Services.

SPECIAL PRESENTATIONS / MEETINGS

The Architect shall attend meetings and make presentations to explain the design of the Project to others on behalf of the Client, as follows:

- **One (1) public meeting after Schematic Design;**
- **One (1) meeting with Park Board.**

Should the Architect be required to attend more than two (2) total such special meetings/presentations, exclusive of periodic construction progress meetings with the Contractor which the Client may also attend, such attendance shall be provided by the Architect as a Change in Services.

ASSISTANCE IN TEXAS DEPARTMENT OF LICENSING AND REGULATION ACCESSIBILITY (ADA) APPROVAL

The Architect shall assist the Client in connection with the Client's responsibility for filing documents required for approval of the Project for accessibility by the disabled by the Texas Department of Licensing and Regulation (TDLR), including forwarding of documents to a TDLR-licensed Reviewer, and reviewing and responding to Reviewer comments, if any.

Should the Architect be required to (1) make substantive revisions to the Drawings and/or Specifications as a result of revisions required by the TDLR Reviewer which were not reasonably anticipatable by the Architect, (2) apply for variance/s based on TDLR Reviewer comments not reasonably anticipatable by the Architect or necessitated by Client mandated Project design components, or (3) provide services related to Reviewer comments from a post-construction inspection, such services shall be provided by the Architect as a Change in Services.

ASSISTANCE IN SAN ANTONIO HISTORIC & DESIGN REVIEW COMMISSION APPROVAL

The Architect shall assist the Client in connection with the Client's responsibility for filing documents required for the approval of the San Antonio Historic and Design Review Commission (HDRC), including attending and making presentations at Commission meetings to obtain conceptual and final approval of the Project.

Should the Architect be required to attend more than one (1) meeting/presentation with the HDRC, such attendance shall be provided by the Architect as a Change in Services.

ASSISTANCE IN CITY BUILDING PERMITTING APPROVAL

In connection with the Client's and/or Client's Contractor's responsibility for submitting documents required for City building permitting, the Architect shall respond to questions or comments by City plan reviewers related to the Architect's scope of services.

VI. CONSTRUCTION COST AND SCHEDULING SERVICES

OPINIONS OF PROBABLE CONSTRUCTION COST

When the Project requirements have been sufficiently identified, the Architect shall prepare a preliminary Opinion of Probable Construction Cost. This Opinion may be based on current area, volume or similar conceptual estimating techniques. As the design process progresses through the end of the preparation of Construction Documents, the Architect shall update and refine the preliminary Opinion of Probable

Construction Cost. The Architect shall advise the Client of any adjustments to previous Opinions of Probable Construction Cost indicated by changes in Project requirements or general market conditions. If at any time the Architect's Opinion of Probable Construction Cost exceeds the Client's budget, the Architect shall make appropriate recommendations to the Client to adjust the Project's size, quality, or budget, and the Client shall cooperate with the Architect in making such adjustments.

The preliminary Opinion of Probable Construction Cost and updated Opinions of Probable Construction Cost prepared by the Architect represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Client has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Client's budget for the Project or from any Opinion of Probable Construction Cost prepared or agreed by the Architect.

If the Architect's final Opinion of Probable Construction Cost is exceeded by the lowest bona fide bid or negotiated proposal, the Client shall:

- give approval for an increase in the budget for the Cost of the Work;
- authorize re-bidding or re-negotiating of the Project within a reasonable time;
- terminate in accordance with the Client-Architect agreement, or;
- cooperate in revising the Project scope and quality as required to reduce the Cost of the Work.

If the Client chooses to proceed with revising the Project scope and quality, the Architect shall modify the documents for which the Architect is responsible under this Agreement as reasonably necessary to comply with the budget for the Cost of the Work. The modification of such documents shall be the limit of the Architect's responsibility.

If the lowest bona fide bid or negotiated proposal exceeds the Architect's final opinion of probable construction cost by more than fifteen per cent (15%), the Architect's services for modifying the documents shall be provided at no additional cost to the Client. **If the lowest bona fide bid or negotiated proposal is within fifteen per cent (15%) or less of the Architect's final Opinion of Probable Construction Cost, the Architect's services for modifying the documents shall be provided at as a Change in Services.**

The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not construction is commenced.

PROJECT SCHEDULE

When Project requirements have been sufficiently identified, the Architect shall prepare, and periodically update, a Project Schedule that shall identify milestone dates for decisions required of the Client, design services furnished by the Architect, completion

of documentation provided by the Architect, commencement of construction and Substantial Completion of the Work.

VII. POST CONSTRUCTION SERVICES

RECORD DRAWINGS

The Architect shall prepare a set of reproducible record drawings of the Project, incorporating changes in the work and other significant variations in the built Project from that depicted in the Construction Documents. The Architect's work shall be based on data provided by the Contractor, upon which data the Architect shall be permitted to rely.

VIII. SPECIAL SERVICES

None.

HOURLY RATE COMPENSATION SCHEDULE

| <u>Rate Per Hour</u> | <u>Classification</u> |
|----------------------|------------------------|
| \$110 - 140 | Principal Architect |
| \$85 - 105 | Architect |
| \$100 | Landscape Architect |
| \$85 - 105 | Senior Project Manager |
| \$70 - 85 | Project Manager |
| \$60 - 70 | Intern II |
| \$55 - 70 | Technician II |
| \$50 - 55 | Intern I |
| \$40 - 50 | Technician I |
| \$35 - 45 | Administrative Staff |

Hourly rates within each classification are in five dollar increments. The specific hourly rate is dependent on the experience and qualifications of individual personnel. Hourly rates are adjusted from time to time in accordance with the normal salary review practices of the Architect. The current rates in effect at any time are available upon request by the owner.

**Evaluation of Qualification Statements for
District 5 Park Improvements Package
CITY OF SAN ANTONIO - ARCHITECT/ENGINEER REVIEW**

| No. | Total Points Possible | Evaluator's Score | | | | | | SBEDA | | | | TOTAL POINTS Out of 100 | Ranking |
|-------------------------------|-----------------------------|-------------------|--------------|-----------------|---------------|----------|---------------------|---|---|--|-------------|----------------------------|---------|
| | | 80 | 80 | 80 | 80 | 320 | 80 | 10 | 5 | 5 | 20 | | |
| Architect/Engineer Candidates | | Scott Stover | Rodney Dziuk | Mark Wittlinger | Chester Slimp | SUBTOTAL | Average Panel Score | Locally Headquartered Business Enterprise | Disadvantaged Business Enterprise (DBE) | Small Business Economic Development Advocacy Policy Compliance (SBEDA) | SBEDA TOTAL | | |
| 1 | Beaty & Partners Architects | 61 | 60 | 68 | 61 | 250 | 62.50 | 10 | 1 | 3 | 14 | 76.50 | 1 |
| 2 | Rialto Studio | 56 | 56 | 71 | 56 | 239 | 59.75 | 10 | 2.75 | 3 | 15.75 | 75.50 | 2 |
| 3 | C.F. Zavala Group | 51 | 53 | 67 | 41 | 212 | 53.00 | 10 | 5 | 4 | 19 | 72.00 | 3 |
| 4 | HNTB Corporation | 48 | 48 | 65 | 47 | 208 | 52.00 | 6 | 1.55 | 2 | 9.55 | 61.55 | 4 |
| 5 | Land Design Partners | 43 | 48 | 63 | 34 | 188 | 47.00 | 3.5 | 1.75 | 3 | 8.25 | 55.25 | 5 |
| 6 | M2L Associates | 40 | 47 | 54 | 30 | 171 | 42.75 | 3 | 5 | 4 | 12 | 54.75 | 6 |
| 7 | Kimley-Horn and Associates | 40 | 45 | 51 | 43 | 179 | 44.75 | 0 | 0 | 0 | 0 | 44.75 | 7 |
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Notes: * Special Considerations - special expertise regarding codes, ADA, rules, regulations, regulatory agency criteria, etc. of: TNRCC (Texas Natural Resource Conservation Commission), HDRC (Historic and Design Review Commission) and TxDOT as they relate to this project.

\$ 240,000

Reviewer:

Date:

PROFESSIONAL SERVICES CONTRACT

ARCHITECTURAL SERVICES

(Revised Jan. 2002)

STATE OF TEXAS

COUNTY OF BEXAR

CITY OF SAN ANTONIO

CONTRACT FOR

**FY 2003 DISTRICT 5 PARK IMPROVEMENTS
(FATHER BENAVIDES PARK AND LAS PALMAS PARK)**

SECTION 1

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

**BEATY AND PARTNERS ARCHITECTS, INC.
110 BROADWAY, SUITE 600
SAN ANTONIO, TEXAS 78205**

Architect (s) duly licensed, and practicing under the laws of the State of Texas, 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 has been notified in writing to proceed. The scope of the project and the Consultant's services required shall be reduced by the Consultant to a written summary of the scope meeting 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 following professional services necessary for the development of the Project to substantial completion, including plans and specifications, construction services and any special and general conditions and instructions to bidders as acceptable to the Director of Public Works, or his duly authorized representative, hereinafter termed "Director", subject to other provisions of this Agreement.

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

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 architect.

- II. The Consultant shall perform his obligations under this Contract in four (4) Phases, namely, (A) the Schematic Design Phase, (B) the Design Development Phase, (C) the Construction Documents Phase, and (D) the Construction Phase.

A. Schematic Design Phase

The Consultant shall:

1. Review the scope of work furnished by the City to ascertain the requirements of the Project and shall review the understanding of such requirements with the City. All field surveys (topography) necessary for the completion of the Plans and Specifications will be furnished by the City to the Consultant.
2. 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.
3. Review with the Director alternative approaches to design and construction of the Project.
4. Coordinate the proposed Project with all utility companies that may effect this Project and request the most current available records showing the location of utilities. Consultant shall identify particular problems and conflicts arising from existing utilities which affect the Project and shall make recommendations with respect thereto. The Consultant shall document the status of each utility effecting the Project with a Memorandum of Record to be submitted with the Schematic Design Phase documents. The City will assist the Consultant in obtaining data and services requested of the utility companies by the Consultant after diligent effort has been made by the Consultant to no avail. The Consultant shall coordinate with the following utility companies:

City Public Service Board (Gas and Electric)
San Antonio Water System
Bexar Metropolitan Water District
Edwards Aquifer Authority
Paragon Cable System
Southwestern Bell Telephone Company
Other utility companies which may be effected

Detailed measurements and surveys for exploration of utilities, if required, will be an additional service as provided in Appendix "A".

5. Prepare for approval by the Director based on mutually agreed upon program and Project budget requirements, Schematic Design documents consisting of drawings and other documents illustrating the scale and relationship of the Project alternatives.
6. Submit to the Director a Statement of Probable Construction Cost based on current area, volume or other unit costs.
7. Furnish the Director with three (3) copies of the Schematic Design Phase documents. Upon review of said documents, the Director will furnish to the Consultant, in writing, authority to proceed with the Design Development Phase on the alternatives selected from the Schematic Design Phase.
8. Plan and coordinate foundation investigations, soil borings, and other tests required for the design of the Project.

B. Design Development Phase

The Consultant shall:

1. Prepare for approval by the Director based on the approved Schematic Design documents and any adjustments authorized by the City in the program or Project budget, Design Development documents consisting of drawings and other documents to fix and describe the size and character of the entire Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. Prepare and provide a Statement of Probable Construction Cost based on unit costs.
2. Attend three (3) citizens meetings and as deemed necessary meet with City officials.

3. Furnish the City Architect with three (3) copies of the Design Development documents. One (1) copy will be distributed to the Administrative Department responsible for the Project and two (2) copies will be retained by the City Architect of which one red lined set will be returned to the Consultant. Upon review and approval of said documents, the Director will furnish to the Consultant, in writing, authority to proceed with the Construction Documents Phase.

C. Construction Documents Phase

The Consultant shall:

1. 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.
2. Attend not more than three (3) citizens meetings and as deemed necessary meet with City officials.
3. Prepare detailed contract drawings and specifications, after authorization has been received from the Director to proceed with the Construction Documents Phase. These designs shall combine in all respects the applications of sound architectural principles with a high degree of economy.
 - a. Detailed specifications shall be developed as applicable, to the particular project.
 - b. A specimen copy of standard general provisions, instructions to bidders, and applicable prevailing wage rates will be furnished to the Consultant by the Director for incorporation in the specifications of the proposed Project.
4. Prior to the actual printing of the final Construction Documents (plans, specifications and proposals) one (1) advance copy shall be submitted to the City Architect. Upon review and approval of said documents, the Consultant shall provide and submit same to the following:
 - a. City Architect's Office
 - 1 set of Plans and Specifications for City Architect
 - 1 set of Plans and Specifications for Building Maintenance
 - 1 set of Plans and Specifications for each utility
 - 1 set of Plans and Specifications for Department Director
 - b. Building and Inspections Department
 - 2 sets of Plans and Specifications
 - c. Plans and Records, Engineering Division, Public Works Department
 - 9 sets of Plans and Specifications
 - d. State Department of Licensing & Regulation
 - Architectural Barriers, Program Manager, E. O. Thompson
 - State Office Building, P. O. Box 12157
 - Austin, Texas 78711
 - 1 set of Plans and Specifications for review of State Handicapped Requirements
5. Advise the Director of any adjustments to previous Statements of Probable Construction Cost indicated by changes in requirements or general market conditions.
6. Upon the direction of the City, issue Plans and Specifications for bidding purposes, receive and record plan deposits; prepare, issue and deliver all addenda required to perfect the bid documents; maintain a record of issuance and receipt of same; furnish to the City a statement that the Consultant has provided and all bidders have received the Plans and Specifications and any necessary addenda thereto prior to opening of the bids. Attend the Pre-Bid Conference as scheduled by the City to provide clarification and interpretation to bidders.

In consultation with the City set a charge for plans and specifications (bid documents) based on the cost of printing and handling, said charge to be assessed all bidders and vendors. Return of bid documents and any refund to be made will be in accordance with normal city policy.

Once the Construction Contract is signed, the successful bidder's document deposit along with all available sets of documents will be turned over to the contractor. Consultant shall provide to the City additional sets of contract documents as required for the successful bidder and subcontractors to use during the construction phase. The Consultant will then be reimbursed by the City for the cost of all document sets furnished to bidders for bid purposes and to the Contractor for construction purposes in accordance with Appendix "A".

7. Attend the formal opening of bids of the City Clerk and shall tabulate and furnish to the City an original and five (5) copies of the bid tabulation together with his recommendation regarding the award of the contract.

D. Construction Phase

The Consultant shall:

1. Attend a Pre-Construction Conference with the Representatives of the interested Departments.
2. Visit the site in intervals appropriate to the stage of construction or as otherwise agreed by the Consultant in writing to become generally familiar with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Contract Documents. However, the Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. On the basis of such on site observations as a professional consultant, the Consultant should keep the City informed of the progress and quality of each major division of the work and shall endeavor to guard the City against defects and deficiencies in the work of the Contractor. The Consultant shall provide the City Architect a Memorandum Record of each jobsite visit and shall submit a Monthly Report to the City Architect, Capital Program Manager, Facility User, plus two additional copies as determined by the City. The Monthly Report shall include the status of the project, completed Contract Time Statement (City Form PW-19A), and information to indicate the progress and performance of the Contractor in accordance with the Contract Documents.
3. Review Contractor's building construction layout, specifically foundation elevations.
4. Not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor or the safety precautions and programs incident to the work of the Contractor.
5. The Consultant's efforts will be directed towards providing assurance for the City that the completed project will conform to the Plans and Specifications. The Consultant shall not be responsible for the failure of the Contractor to perform the construction work in accordance with the Plans and Specifications and the Contractor's contract. However, the Consultant shall report to the City any deficiencies in the work actually detected by the Consultant.
6. Submittals: Review and take other appropriate action (approve with modifications, reject, etc.) upon the Contractor's submittals such as shop drawings, product data and samples, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. Such reviews and approvals, or other actions, shall not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions and program incident thereto. The approval of a specific item shall not indicate approval of an assembly of which the item is a component.
7. Receive and review certificates of inspections, testing (to include field, laboratory, shop and mill testing of materials) and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents to determine generally that the results certified substantially comply with the Contract Documents which are submitted to him. The Consultant shall also recommend to the City special inspection or testing when deemed necessary to assure that materials, products, assemblages and equipment conform to the design concept and the Contract Documents.
8. Review and approve in concert with the City all colors, materials, fabrics, etc., relating to finishes required.
9. Review and approve in concert with the City equipment required to be submitted and tested by the Plans and Specifications for compliance with Project design and performance specifications.

10. Determine the amounts owing to the Contractor based on observations at the site and on evaluations of the Contractor's Monthly Estimates (and Final Estimate) and issue recommendations to the City for payment of such amounts as provided in the Contract Documents.

The issuance of a Recommendation For Payment shall constitute a representation by the Consultant to the City based on the Consultant's observations at the site as provided herein and in the data comprising the Contractor's Monthly Estimate (and Final Estimate), that the work has progressed to the point indicated; that to the best of the Consultant's knowledge, information and belief, the quality of work is in accordance with the Contract Documents (subject to an evaluation of the work for conformance with the Contract Document upon substantial completion, to the results of any subsequent test required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Recommendation For Payment); and that the Contractor is entitled to payment in the amount recommended. However, the issuance of a Recommendation For Payment shall not be representation that the Consultant has made an examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the contract sum.

11. Observe the initial start-up of the Project and the necessary performance tests required by the Specifications of any machinery or equipment installed in and made a part of the Project. The Consultant shall advise the City representatives if in his opinion the machinery or equipment is not operating properly.
12. Perform in company with the City representative (s) a "conditional approval" and a "final" inspection of the Project to observe any apparent defects in the completed construction, assist the City in consultation and discussions with the Contractor(s) concerning such deficiencies, and make recommendations as to replacements or corrections of the defective work.
13. After completion of the work, and before final payment to the Contractor, it shall be the City's responsibility to require a set of "Record Drawings" from the Contractor, who has control of the work and who is in a position to know how the Project was constructed. The Consultant, after receiving this information shall transfer the information to a set of "Mylar" tracings as "Record Drawings" or documents for the City's permanent file. The Consultant shall not be held liable for the information supplied him by the Contractor and/or City representative.
14. The City will require the Contractor to submit to the Consultant who shall assemble and deliver to the City all manufacturer's warranties or bonds, equipment maintenance and operating manuals, and similar data on materials and equipment incorporated in the Project as required by the Contract Document.
15. Develop, at the request of the City, any changes, alterations or modifications to the Project which appear to be advisable and feasible and in the best interest of the City. Such alterations shall appear on or be attached to the City's form "Field Alteration Request". A supply of these forms will be furnished to the Consultant by the City for this purpose. The Consultant shall obtain the Contractor's acceptance of the proposed alteration prior to submitting it to the City for its approval. No work shall be authorized to be done by the Contractor prior to receipt of the City's approval of the "Field Alteration Request".

III. Period of Service

- A. The Consultant shall complete the various phases of work under Section 1, I, and II of this contract in accordance with the Production Schedule in Appendix "B" of this contract. Once the Consultant has submitted a completed phase of work, no further work days shall be charged against that phase of work as total calendar days. If, upon review of phase work, corrections, modifications, alterations, or additions are required of the Consultant, these items shall be completed by the Consultant before that phase is approved. Calendar days shall be charged for this period when changes are being made.
- B. Upon acceptance and approval of the Schematic Design, Design Development, or Construction Documents Phases, the Director will authorize in writing the Consultant to proceed with the next appropriate phase of work. However, if the City elects to discontinue the Consultant's effort at the end of any phase for any reason (see Section 1, VIII), the total time expended up to that time will be charged against the total allowable time in the same manner as if no delay or suspension had occurred. However, if circumstance dictates, the Director may authorize extra calendar days or make adjustments to the Production Schedule as he deems necessary to complete the required design.

- C. If the Consultant fails to furnish the completed work as herein required, 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, an amount for each day beyond the required day for completion and submittal until day of completion and submittal as determined by the following schedule with said amount to be withheld and deducted from any amount due or owing the Consultant.

| <u>Construction Cost of Project</u> | <u>Amount of Liquidated Damages Per Day</u> |
|---|---|
| Up to \$ 500,000 | \$ 50.00 |
| \$ 500,001 to 1,000,000 | 100.00 |
| 1,000,001 to 2,000,000 | 150.00 |
| 2,000,001 to 3,000,000 | 200.00 |
| 3,000,001 to 4,000,000 | 250.00 |
| 4,000,001 to 5,000,000 | 300.00 |
| Over \$5,000,000 | 350.00 |

The Consultant further acknowledges the said amount 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.

- D. 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.
- E. This Agreement shall remain in force for a period which may reasonably be required for the design, award of the contract, and construction of the Project including any extra work and any required extensions thereto unless discontinued as provided for elsewhere in this contract.

IV. Coordination with the City.

- A. The Consultant shall hold periodic conferences with the Director or his 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 in planning and designing the Project all existing plans, maps, statistics, computations and other data in its possession relative to existing facilities and 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 instructed to do so by the Director.
- B. The Director will act on behalf of the City with respect to the work to be performed under this Agreement. He 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, in the work of the Contractor, 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. Fee Schedule

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 to Drawings and Specifications

The Consultant shall make without expense to the City such revisions to the Schematic Design Phase drawings, reports or other documents as may be required to meet the needs of the City which are within the Scope of the Project, but after the approval of the Schematic Design Phase 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.

The Director may require the Consultant to revise the drawings and specifications, at no cost to the City, if the lowest bona fide bid is in excess of fifteen percent (15%) of the amount of the fixed limit or the Design Development Phase cost estimate as submitted by the Consultant, and accepted by the City.

VII. Ownership of Documents

All documents including the 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 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 and upon the scheduled completion date of the performance phase in which Consultant is then currently working, whichever effective termination date occurs first.

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 at the end of any phase 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 hereinabove, 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 reproducible of all completed or partially completed designs and 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 designs, 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.

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.

XXI. Insurance requirements

- 12.1 Prior to the commencement of any work under this CONTRACT, CONSULTANT shall furnish a completed Certificate of Insurance to the CITY's Public Works Department and City Clerk's Office, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The CITY shall have no duty to pay or perform under this CONTRACT until such certificate shall have been delivered to the CITY's Public Works Department and the City Clerk's Office, and no officer or employee shall have authority to waive this requirement.
- 12.2 The CITY reserves the right to review the insurance requirements of this section during the effective period of this CONTRACT and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by the CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance will the CITY allow modification whereupon the CITY may incur increased risk

12.3 A CONSULTANT's financial integrity is of interest to the CITY, therefore, subject to CONSULTANT's right to maintain reasonable deductibles in such amounts as are approved by the CITY, CONSULTANT shall obtain and maintain in full force and effect for the duration of this CONTRACT, and any extension hereof, at CONSULTANT's sole expense, insurance coverage written on an occurrence except professional liability basis, by companies authorized and admitted to do business in the State of Texas and rated A - or better by A.M. Best Company and/or otherwise acceptable to the CITY, in the following types and amounts.

| | |
|---|--|
| 1. Workers' Compensation ** Employers' Liability ** | Statutory \$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 | |
| | |

12.4 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 Section 12.6 herein within 10 days of the requested change. CONSULTANT shall pay any costs incurred resulting from said changes.

12.5 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.

12.6 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. All notices shall be given to the CITY at the following address:

City of San Antonio
 Public Works Department
 P.O. Box 839966
 San Antonio, Texas 78283-3966

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

12.7 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.)

12.8 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.

12.9 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

- 13.1 **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.**
- 13.2 **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**.
- 13.3 **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.**
- 13.4 Acceptance of the 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, working 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, working 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. Estimates of Cost

Since the Consultant has no control over the cost of labor, materials or equipment or over the contractor's methods of determining prices, or over competitive bidding or market conditions, Consultant's opinions of probable Project Cost or Construction Cost provided for herein are to be made on the basis of Consultant's experience and qualifications and represent Consultant's best judgment as a design professional familiar with the construction industry but the Consultant cannot and does not guarantee that proposals, bids or the construction cost will not vary from opinions of probable Cost prepared by Consultant.

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. The Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3942, (512) 305-9000 has jurisdiction over individuals licensed under the Architectural Registration Law, Article 249A, VTCS.

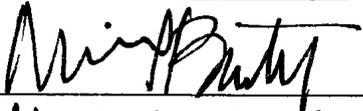
XVIII. Entire Agreement

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.

SECTION 2

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 Michael Beaty, AIA thereunto authorized President, does now sign, execute and deliver this document.

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

BY 

MICHAEL BEATY
Official Title

CITY OF SAN ANTONIO

BY _____
City Manager

ATTEST BY:

City Clerk

EXHIBIT 1

**COMPENSATION FOR PROFESSIONAL SERVICES
LUMP SUM METHOD**

Section 1 - Basis of Compensation

- 1.1 The Total Fee for all services defined by this contract is to be a lump sum in the amount of \$25,200.00 and it is agreed and understood that this amount will constitute full compensation to the Consultant. This amount has been approved and appropriated by the San Antonio City Council for expenditure under this contract. Unless and until the City sees fit to make further appropriations, the obligation of the City to the Consultant for Total Fee in connection with this Agreement cannot and will not exceed the sum of \$25,200.00 without further amendment to this contract.
- 1.2 For the purpose of establishing portion of the above fee for separate phases, the following percentage allocations of fee shall apply:

| <u>PHASE</u> | <u>PERCENT OF TOTAL FEE</u> |
|------------------------------|-----------------------------|
| Schematic Design Phase | 30 |
| Design Development Phase | 15 |
| Construction Documents Phase | 35 |
| Construction Phase | 20 |

- 1.3 The Total Fee for all additional services in accordance with Appendix "A" is to be a lump sum in the amount of \$ Ø and it is agreed and understood that this amount will constitute full compensation for any additional services when authorized in writing by the Director. This amount has been approved and appropriated by the San Antonio City Council for expenditure under this contract. Unless and until the City sees fit to make further appropriations, the obligation of the City to the Consultant for Total Fee for additional services in connection with this Agreement cannot and will not exceed the sum of \$ Ø. If the scope of work materially changes the lump sum amount for additional services will be adjusted accordingly by amendment to this contract.

Section 2 - Changes

- 2.1 The Consultant and the City acknowledge the fact that the Total Fee amount contained in paragraph 1.1 above has been established predicated upon the total estimated costs of services to be rendered under this contract. For additional services or if the scope of services are changed materially, compensation shall be in accordance with 1.3 above.

Section 3 - Method of Payments

- 3.1 Payment may be made to the Consultant based upon the several phases as described heretofore and in accordance with the following:
- 3.1.1 Schematic Design Phase - the total amount due the Consultant under the Schematic Design Phase shall be payable after approval and acceptance of this Phase by the City.
 - 3.1.2 Design Development Phase - the total amount due the Consultant under the Design Development Phase shall be payable after approval and acceptance of this Phase by the City.
 - 3.1.3 Construction Documents Phase - the total amount due the Consultant under the Construction Documents Phase shall be payable after the bid opening provided the low qualified bid is in conformance with Section 1, VI of the Agreement.
 - 3.1.4 Construction Phase - Payment during the Construction Phase will be made in monthly installments for this Phase in proportion to the construction work completed by the construction Contractor. The final payment to be made by the City to the Consultant will be payable upon submission of the "Record Drawings".

APPENDIX "A"

COMPENSATION FOR ADDITIONAL PROFESSIONAL SERVICES

The fees as described in Exhibit 1 of this Contract for the Schematic Design, Design Development, Construction Documents, and Construction Phases of the Project shall provide compensation to the Consultant for all services specified under this Agreement to be performed by Consultant for all services specified under this Agreement to be performed by Consultant or under his direction except the services as set forth below. These additional services and the compensation to be paid by the City to the Consultant for their performance when authorized in writing by the Director or his representative, are set forth as follows:

- A. The basis for compensation for additional services may be in one or more of the following forms:
1. \$100.00 per hour for testimony of principals.
 2. Salary cost times a multiplier of 2.5 with a stated maximum not to be exceeded, other than testimony of principals.
 3. Reimbursement of non-labor expense and subcontract expense at invoice cost plus a 15% service charge.
 4. Lump sum.
 5. Lump sum per item of work.
- B. Examples of additional services (not all inclusive).
1. Assistance to the City as an expert witness in any litigation with third parties, arising from the development or construction of the Project including the preparation of architectural data and reports.
 2. Preparation of applications and supporting documents for Governmental grants, loans or advances in connection with the Project; Preparation or review of environmental assessment and impact statements; Review and evaluation of the effect on the design requirements of the Project of any such statements and documents prepared by others; And assistance in obtaining approval of authorities having jurisdiction over the anticipated environmental impact the Project.
 3. Making revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given, are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents or are due to other causes not solely within the control of the Consultant.
 4. Preparing documents of alternate, separate or sequential bids or providing extra services in connection with bidding, negotiation or construction, when requested by the City.
 5. Providing detailed information of:
 - a. Owning, operation, maintenance and overhead costs of material and equipment, or
 - b. Quantity surveys of material, equipment and labor, or
 - c. Inventories of material and equipment, or
 - d. Detailed Construction cost estimates, or
 - e. Investigations, surveys, valuations, inventories or detailed appraisals of facilities, construction and/or services not required by the Base Contract.
 6. Providing Value Engineering during the course of design.
 7. Preparation of feasibility studies not required in the Base Contract.
 8. Cash flow and economic evaluations, rate schedules and appraisals.

9. Audit or inventories required in connection with construction performed by the City.
10. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitutions proposed by Contractor(s); and services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by Contractor.
11. Services during out of town travel required of consultants.
12. Additional services during construction made necessary by
 - a. Work damaged by fire or other cause during construction.
 - b. A significant amount of defective or neglected work of Contractor(s).
 - c. Failure of performance of Contractor(s).
 - d. Acceleration of the progress schedule required by the City involving services beyond normal working hours.
 - e. The completion date of the construction contract being extended beyond the original completion date.
 - f. Default by Contractor(s).
13. Providing extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
14. Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase.
15. Services after completion of the construction phase, such as inspections during any guaranteed period and reporting observed discrepancies under guarantee called for in any contract for the Project.
16. Providing services of Geotechnical Engineering Firm to perform test borings and other soil or foundation investigations and related analysis.
17. Providing the services of material testing laboratory for detailed mill, shop and/or laboratory inspection of materials or equipment.
18. Additional copies of contract documents, review documents, bidding documents, reports, drawings and specifications over the number specified in the Base Contract.
19. Providing photographs, renderings or models for City use.
20. Providing services of aerial mapping firm.
21. Providing services to investigate existing conditions or facilities or to make measured drawings thereof or to verify the accuracy of drawings or other information furnished by the City.
22. Providing services for exploration of utilities to include detailed measurements, surveys and verification of information provided by City and/or utility companies.
23. Providing services in connection with the work of a construction manager or separate consultants retained by the City.
24. Providing interior design and other similar services required for or in connection with selection, procurement or installation of furniture, furnishings and related equipment.

25. Preparing drawings, specifications and supporting data and providing other services in connection with Field Alteration Requests to the extent that the adjustment in the basic compensation resulting from the adjusted construction cost is not commensurate with the services required of the Consultant, provided such Field Alteration Requests are required by causes not solely within the control of the Consultant.
26. Providing services of Consultants for other than the normal architectural, structural, mechanical, civil and electrical services for the Project.
27. Providing other services not otherwise included in this Agreement which are not customarily furnished in accordance with generally accepted architectural practice.

C. Field Alterations:

1. Compensation through the Construction Documents Phase for all Field Alterations that have been deemed fee eligible, shall be invoiced separately based upon the approved cost of the Field Alteration(s) times the percent fee factor as determined by the amount of the Contract award times 80 percent. The remaining 20 percent fee due for the Construction Phase will be automatically included when the final in-place cost of the project is determined and the Consultant submits the final invoice for the Construction Phase of the completed and accepted Project.
2. Compensation for Field Alterations that have been deemed fee eligible whose net amount involved a combination of increases and decreases in contract cost shall be based on the amount of the increase in accordance with C.1. above.
3. Compensation for Field Alterations that have been deemed fee eligible reflecting only a deduction in contract cost shall be negotiated.
4. Compensation for Field Alterations not covered by C.1., 2., or 3. are to be negotiated.

D. Fee Eligible

1. Fee eligible as it relates to Field Alterations is defined as requiring significant architectural and/or engineering effort to compute and document the work effort reflected by the Field Alteration. Determination of "Fee Eligible" shall be made by the City Architect.

E. Salary Cost

1. Salary cost is defined as the cost of salaries of architects, engineers, draftsmen, stenographers, surveyors, clerks, laborers, etc. for time directly chargeable to the Project, plus customary and statutory benefits including but not limited to social security contributions, unemployment, excise and payroll taxes, employment compensation insurance, retirement benefits, medical and insurance benefits, sick leave, vacation and holiday pay applicable thereto.
 - a. The amount of customary and statutory benefits of all personnel other than Principals of the Consulting Firm will be considered equal to 33 % of salaries or wages.

F. Principals of the Consulting Firm

1. For the purpose of this provision, the Principals of the Consulting Firm and their total hourly charge will be as follows, except as stated previously for testimony as expert witnesses:

APPENDIX "B"
 PROFESSIONAL SERVICES CONTRACT
 PRODUCTION SCHEDULE

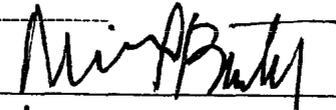
Project: FY 2003 DISTRICT 5 PARK IMPROVEMENTS (FATHER BENAVIDES PARK AND LAS PALMAS PARK)

Architect/Engineer Firm: BEATY AND PARTNERS ARCHITECTS, INC.

| | <u>SCHEDULED</u> | <u>ACTUAL</u> |
|-------------------------|------------------|---------------|
| SCHEMATIC DESIGN PHASE: | | |
| Beginning Date: | _____ | _____ |
| Completion Date: | _____ | _____ |
| Calendar Days Used: | <u>30</u> Days | _____ Days |
| City Review & Approval: | _____ Days | _____ Days |

| | | |
|---------------------------|------------|------------|
| DESIGN DEVELOPMENT PHASE: | | |
| Beginning Date: | _____ | _____ |
| Completion Date: | _____ | _____ |
| Calendar Days Used: | _____ Days | _____ Days |
| City Review & Approval: | _____ Days | _____ Days |

| | | |
|------------------------------|----------------|------------|
| CONSTRUCTION DOCUMENTS PHASE | | |
| Beginning Date: | _____ | _____ |
| Completion Date: | _____ | _____ |
| Calendar Days Used: | <u>45</u> Days | _____ Days |
| City Review & Approval: | _____ Days | _____ Days |
| Total Contract Time: | _____ Days | _____ Days |

BY: 
PRESIDENT
 Official Title