

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL CORRESPONDENCE SHEET
PUBLIC WORKS DEPARTMENT**

CONSENT AGENDA

ITEM NO.

13

TO: Mayor and City Council

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

THROUGH: Terry M. Brechtel, City Manager

COPIES: Melissa Byrne Vossmer; Frances A. Gonzalez; Andrew Martin; Peter Zandoni; Milo D. Nitschke; file

SUBJECT: Animal Care Facility

DATE: June 10, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the selection of Lewis Fisher, Architect, Inc. dba Fisher Heck, Inc. Architects, a SBE, for programming services, accepts the proposal and awards a professional services contract for Phase I of these programming services in the amount of \$194,359.00, and authorizes \$15,000.00 for contingency expenses, for an overall total amount of \$209,359.00 in connection with the Animal Care Facility (ACF) project, an authorized 2003-2007 General Obligation Public Health and Safety Improvement Bond funded project located in the Southwest Business and Technology Park near Old Highway 90 and Texas Highway 151 in Council District 6, that will service the entire City of San Antonio Metropolitan Area.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

This project will provide for an approximately 42,000 square-foot facility, which will be located on approximately eight (8) acres. The ACF will include kennels, a veterinary clinic, employee locker rooms, administrative space, as well as parking for animal control vehicles, visitors and employees. The ACF will be 43 percent larger in size than the current facility, and will allow for a three (3) day holding period for animals being housed at the facility.

A standard project progresses through the following steps with the associated products:

	PROJECT STEP	RESULTING PRODUCT	DEVELOPMENT/ OVERSIGHT
1	Concept	Scope of Services Developed; RFQ released; Consultant Selected	City staff
2	Programming Design	Master Plan is developed	Consultant with City staff management
3	Design Development	Preliminary Construction Plans	Consultant with City staff management
4	Construction Plans	Actual Construction Plans are developed	Consultant with City staff review and management
5	Bid Phase/Award of Construction Contract	Development of Bid Specifications; Review of Contractors' Bids; Recommendations to City Council and Contract	Consultant with City staff management and oversight
6	Project Construction	Project execution and completion	Contractor with Consultant project administration and City staff inspection

With regard to this project, due to the uniqueness of this effort, staff recommends that a phased approach be taken. Rather than developing and approving a Professional Services Agreement with the consultant that encompasses all of the above steps, a phased approach allows the Consultant to develop a scope of services and costs for step 2 and 3, then allows City staff to negotiate the scope of services and Consultant's work effort for steps 4 through 6. Staff believes this approach will provide for better cost-control while minimizing project "scope creep".

Public Works anticipates that this phased approach will be utilized for all unique projects, and has been used by the Aviation Department for airport projects in the past. It is expected that there will be no additional costs in proceeding with project development and execution in this manner.

The initial services for this project will include site assessment and master plan development, programming, and preliminary planning services associated with the ACF, as it is a unique facility with critical operational elements, the nature of which must be determined in advance of design services.

These preliminary planning services will include the review of the existing animal care program and interviews with key personnel to assist in the determination of the requirements, methods of operation and equipment critical to the design of a functional,

efficient and attractive building and site. The site assessment and master plan will identify the characteristics, challenges and potentials of the site, and will identify potential interim and long-term uses for undeveloped areas. The site master plan will also be used to determine actual project scope and costs associated with providing necessary utilities, landscaping, lawn irrigation, service access roads, storm water drainage impact, traffic impact, and fees associated with platting the property. Following the completion of the planning efforts, the consultant will provide schematic design services illustrating the size and relationship of the project components and fees for future consultant services will be negotiated.

This ordinance approves the selection of Fisher Heck, Inc. Architects to provide programming services for the ACF project, authorizes the execution of a professional service agreement, and provides for the compensation to Fisher Heck, Inc. Architects for Phase I services in advance of the full scope of professional services for the project in the amount of \$194,359.00. The Professional Services Agreement is included herein as Attachment 3.

This firm was selected following the City's release of a Request for Qualifications to which eighteen (18) firms responded. The Public Works Architectural and Engineering Selection Committee interviewed representatives, and reviewed the presentations of the five (5) highest rated firms. Of these firms, Fisher Heck, Inc. Architects was selected on May 12, 2004 for the project. The Statement of Interest Review Summaries are included herein as Attachment 2. Fisher Heck, Inc. Architects currently has three (3) contracts with the City's Parks and Recreation Department in the amount of \$62,030.00 for the San Pedro Springs Park Bandstand/Blockhouse Restoration, Commanders House Exterior Improvements, and the Little Church of La Villita ADA Modifications. They do not currently have any projects with the City's Public Works Department.

These preliminary services are anticipated to be complete by November 2004. The schedule and summary of man-hours is also included in the Consultant's Workplan and Fee Proposal, included herein as part of the Professional Services Agreement, Attachment 3.

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 Public Health and Safety Improvement Bonds.

FISCAL IMPACT

The 2003 authorized Public Works capital project, the Animal Care Facility, has total approved funds of \$12,100,000. Funds in the amount of \$209,359 will be appropriated from authorized 2003-2007 General Obligation Public Health and Safety Improvement Bonds, and authorized payable as follows:

\$ 194,359.00	payable to Fisher Heck, Inc. Architects for programming services
\$ 15,000.00	payable for miscellaneous contingency expenses

COORDINATION

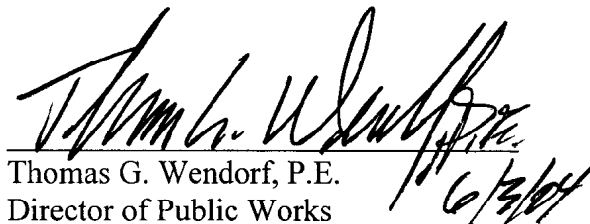
This request for ordinance has been coordinated with the Finance Department, Office of Management and Budget, and the San Antonio Metropolitan Health District.

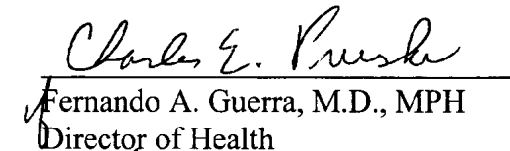
SUPPLEMENTARY COMMENTS

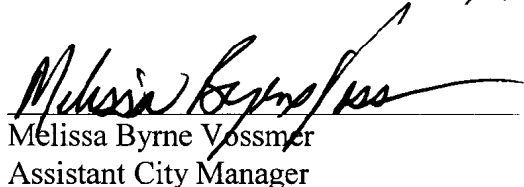
The Discretionary Contracts Disclosure Form required by the Ethics Ordinance is attached and is included herein as Attachment 4.

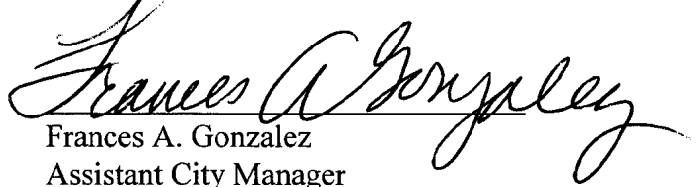
ATTACHMENTS

- 1) Project Map
- 2) A/E Review Summaries
- 3) Professional Services Agreement
- 4) Discretionary Contracts Disclosure Form

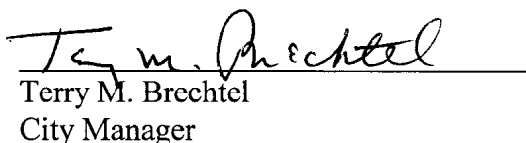

Thomas G. Wendorf, P.E.
Director of Public Works

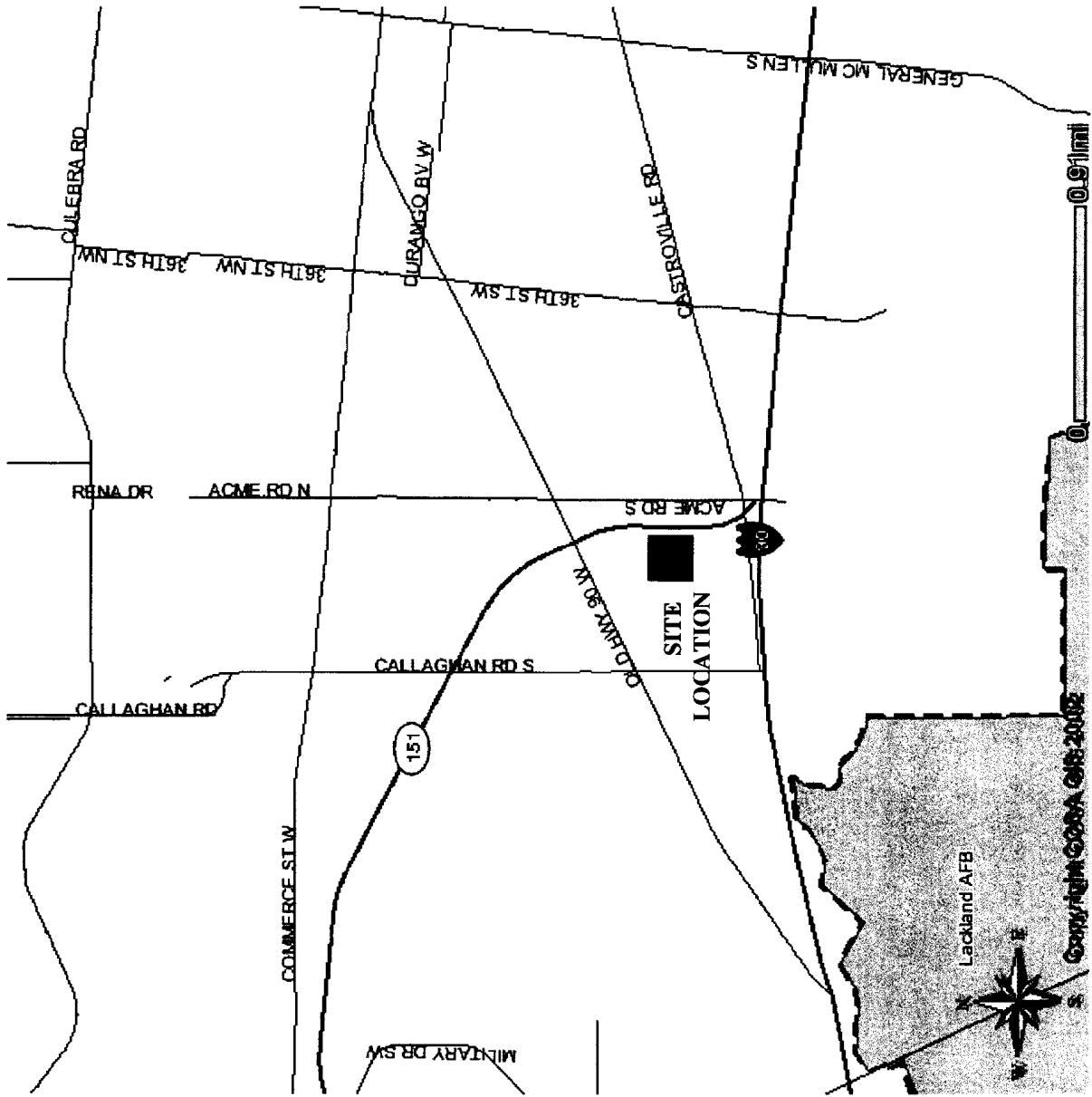

Fernando A. Guerra, M.D., MPH
Director of Health


Melissa Byrne Vossmer
Assistant City Manager


Frances A. Gonzalez
Assistant City Manager

Approved:


Terry M. Brechtel
City Manager



Animal Care Facility

Request for Qualifications Statements

ARCHITECT/ENGINEER INTERVIEW REVIEW SUMMARY

CITY OF SAN ANTONIO

[illegible]

PROFESSIONAL SERVICES CONTRACT	§	STATE OF TEXAS
	§	
ARCHITECTURAL	§	COUNTY OF BEXAR
	§	
CONSULTING SERVICES	§	CITY OF SAN ANTONIO

**CONTRACT FOR
ANIMAL CARE FACILITY**

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

**Fisher Heck, Inc., Architects
915 S. St. Mary's Street
San Antonio, Texas 78205-3410**

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

I.

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

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

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

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

II. Scope of Services - Completion Schedule

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

III. Liquidated Damages

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

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

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

IV. Coordination with the City.

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

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

V. Compensation

For and in consideration of the services to be rendered by the Consultant in this Agreement, the City shall pay and the Consultant shall receive the fee set forth in attachment hereto which is made a part hereof and identified as Exhibit 2.

VI. Revisions

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

VII. Ownership of Documents

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

VIII. Termination and/or Suspension of Work

A. Right of Either Party to Terminate

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

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

B. Right of City to Terminate

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IX. Consultant's Warranty

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

X. Equal Employment Opportunity/Minority Business Advocacy

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

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

Where applicable:

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

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

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

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

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

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

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

XI. Assignment or Transfer of Interest

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

XII. Insurance requirements

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

their limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance will the City allow modification whereupon the City may incur increased risk.

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

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

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

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

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

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

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

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

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

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

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

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

XIII. INDEMNIFICATION

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

XIV. Severability

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

XV. Notices

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

If intended for CITY, to:

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

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

If intended for CONSULTANT, to:

Fisher Heck, Inc., Architects
915 S. St. Mary's Street
San Antonio, Texas 78205-3410

XVI. Interest in City Contracts Prohibited

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

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

XVII. Entire Agreement

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

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

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

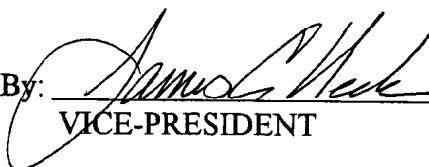
CITY:

CITY OF SAN ANTONIO

CONSULTANT:

FISHER HECK, INC., ARCHITECTS

By: _____
CITY MANAGER Date

By:  5/25/04
VICE-PRESIDENT Date

APPROVED AS TO FORM:

CITY ATTORNEY Date

ATTEST BY:

CITY CLERK Date

EXHIBIT 1

SCOPE OF SERVICES – COMPLETION SCHEDULE

General Services

The Consultant shall:

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

The Consultant shall:

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

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

The Consultant shall:

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

Specific Services

The Consultant shall:

PROJECT SCOPE

The project consists of initial services for a new one-story animal care facility of approximately 42,000 sq. ft., on approximately 8 acres located in the Southwest Business and Technology Park, San Antonio, Texas near Old Hwy. 90 and Tx151 in Council District 6. These initial services will help determine the final scope of architectural and engineering services required for the actual building facilities and site improvements.

BASIC SERVICES

1. **Site Assessment** – The Consultant will visit the site and inventory existing conditions specific to the site as well as external factors affecting the site. The Consultant will prepare a diagrammatic site plan illustrating the site characteristics, its challenges and its potentials.
2. **Site Master Plan** - Based on the site assessment, the Consultant will prepare a master plan defining the proposed uses and circulation patterns. Phasing, if required, can also be addressed. The Consultant will present initial site options and then a final site master plan. The site master plan shall also include potential interim and long-term uses for undeveloped areas of the site. The Consultant can assume a maximum of five (5) presentations (1 health dept.; 1 community stakeholders; 1 City management; 1 Humane Society; and 1 City Council meeting).
3. **Facilities Programming** – The Consultant will review the existing animal care program and interview key health dept. personnel to determine functional relationships within the health department and animal care related local agencies. The Consultant will identify square footage requirements, methods of operations, and equipment critical to the design of a functional, efficient and attractive building and site.
4. **Civil and UDC Conformance Overview** – The Consultant will obtain information regarding the final roadway development of Tx151 to determine the impact and effect it will have on the animal care facility site. A survey of the site will include a general survey of the entire proposed site and a detailed survey of approximately eight acres where the animal care facility is proposed to be located including topography and tree survey. Research will be done to determine site factors that will affect the land's use such as easements, setbacks, drainage, UDC requirements, proposed street development, etc.
5. **Conceptual Building Design** – The Consultant will provide full Schematic Design services which will include illustrating the size and relationship of the project components. The Consultant will develop design sketches to determine the scale and character of the project. The Consultant will prepare schematic floor plans and color rendered exterior elevations.
6. **Budget, Schedule and Scope of Services** – The Consultant will review and finalize the scope of services. The Consultant will review and establish the final budget and time schedule for the project. The Consultant will prepare cost breakdowns to help develop a budget for this project.

ADDITIONAL SERVICES

Additional Services include any work which is not outlined as part of the Basic Services above and/or any work required beyond the limitations set forth in this proposal. If the Consultant's work proceeds based on an approved design and changes are later required, the extra work necessary to make the changes will be done as an additional service.

CONSULTANT SERVICES

The Consultant will rely on outside professional firms to provide civil engineering and/or other special consulting services necessary for the design of the project.

ADDITIONAL SERVICE COMPENSATION & REIMBURSABLE EXPENSES

Additional Services are available but not included in the compensation for Basic Services. If required, the Consultant will perform additional services at their standard hourly rates in effect at the time the work is done or, at the City's request, the Consultant can provide a separate proposal for any additional services. Please refer to the Consultant's attached hourly compensation schedule which is currently in effect.

Reimbursable expenses, such as reproduction of documents (exclusive of interoffice and inter-disciplinary coordination prints), auto travel mileage outside of Bexar County, delivery charges, long distance communication, freight, and expenses incurred in travel and lodging will be billed monthly at 1.10 times the Consultant's cost and will be in addition to the above Consultant compensation.

INVOICES

Invoices for the work performed by the Consultant will be submitted to the City each month. Payment is due upon receipt. If payment is overdue beyond thirty (30) days of billing date, carrying charges are guaranteed by the City 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 delinquent account. If payment becomes more than sixty (60) days past due, the Consultant reserves the right to stop work on the project, and any liabilities and/or additional expenses caused by our termination of activity will be assumed by the City.

OTHER PROVISIONS

This proposal is subject to change if this agreement has not been signed within sixty (60) days.

Should the City choose to terminate this agreement for any reason, the City may do so by notifying the Consultant in writing. In this event, the Consultant's total compensation due would be for that portion of services provided and reimbursable expenses incurred to the date of the Consultant receiving the City's written notice.

The Consultant's compensation for Basic Services include a maximum of five (5) client presentations. If more meetings are required, the Consultant's time, including time spent traveling to and from such meetings, will be provided as an additional service.

The Consultant anticipates completing the professional services within _____ months from notice to proceed. If the project is delayed or extended beyond this time and additional work is required as a result of delays, we can provide the additional services needed on an hourly basis.

COMPLETION SCHEDULE

_____ calendar days (____ months x 30 calendar days).

EXHIBIT 2

COMPENSATION FOR PROFESSIONAL SERVICES

Compensation for Basic Services 1-6, not including reimbursable expenses, shall be:

Site Assessment	_____
Site Master Plan	_____
Facilities Programming	_____
Conceptual Building Design	_____
Civil & UDC Conformance	_____
Cost & Budget	_____
Reimbursable Expenses	_____
Total	_____

5/24/04

City of San Antonio Animal Care Facility
Master Plan/SD Phase Fee Proposal
Fisher Heck, Inc., Architects

Basic Services

(Based on Construction Budget of \$8,329,400 at 7.0 %)

Includes: Architectural, MEP Engineering, Structural Engineering, Landscape Design, Civil Engineering (this phase will determine budget, schedule, & scope of services).

- 100% of Schematic Design Phase ($15\% \times 7.0\% \times \$8,329,400$)= **\$87,459**

Additional Services

- Programming **\$23,900**

Includes 2 Shelter tours for 1 person (in Texas), Stakeholder meetings, review of existing program, development of new program, identification of major code & regulatory requirements- final product- bound program report.

- Master Planning (Approx. 16 acres) **\$35,000**

Site Assessment	\$10,000
Site Master Plan	\$20,000
Civil & UDC Conform. Overview	\$5,000

Includes site assessment, civil research to determine factors that will affect the land's use, preparation of site Master Plan illustrating phased initial, interim, and long-term use of site. Includes 5 presentations. Final product- phased/color site plans & related text-bound in as part of program report.

Environmental Testing

Not anticipated at this time unless research for future crematory is desired.

Landscaping

Included in Basic Services.

- Geotechnical \$8,000

Investigation shall be limited to 6 to 8 acre parcel of land for initial phase of construction. Actual number of borings and depths to be determined based on preliminary design concepts.

Materials Testing

Not included at this time.

- Survey (Allowance for Survey and Platting) \$25,000

Topographical & boundary survey of 6 to 8 acre initial phase site.

General survey of approximately 16 acres.

Platting

Included in Survey.

Civil Drainage Considerations

Included in Master Planning services.

Storm Water Policy Prevention Plan

Not included at this time.

TDLR Fee

Not included at this time.

Fire Flow Test

Not included at this time.

Traffic Impact Analysis

Not included at this time.

- Reimbursables Est. **\$15,000**

Estimated reimbursable expenses (as defined in contract)
Perspective rendering

Schedule

Begin Programming/Master Planning Phase	July 1, 2004
Begin Schematic Design	August 16, 2004
Completion of Master Plan and 50% SD	Sept. 30, 2004
Completion of SD Phase	Oct. 29, 2004
Completion of DD Phase	Feb. 28, 2005
Completion of CD Phase	Sept. 30, 2005
Start of Bidding Phase	Oct. 17, 2005
Completion of Bidding Phase	December 16, 2005
Start of Construction Phase	January 2, 2006
Completion of Construction Phase	June 29, 2007



May 24, 2004

Mr. Tim Palomera III, City Architect
City of San Antonio
Public Works Department
P. O. Box 839966
San Antonio, Texas 78283-3966

Re: City of San Antonio
Animal Care Facility

Dear Mr. Palomera:

The following is our Fee Proposal for the Master Planning and Schematic Design Phase (Phase I Services) for the new Animal Care Facility project. Design Development through Construction Administration Phase services (Phase II Services) shall be determined at the 50% Schematic Design Phase.

Basic Services (Based on Construction Budget of \$8,329,400 at 7.0 %)

Includes: Architectural, MEP Engineering, Structural Engineering, Landscape Design, Civil Engineering (this phase will determine budget, schedule, & scope of services).

- 100% of Schematic Design Phase ($15\% \times 7.0\% \times \$8,329,400$)=
\$87,459

Additional Services

- **Programming** **\$23,900**

Includes 2 Shelter tours for 1 person (in Texas), Stakeholder meetings, review of existing program, development of new program, identification of major code & regulatory requirements- final product- bound program report.

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915 S. St. Mary's Street | San Antonio, Texas 78205 |
tel 210.299.1500 fax 210.299.1622 www.fisherheck.com

- Master Planning (Approx. 16 acres) \$35,000

Site Assessment	\$10,000
Site Master Plan	\$20,000
Civil & UDC Conform. Overview	\$5,000

Includes site assessment, civil research to determine factors that will affect the land's use, preparation of site Master Plan illustrating phased initial, interim, and long-term use of site. Includes 5 presentations. Final product- phased/color site plans & related text-bound in as part of program report.

Environmental Testing

Not anticipated at this time unless research for future crematory is desired.

Landscaping

Included in Basic Services.

- Geotechnical \$8,000

Investigation shall be limited to 6 to 8 acre parcel of land for initial phase of construction. Actual number of borings and depths to be determined based on preliminary design concepts.

Materials Testing

Not included at this time.

- Survey (Allowance for Survey and Platting) \$25,000

Topographical & boundary survey of 6 to 8 acre initial phase site.

General survey of approximately 16 acres.

Platting

Included in Survey.

Civil Drainage Considerations

Included in Master Planning services.

Storm Water Policy Prevention Plan

Not included at this time.

TDLR Fee

Not included at this time.

Fire Flow Test

Not included at this time.

Traffic Impact Analysis

Not included at this time.

- Reimbursables Est. \$15,000
Estimated reimbursable expenses (as defined in contract)
Perspective rendering

Schedule

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Start of Construction Phase	January 2, 2006
Completion of Construction Phase	June 29, 2007

Please let me know if you need any further information.

Sincerely,



James C. Heck, AIA

Cc: File

ATTACHMENT 3
City of San Antonio
Discretionary Contracts Disclosure*

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

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

Disclosure of Parties, Owners, and Closely Related Persons

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

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

N/A

(2) the identity of any **business entity**¹ that would be a party to the discretionary contract:

Fisher Heck, Inc. Architects

and the name of:

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

N/A

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;

N/A

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.

Discretionary Contracts Disclosure

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

None


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:
None	-0-	N/A

Disclosures in Proposals

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

Signature: 	Title:	Date:
James C. Heck, AIA	Vice-President/Partner	02/27/2004
	Company: Fisher Heck Arch.	

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.