

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
ECONOMIC DEVELOPMENT DEPARTMENT**

**PUBLIC HEARING
TIME CERTAIN
ITEM NO 3(B)
2:00PM**

TO: Mayor and City Council

FROM: Ramiro A. Cavazos, Director, Economic Development Department

THROUGH: Terry M. Brechtel, City Manager

COPIES: J. Rolando Bono, Peter Zaroni, Milo Nitschke, Malcolm Matthews,
Tom Wendorf, Trey Jacobson, File

SUBJECT: Ordinance authorizing the Downtown Public Improvement District
Management Agreement with Centro San Antonio Management Group

DATE: September 2, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the City Manager to negotiate and execute a Management Agreement with Centro San Antonio Management Corporation (Centro), a non-profit corporation, to manage the delivery of supplemental services within the Downtown Public Improvement District (PID), for the five-year term of the District, commencing October 1, 2004.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

The City contracts for the provision of services and improvements to the PID. Under this management agreement, Centro provides for the management, maintenance, landscaping, marketing, and public service representative services. The specific services and improvements to be provided are detailed in the Service and Assessment Plan, which is subject to annual approval by City Council.

POLICY ANALYSIS

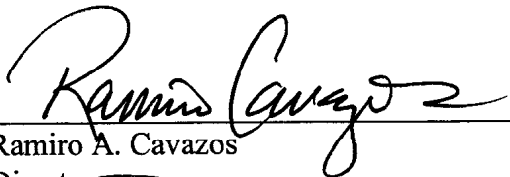
The proposed Management Agreement (Attachment B) does not recommend any substantive changes to the services currently being provided by the PID, nor does it alter the business relationship between Centro and the City. The City will continue to collect the assessment and Centro will receive reimbursement by the City.

FISCAL IMPACT


There is no direct fiscal impact from this action. The host municipality is required to participate financially in the PID at the same rate as other property owners within the PID. The assessment rate for City property for FY 2005 will be \$77,650. Funds have been allocated in the FY 2004-2005 Proposed Budget.

COORDINATION

This item has been coordinated with the Offices of the City Attorney and City Clerk, the Departments of Finance, Public Works, Parks and Recreation and Asset Management.

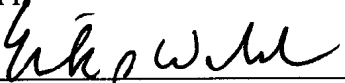


Ramiro A. Cavazos
Director



J. Rolando Bono
Deputy City Manger

Approved:



Terry M. Brechtel
City Manager

Attachment

**CONTRACT FOR IMPROVEMENTS
AND/OR SERVICES IN THE
SAN ANTONIO PUBLIC IMPROVEMENT DISTRICT
IN THE DOWNTOWN AREA**

STATE OF TEXAS §

COUNTY OF BEXAR §

WHEREAS, pursuant to the Public Improvement District Assessment Act, V.T.C.A., Local Government Code, Chapter 372, as amended (hereafter referred to as the "Act") the governing body of a municipality is authorized to undertake improvements and/or services which confer a special benefit on a definable part of the city; and

WHEREAS, the City Council of the City of San Antonio, Texas (hereafter referred to as the "City"), is authorized by the Act to levy and collect special assessments on real property in a public improvement district, based on the special benefits conferred by the improvements and/or services and to pay the cost of such improvements and/or services; and

WHEREAS, on June 3, 2004, the City Council of the City adopted Ordinance No. 99288, authorizing the re-establishment of the Public Improvement District in the Downtown Area (hereafter referred to as the "PID"); specifying the general nature of the improvements in the PID which will include landscaping of public areas, maintenance activities, graffiti removal, sidewalk sweeping, power washing of sidewalks, uniformed public service representatives, marketing and promotion of Downtown, and any other improvement or administrative cost authorized by the Act; estimating the cost of the improvements in the proposed PID will be \$1,000,000.00 annually or \$5,000,000.00 for the five (5) year term of the PID; establishing the PID boundaries; specifying the method of assessment in the PID will be according to the value of real property and will be based on the appraised value of real property as determined by the current roll of the Bexar Appraisal District; and establishing that the City's property included in the PID shall be subject to assessment, and otherwise, all costs of the PID's activities will be paid by and apportioned to the PID and not to the City as a whole; and

WHEREAS, pursuant to Section 372.010 of the Act, an authorization takes effect when the ordinance authorizing the PID has been published one time in a newspaper of general circulation in the municipality; and

WHEREAS, the required public notices appeared in the *San Antonio Express-News* on May 16, 2004; and

WHEREAS, as part of the City's Downtown Strategic Plan, certain business and property owners desire to receive and underwrite the cost of supplemental services for the downtown area through the establishment of the PID; and

WHEREAS, for FY 2005, in addition to annual property taxes, property owners in the district will be required to pay an annual assessment rate of up to \$0.11 per \$100 valuation which could raise in excess of \$1 million annually to fund a variety of supplemental services; and

WHEREAS, the City now desires to enter into a contract to provide for certain improvements and/or services in the PID, which improvements and/or services shall consist of a management program, a maintenance program, a landscaping program, a marketing program, and a public service representatives program; and

WHEREAS, such improvements and/or services constitute a supplement to standard City services and an added increment of service to ensure the continued high quality of maintenance in the PID and to provide other special benefits and services which will enhance the vitality and quality of the Downtown area; and

WHEREAS, Centro San Antonio Management Corporation, a Texas non-profit corporation, has offered to assist the City by providing, furnishing or performing the aforesaid improvements and/or services; and

WHEREAS, pursuant to the Act, a municipality is responsible for payment of assessments against exempt municipal property in the PID; and

WHEREAS, on September 2, 2004, the City Council of the City adopted Ordinance No. _____, which levied a Supplemental Special Assessment for Fiscal Year (FY) 2005 to fund services and improvements for the PID, levied the assessment rate at \$0.11 per \$100 value of real property in the PID; and approved the FY 2005 Services and Assessment Plan for the PID to include an Annual Budget, a Five-Year Fiscal Forecast, the Supplemental Special Assessment rate, a maintenance and landscaping program, a marketing program, and a public services representatives program; and

WHEREAS, by that same ordinance, the City Council determined that for FY 2005, the annual net contribution of the City shall be \$77,650 and the annual net contribution of the City Public Service shall be \$16,018, to satisfy assessments against exempt municipal property within the PID, which amounts are based on the estimated value of all municipal property within the PID; and

WHEREAS, also on September 2, 2004, the City Council of the City adopted Ordinance No. _____, which authorized the negotiation and execution of a contract with Centro San Antonio Management Corporation to provide specified services and develop annual *Service and Assessment Plans* for the PID; and ,

WHEREAS, the City and Centro San Antonio Management Corporation mutually desire to enter a contract whereby, for the consideration stated below, Centro San Antonio Management Corporation will provide, furnish or perform such improvements and/or services as further detailed herein;

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That, for and in consideration of the mutual covenants, promises and agreements contained herein, the City, acting by and through the City Manager, and Centro San Antonio Management Corporation, a Texas non-profit corporation, hereinafter referred to as the "Contractor," acting by and through its duly authorized President, do hereby covenant and agree as follows:

SECTION 1.

Engagement of Contractor

The City hereby engages the Contractor, and the Contractor hereby agrees, to provide, furnish or perform the improvements and/or services to be provided in the PID as described in Section 2 of this contract.

SECTION 2.

Scope of Services Provided by Contractor

1. The Contractor shall annually submit to the City Manager's Office an updated *Service and Assessment Plan* (a "Plan") to outline the improvements and/or services to be provided, furnished and/or performed by the Contractor in the PID for the ensuing fiscal year. Fiscal years will end September 30, and Plans for the ensuing fiscal year shall be submitted by August 31st of each fiscal year. Once an updated Plan is provided to the City Manager's Office by the Contractor and a mutually accepted plan is approved by City Council by passage of an ordinance, the Contractor shall provide, furnish and/or perform all improvements and/or services called for in the Plan for the ensuing fiscal year. Plans will be placed on file in the City Clerk's Office, and shall be hereto attached as Exhibit "A" and incorporated upon completion and approval by City Council. Each Plan shall address the degree of services to be provided by the Contractor in each of the following programs:

A. Management Program

To the extent provided in the approved Plan, the Contractor shall provide the following administrative and management services for operations of the PID:

1. Recruit, hire, pay and provide the staff, administrative services, management, supervisory services and work force necessary to furnish improvements and/or services in the PID.
2. Full-time employees shall be entitled to fringe benefits that shall include at a minimum a health plan for the employee and his/her dependents.
3. Contractor shall keep time sheets that accurately reflect the time worked by each employee for each pay period. Contractor shall retain records of the time sheets for a period of four (4) years after the completion of each pay period.
4. Provide the office space necessary to furnish services in the PID.

5. Provide financial and program monitoring systems for operation of the PID including:

- a. Accurate, current and complete disclosure of financial results in accordance with the reporting requirements set forth in Section 26 of this Agreement (if accrual basis reports are required, the Contractor shall develop such accrual data for its reports on the basis of an analysis of the documentation on hand);
- b. Records that adequately identify the source and application of funds for PID activities. These records shall contain information pertaining to awards, authorizations, obligations, unobligated balances, assets, equity, outlays, and income;
- c. Effective control over and accountability for all funds, property, and other assets (the Contractor shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes);
- d. Comparison of actual outlays with budget amounts from the approved financial plan/program budget (whenever appropriate or required by the City, financial information should be related to performance and unit cost data);
- e. Procedures to minimize the time elapsing between the transfer of funds from the City and the disbursement of said funds by the Contractor;
- f. Establishment and maintenance of an adequate system of accounting and internal controls and for ensuring that an adequate system exists for each of its sub-contractors. An acceptable and adequate accounting system presents and classifies costs of operating PID in such a manner as to facilitate adequate budgetary and financial evaluation. The Contractor shall be responsible for an accounting system reflecting generally accepted accounting principles.
- g. The accounting system of the Contractor must ensure that City assessed PID funds are not commingled with funds from other funding sources. City assessed PID funds must be accounted for separately.
- h. Procedures for determining the reasonableness and, allowability, of costs in accordance with the provisions of this Agreement and any and all applicable cost principles under generally accepted principles of accounting for non-profit corporations; and
- i. Accounting records that are supported by source documentation;

6. Unless otherwise requested by City, the Contractor shall coordinate with and provide quarterly reports to the City through its designated representative on operations, services provided, activities and conditions within the PID;
7. Provide the City through its designated representative an annual independently audited financial report complete with an auditor's opinion by December 31 for the preceding fiscal year;
8. Enter into all necessary contracts with, supervise and monitor the performance of subcontractors;
9. Serve as an information resource for businesses, services, activities and physical improvements within the PID; and
10. Provide recommended and updated annual Plans to the City's designated representative who will submit to the City Manager's Office plans which shall include detailed descriptions of the levels of services and/or improvements to be provided by the Contractor during the coming fiscal year for each of the programs listed in the Contractor's Scope of Services (Section 2 of this Agreement). A financial plan/program budget shall also be included in each Plan.
11. Financial plans/program budgets will show expenditures in balance with income. The financial plan/program budget must be for the full fiscal year and reflect anticipated program activity throughout the life of agreement. If the Contractor operates for only a portion of the year, the financial plan/program budget must reflect the period of inactivity.
12. Contractor shall have the authority to transfer program budgets within a particular program or to other programs so long as the total amount transferred does not exceed 10% of each annual program budget. The total expenditure of funds by the Contractor to conduct PID activities must not exceed the amount authorized by the City in the approved Plan. Changes greater than 10% shall require prior written approval of the City Manager's Office. Significant changes (as determined by the City Manager's Office) to the Scope of Work as outlined in the approved *Service and Assessment Plan* shall require City Council approval. The Contractor shall immediately request approval from the designated City representative when there is reason to believe that a revision to the financial plan/program budget will be necessary for the following reasons:
 - a. Changes are requested in the scope or the objective of projects, programs, services and/or improvements to be made according to the approved Service and Assessment Plan.

To obtain City approval, the Contractor must submit a written request stating the proposed changes and justification to the designated City representative. The City may, at its option, restrict revisions to the financial

plan/program budget, and under no circumstances will revisions to the plan/budget be allowed if such revision, or any part thereof, causes PID funds to be used for purposes other than those intended by this Agreement and City Ordinance No. _____.

13. The Contractor must notify the City of any and all changes in board membership, officers, and policy in the next Plan. The Contractor must include in the Plan an accurate schedule as to time and place of regularly scheduled board meetings for the year. Excepting consultation concerning attorney-client matters (real estate, litigation, contracts, personnel and security) all board meetings shall be open to the public. The City must be notified of board meetings at least 72 hours in advance of said meeting. Minutes of board meetings will become part of the Contractor's program record, and as such, must be kept current and are subject to review by the designated City representative.

B. Maintenance and Landscaping Program

1. To the extent provided in the approved Plan, the Contractor shall provide the following maintenance services in the PID, either directly or through a subcontractor:
 - a. Sidewalk sweeping, litter removal and sidewalk washing as required to maintain an attractive pedestrian environment within the PID, coordinated with and supplementing the City's maintenance services;
 - b. In addition to and in coordination with the City's regular tipping of trash receptacles located on public property and in public rights-of-way within the PID, tip trash receptacles as required to maintain adequate remaining capacity; and
 - c. Clean street furniture and remove graffiti and other defacements from public areas in the PID (including benches, drinking fountains, fountains, public art, street planters and other public landscaping improvements, trash receptacles, pedestrian lighting, PID signage, public telephones and telephone booths, kiosks, and other related improvements in public areas) as provided in the Plan and coordinated with the City's cleaning and graffiti removal schedules.
2. To the extent provided in the approved Plan, the Contractor shall provide the following landscaping services in the PID, either directly or through a subcontractor:
 - a. Care for and maintain all landscaping (including planters) funded, added, and/or installed by the Contractor, its agents, servants, employees or subcontractors within the PID, including: watering, fertilizing, pruning, plant replacement, treatment of wounds, disease control, and insect control.

- b. The Contractor shall not be responsible for the maintenance and repair of plumbing and electrical equipment except for electrical equipment pertaining to tree lighting or other decorative PID improvements.
- c. The Contractor shall report all plumbing problems to the designated City representative who shall report the same to the appropriate City department for timely correction.
- d. The Contractor shall reimburse the City or pay directly for any repairs resulting from negligence or abuse of City electrical or plumbing facilities by the Contractor, its agents, servants, employees or subcontractors.
- e. The Contractor shall advise the designated City representative in a timely manner of recognized needs for capital improvements, replacements, repairs and/or relocations of City-owned property in the PID (including street furniture and landscaping).

C. Marketing Program

To the extent provided in the approved Plan, the Contractor shall provide a marketing program that shall include the following services:

- 1. A public relations/public service campaign to describe the PID; the services being provided; and activities, attractions, and events occurring within and surrounding the PID;
- 2. Seek a wide variety of media exposure for the PID and surrounding areas; and
- 3. Serve as a communication resource for information about the PID.

D. Public Service Representatives Program

To the extent provided in the approved Plan, the Contractor shall provide for a Public Service Representatives Program in the PID in the following ways:

- 1. Uniformed individuals, trained and knowledgeable about businesses and services located in and surrounding the PID, equipped with communication devices and circulating throughout the PID; and
- 2. The public service representatives shall work in close coordination with various public and private law enforcement individuals and agencies within the PID, but they shall not be or function as deputized law enforcement officers.

E. Other Service and/or Improvement Programs

To the extent provided in the approved Plan, the Contractor shall provide additional services and/or programs other than those described above. In addition to Section 2(A)(12), the Contractor may utilize an amount not to exceed 10% of the total annual budget as an Unallocated Contingency Fund. These funds shall be used within the PID, at the Contractor's discretion with the approval of the designated City representative for services and/or improvements under the Maintenance and Landscaping Program, Marketing Program, or Public Service Representatives Program.

F. Execution of Services and/or Improvements by Contractor

The Contractor shall commence, carry on and provide such improvements and/or services with all practicable dispatch, in a sound, economical and efficient manner, in accordance with this Agreement and its attachments and all applicable laws. In providing such improvements and/or services, the Contractor shall take such steps as are appropriate to ensure that the work involved is properly coordinated with related work being performed by the City or other agencies which may use the public right of way.

Personnel employed by the Contractor or its subcontractors shall not be considered employees of or under any contractual relationship with the City. Unless otherwise specifically provided herein, all of the improvements and/or services required herein will be performed by the Contractor or its subcontractors, and all personnel engaged by the Contractor shall be fully qualified to perform such improvements and/or services.

SECTION 3.

The City's Duties and Responsibilities

- A.** The City shall provide the following services in connection with operations of the PID and with the performance of this Agreement:
1. Annually determine the Supplemental Special Assessment for each Fiscal Year (FY), levy the assessment rate based on the value of real property in the PID; approve the Services and Assessment Plan for the PID, and record the same in a separate fund;
 2. Make payments to the Contractor from assessment revenues, limited to funds currently available from assessment collections;
 3. Maintain the existing level of services that the City currently provides in the PID (as set out in the Existing Downtown Maintenance, Horticultural and Landscaping document of 1999), either directly or by payment(s) in lieu thereof (however, service reductions are permitted without penalty in conjunction with Citywide service reductions);
 4. Maintain complete and detailed records concerning any expenditures of special assessment revenues that are made through City departments, boards or agencies;

5. Promulgate rules and regulations pertaining to the use of the public space in the PID;
 6. Make quarterly reports to the Contractor concerning assessment collections, delinquent assessments, liens and make billings thereon as necessary;
 7. Produce an annual assessment roll of property owners and property within the PID;
 8. Respond to inquiries and requests from the Contractor in a timely fashion; and
 9. Pay the annual assessments on municipal property in the PID satisfied through an annual net City contribution and an annual net City Public Service contribution that is determined by the rate levied by the City Council for each fiscal year, beginning in FY 2005 and ending upon termination of this Agreement. For FY 2005, the City contribution shall be \$77,650, and the City Public Service contribution shall be \$16,018.
- B.** The City shall have no financial obligation to the PID other than levying and collecting the assessments levied by the PID, except as provided in Section 3A above and paying for improvements and/or services that the Contractor performs in the PID in accordance with the approved Plan, subject, however, to the provisions of Sections 6 and 7 hereof. Payments shall be limited to funds available from assessment collections and contributions in payment of assessments against tax-exempt municipal property.
- C.** In the event a PID fund balance remains after dissolution, after payment of all expenses, and after payment of all liabilities, City shall consult with the District to determine how to utilize any such balance for incremental services and/or improvements eligible under the Act within the boundaries of this PID.

SECTION 4.

Amendments to Contract

This contract shall not be considered to be modified, altered, changed or amended in any respect unless the same is done in writing and is signed by both parties and approved by City Council as authorized by passage of an ordinance.

SECTION 5.

Term

The initial term of this contract shall begin after the CITY receives written notice from Contractor of its intent to start such services and the date services will begin. The scope of work set out in the Service and Assessment Plan is not anticipated to occur prior to October 1, 2004. This contract shall terminate September 30, 2009 and may be extended for additional one-year terms beyond the initial term upon mutual agreement of both parties. Any extensions shall be authorized by the San Antonio City Council, evidenced by a duly authorized ordinance, on an annual basis. The compensation for contract extensions may be adjusted in accordance with the annual Service and Assessment Plan approved by City Council.

SECTION 6.

Payments to Contractor

- A. After October 1, 2004, the CITY shall reimburse the Contractor on a monthly basis for performance of the work as hereinafter provided. On the last working day of each month the Contractor shall send the CITY an invoice detailing the improvements and/or service performed during that period. Upon arrival of such notice, the CITY shall, within ten (10) working days reimburse the Contractor from available funds for eligible expenses adjusted for accrued interest earned on the advance.

The City may require the submission of original or certified copies of invoices and/or cancelled checks to verify invoiced expenses. Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, the Contractor will refund such amount to the City. The City has the authority to deduct such claims from subsequent reimbursements.

- B. The Contractor shall make a quarterly work report to the designated City representative. This quarterly report shall detail all of the Contractor's significant work activities during the preceding quarter. The format of the report shall be in a form that is mutually agreed upon by the Contractor and the City Manager. The report shall be due on the fifteenth working day of the month after the end of the quarter. Payments to the Contractor may be withheld if the quarterly report is not received. The City's designated representative shall have the right to verify that the report is complete and accurate.
- C. In the case of any improvements and/or services that the Contractor does not provide throughout the term of the contract, the Contractor shall receive payments to cover only the periods when such improvements and/or services were actually provided.

- D.** All funds received by the Contractor under this Contract will be used in the management and operation of the PID. Any funds received from the City by the Contractor, even if held after the term of this Contract, shall be used by the Contractor to manage the PID, or make improvements in or provide services in the PID, in accordance with the approved Plan. Acceptance by the City of requests for reimbursements that are not in compliance with contract provisions shall not be construed to be a waiver of the City's right to demand that future requests meet contract requirements.
- E.** Contractor shall obtain a fidelity bond covering all persons handling funds received or disbursed hereunder and/or signing or co-signing checks for said fund disbursement. Prior to the receipt of funds, the Contractor shall obtain a Fidelity Bond in an amount of not less than the maximum total of the Contractor's expected combined request for reimbursements submitted to the City for any given fiscal year, and evidence of same shall be filed with the City Clerk (copy to City's designated representative) prior to any disbursement of funds hereunder but no later than ten (10) working days prior to operations under this Agreement. Contractor shall ensure that such bond shall contain a provision that cancellation or expiration notice be sent to CITY at least sixty (60) days prior to the effective date of such cancellation or expiration. All costs shall be paid by said Contractor although such bonding costs are a proper charge against the budget of the Contract.
- F.** The costs associated with budgeted travel for business, either in-town or out-of-town, are allowable costs provided documentation of expenses is present
1. Employees, to be eligible for car allowance, are required to possess a valid Texas Driver's License and liability insurance as required by law. Participation by the employees in an approved defensive driving course is strongly encouraged. Evidence of the required driver's license and liability insurance must be kept on file with the agency.
 2. Employees eligible for car allowance are required to record on a daily basis, odometer readings before and after business use, showing total business miles driven each day. Mileage records are subject to spot-checks by City auditors and monitors and must be kept in the vehicle.
 3. Costs associated with out-of-town travel must be no more liberal than the City of San Antonio's travel policies. The purpose of the trip along with complete documentation of expenses and copies of all receipts are required to be maintained in the Contractor's files.
- G.** In those cases where the Contractor receives funds for this specific program from sources other than the City, there may be administrative-standards and/or practices that are different from those required by the City. The accounting system of the Contractor must ensure that City assessed PID funds are not commingled with funds from other funding sources. City assessed PID funds must be accounted for

separately.

SECTION 7.

Availability of Funds

If the City revenues referred to in Section 6 above are not available or are insufficient for the City to make the payments due hereunder, the City's designated representative will immediately notify the Contractor of such occurrence, and the Contractor's duty's under this Agreement shall be suspended until funds are available from special assessments or previously appropriated City funds. In the alternative when sufficient funds are not available, the City and the Contractor may meet and negotiate an amendment to this contract and the Plan so that the scope of improvements and/or services to be provided by the Contractor will correspond to the amount of available funds.

SECTION 8.

Public Convenience and Safety

- A. The Contractor shall observe City ordinances relating to obstructing streets, keeping alleys or other rights-of-way open and protecting same and shall obey all laws and City ordinances controlling or limiting those engaged in the work and shall coordinate with the respective City departments concerning the same.
- B. The Contractor shall perform its duties in a manner that will cause the least inconvenience and annoyance to the general public and property owners.

SECTION 9.

Right of Ownership

All permanent public facilities and equipment owned by the City within the PID shall remain the property of the City, and such property cannot be disposed of by the Contractor without the express written consent of the City. Upon termination of the Contractor's services under this contract (including if the Contractor's services are not renewed), the City reserves the right to have ownership of any, some, or all improvements funded, added, and/or installed by the Contractor, its agents, servants, employees or subcontractors within the boundaries of and in connection with the PID (including benches, drinking fountains, fountains, public art, street planters and other landscaping improvements, pedestrian lighting, PID signage and banners, public telephones and telephone booths, kiosks, and/or other related improvements in public areas) transferred to the City by the Contractor at no cost to the City. Additionally, upon termination of the Contractor's services the Contractor shall, as an expense of the PID, remove any such improvements on public property funded, added, and/or installed by the Contractor, its agents, servants, employees or subcontractors within the boundaries of and in connection

with the PID that the City chooses not to retain.

SECTION 10.

Discrimination by Contractor

The Contractor, in the execution, performance, or attempted performance of this contract, shall not willfully discriminate against any person or persons because of sex, race, religion, color or national origin, nor will the Contractor knowingly permit its officers, agents, employees or subcontractors to engage in such discrimination.

SECTION 11.

Contractor Liability

The Contractor shall assume full liability for any damages to any person or any public or private property that is due to the negligence of the Contractor, its subcontractors, agents, permittees or assigns.

SECTION 12.

Personal Liability of Public Officials

No employee of the City, or any other agent of the City shall be personally responsible for any liability arising under or growing out of this contract or operations of the Contractor under the terms of this contract.

SECTION 13.

City Not Liable for Delay

It is further expressly agreed that in no event shall either party to this Agreement be liable or responsible to the other or any other person for or on account of any stoppage or delay in the work herein provided for by injunction or other legal or equitable proceedings, or from or by or on account of any delay for any cause over which such party has no control.

SECTION 14.

Indemnification

CONTRACTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines,

penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, (including but not limited to, personal or bodily injury, death and property damage,) made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR's activities under this CONTRACT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this CONTRACT. 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 CONTRACTOR 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 THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. The provisions of this INDEMNIFICATION 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.

CONTRACTOR shall promptly advise the CITY in writing of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this CONTRACT.

SECTION 15.

Insurance

Prior to beginning operations under this Contract, Contractor shall furnish an original completed Certificate(s) of Insurance to the CITY's Risk Management Division 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 original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the CITY. The CITY shall have no duty to pay or perform under that Contract until such certificate shall have been delivered to the Risk Management Division and no officer or employee shall have authority to waive this requirement.

The CITY reserves the right to review the insurance requirements of this section during the effective period of the Contract and any extension or renewal hereof. When deemed necessary and prudent by the CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, CITY shall consult with Contractor to develop mutually agreed upon coverages and limits.

A Contractor's financial integrity is of interest to the CITY, therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are

approved by the CITY, Contractor shall obtain and maintain in full force and effect for the duration of the Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence 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:

<u>TYPE</u>	<u>AMOUNT</u>
A. Workers' Compensation Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
B. Commercial General (public) Liability Insurance to include coverage for he following:	
a. Premises/Operations	<u>Combined Single Limit</u>
b. Independent contractors	for <u>Bodily Injury</u> and
c. Products/completed operations	<u>Property Damage</u> of
d. Personal Injury	\$1,000,000 per occurrence
e. Contractual liability	or its equivalent with a \$2,000,000 Aggregate.
C. Broad form property damage, to include fire legal liability.	\$50,000 per occurrence.
* D. Business Automobile Liability	
a. Owned/leased vehicles	<u>Combined Single</u>
b. Non-owned vehicles	<u>Limit (CSL)</u>
c. Hired vehicles	of \$1,000,000

* If applicable

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 make a reasonable request for 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). Upon such request by the CITY, the Contractor shall exercise reasonable efforts to accomplish such changes in policy coverage and shall pay the cost thereof.

Contractor 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, agents volunteers and elected representatives as additional insureds with respect to 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 Employers' liability policy;

- The Contractor'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 the contract with the City of San Antonio;
- Workers' Compensation and Employer's Liability policy will provide a waiver of subrogation in favor of the CITY.

Contractor shall notify the CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the CITY at the following addresses:

**City of San Antonio
Office of the City Manager
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 Contractor 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 Contractor to maintain said insurance or secure such endorsement. In addition to any other remedies the CITY may have upon Contractor'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 Contractor to stop work hereunder, and/or withhold any payment(s) which become due, to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

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

SECTION 16.

Laws to be Observed

The Contractor at all times shall observe and comply with all federal and state laws, local laws, ordinances, orders and regulations of the federal, state, county or City governments. The federal, state and local laws, ordinances and regulations which affect those engaged or employed in the work or equipment used in the work, or which in any way affects the conduct of the work, shall be observed, and no pleas of misunderstanding will be considered on account of ignorance thereof.

SECTION 17.

Taxes

The Contractor shall pay all federal, state and local taxes that may be chargeable against the performance of this work.

SECTION 18.

Permits

Before proceeding with the work hereunder, the Contractor shall obtain and pay for any necessary permits and licenses, whether issued by the state, county or City and furnish proof thereof.

SECTION 19.

Character of Workers and Work

The Contractor and the Contractor's employees, including subcontractors, shall be competent and careful workers skilled in their respective trades. The Contractor shall not knowingly employ nor contract with any person who repeatedly engages in misconduct or is incompetent or negligent in the due and proper performance of his or her duties. The City shall have the right to require the Contractor to remove any employee who (as determined by a court) displays misconduct toward the public or public property, or is in any way discourteous to the public.

SECTION 20.

Bidding

Contractor agrees to abide by the following bidding procedures as set forth below:

No bids or City approvals are required for equipment purchases and leases totaling less

than \$3,000.00 annually. Three informal bids (if available) and no City approval will be required for equipment purchases and leases totaling \$3,000.00 - \$25,000.00 annually. Three formal bids (if available) and City approval are required for equipment purchases and leases totaling more than \$25,000.00 annually.

No proposals or City approval is required for professional services totaling less than \$3,000.00 annually. Three informal proposals (if available) and no City approvals will be required for professional services totaling \$3,000.00 - \$25,000.00 annually. Three formal proposals (if available) and City approval is required for professional services totaling more than \$25,000 annually.

SECTION 21

Equipment

The Contractor shall at all times maintain its equipment in a clean, serviceable condition. All equipment shall be properly licensed and inspected and clearly marked with the Contractor's name.

The City retains ownership of all equipment/property purchased with funds received through the City and shall, at the City's option, revert to the City at the termination. Should the City decline the option of reversion, then such equipment and/or property shall be sold by the Contractor and such PID funds shall be used in accordance with Section 3(C) of this Agreement. It is understood that the term "equipment", as used herein, shall include not only furniture and other non-expendable, durable property, but also vehicles.

- A. No equipment, purchased with funds from assessments with a Fair Market Value in excess of \$2,500 may be disposed of without prior written approval from the City. In cases of theft and/or loss of equipment, it is the responsibility of the Contractor to replace such equipment to the extent such equipment is covered by insurance. City funds cannot be used to replace equipment in those instances.
- B. Equipment that has reverted to the Contractor through a City-paid lease agreement with option to buy will be considered the same as though the equipment was purchased outright with City funds.
- C. The Contractor is fully and solely responsible for the safeguarding, maintaining, and reporting of lost, stolen, missing, damaged or destroyed equipment/property purchased or leased with City/PID funds. All lost, stolen, missing, damaged and/or destroyed equipment/property shall be reported to the local Police Department and, if applicable, the Federal Bureau of Investigation (FBI). The Contractor shall make such reports immediately and shall notify and deliver a copy of the official report to the City, including:
 - 1. A reasonably complete description of the missing, damaged or destroyed article of property, including the cost and serial number and other pertinent information;

2. A reasonably complete description of the circumstances surrounding the loss, theft, damage or destruction; and
3. A copy of the official written Police report or, should the Police not make such copy available, a summary of the report made to the Police, including the date the report was made and the name and badge number of the Police Officer who took the report.

SECTION 22.

Assigning or Subletting this Contract

The Contractor shall not assign this contract or any portion of this contract without written approval of the City Manager's Office. The City's written approval of the Contractor assigning this Contract shall not be considered as making the City a party to such assignment or subjecting the City to liability of any kind to any contractor. No subcontract shall under any circumstance relieve the Contractor of the Contractor's liability and obligations under this contract; all transactions will be made through the Contractor. Such subcontractors will be recognized and dealt with only as workers and representatives who are providing services to the Contractor. Any subcontractors shall be subject to the provisions of Section 11 hereof.

SECTION 23.

Breach of Contract

All terms, conditions and specifications of this Agreement shall be considered material, and failure to perform any part of the contract shall be considered a breach of contract. Should a party in default fail to remedy any breach of contract within fourteen days after written notification to the other party of the violation, the non-defaulting party may, at its option and in addition to any other remedies available to it under law, terminate the contract. This contract shall not be terminated, however, if the defaulting party has commenced to cure the breach within said fourteen-day period, and thereafter pursues such cure with reasonable diligence and in good faith.

SECTION 24.

Contract Administration

The City assigns to the Contractor the responsibility to perform the administrative, supervisory and management tasks for the PID as set forth in this contract and the Plan which is on file in the City Clerk's Office of the City of San Antonio. Administration by the City of this Agreement involves many departments. Tasks have been assigned to the organizational units within the City structure that are best equipped to administer specific tasks and eliminate duplication of effort. The City Manager's Office will provide the

Contractor written notice of representative(s) designation. Should any question arise with regard to the responsible department, such inquiry should be made to the City Managers office. The various tasks are assigned as follows:

- A. BUDGETING - BUDGET AND MANAGEMENT ANALYSIS AND CITY MANAGER'S DESIGNEE;
- B. CONTRACT NEGOTIATION AND EXECUTION - CITY MANAGER'S DESIGNEE AND CITY MANAGER'S OFFICE;
- C. PROGRAM MONITORING - CITY MANAGER'S DESIGNEE;
- D. FISCAL MONITORING - CITY MANAGER'S DESIGNEE;
- E. ACCOUNTING AND ASSESSMENT STATEMENTS - FINANCE DEPARTMENT;
- F. AUDIT - OFFICE OF INTERNAL REVIEW;
- G. EQUAL EMPLOYMENT OPPORTUNITY - OFFICE OF INTERNAL REVIEW;
- H. REPROGRAMMING OF FUNDS BETWEEN AGENCIES - BUDGET AND MANAGEMENT ANALYSIS AND CITY MANAGER'S DESIGNEE;
- I. PROGRAM AND FISCAL EVALUATION - CITY MANAGER'S DESIGNEE;
- J. PLANNING - CITY MANAGER'S DESIGNEE;
- K. AGENCY BOARD MONITORING - CITY MANAGER'S DESIGNEE;
- L. INSURANCE - RISK MANAGEMENT DIVISION;
- M. FILED DOCUMENTS - CITY CLERK'S OFFICE; AND
- N. ANY OTHER TASKS - CITY MANAGER'S DESIGNEE.

SECTION 25.

Information

The Contractor shall, at such time and in such form as the City may require, furnish periodic information concerning the status of the project and such other statements, certificates and approvals relative to the project as may be requested by the City through its designated representative.

SECTION 26.

Books and Records

The Contractor shall maintain complete and accurate records with respect to costs incurred under this Agreement. All such records shall be maintained on a generally-accepted accounting basis and shall be clearly identified and readily accessible. The Contractor shall provide representatives of the City or its appointees free access to such books and records, at all proper times, in order that they may examine and audit the same and make copies thereof. The Contractor shall further allow the City and its representatives to make inspections of all work data, documents, proceedings and activities related to this contract. Such right of access and audit shall continue for a period of three (3) years from the date of final payment under this contract.

A. Approval of Accounting System

The Contractor shall establish and maintain a financial system that provides for adequate control of Contract funds and other assets; ensure the accuracy of financial data; and provide for operational efficiency and for internal controls to avoid conflicts of interest and to prevent irregular transactions or activities.

Initially, the City's Office of Internal Review (Internal Audit) will review and approve all Contractor's systems of internal accounting and administrative controls prior to the release of funds hereunder. Thereafter, Internal Review will schedule a review at least every three years. The City will disburse no funds to the Contractor until the Office of Internal Review has determined the system to be adequate including any necessary corrective action that might be necessary.

B. Reporting Requirements

The Contractor must comply with any and all applicable Federal, State and/or Local reporting requirements. Additionally, cost summaries should be maintained by the Contractor to reflect accrued costs on a monthly basis and may be required to be submitted to the City. The Responsible Department may provide to the Contractor, summary statements based upon City records of expenditures and reimbursements to date, and the Contractor should reconcile these summary statements to their trial balances and general ledger. Special reports, as required or deemed necessary by the responsible department, are to be submitted as needed.

C. Cash Management

The Contractor must deposit PID funds in a bank insured with the Federal Deposit Insurance Corporation (FDIC). In those situations where PID funds deposited exceed the FDIC insurance limit, the Contractor must arrange with its bank to automatically have the excess collaterally secured. The Contractor will maintain on file a written copy of the collateral agreement from its banking institution for monitoring reviews and audits.

D. Checks and Check Procedures

The Contractor shall establish adequate internal accounting and administrative controls to properly safeguard the preparation of checks and unused checks. The system of internal accounting and administrative controls must include the following controls:

1. All checks issued in an amount greater than \$1,000.00 on PID funds must have the original signatures of two (2) duly authorized and responsible officials;
2. No blank checks are to be signed in advance;
3. No checks are to be made payable to cash or bearer with the exception of those for petty cash reimbursement, not to exceed a \$50.00 maximum;
4. Unclaimed salary or wage checks must be immediately returned to the PID. Contractor must keep records of all returned checks and such amount shall be reduced in the following monthly reimbursement.

E. Equipment Records

Records shall be maintained on all non-expendable items obtained with PID funds and will include:

1. A description of the equipment, including the model and serial number, if applicable;
2. The date of acquisition, cost and procurement source, purchase order number, and vendor number;
3. An indication of whether the equipment is new or used;
4. The vendor's name (or transferred from);
5. The location of the property;
6. The property number shown on the property tag; and,
7. A list of disposed items and disposition.

Non-expendable equipment must be properly identified as furniture or equipment and listed in the asset section of the GENERAL LEDGER cumulative from the date of purchase. An annual inventory of all equipment/property purchased or acquired under this Agreement is required to be completed and submitted by the Contractor as part of the annual financial plan/program budget. The City may perform an on-site verification of the inventory to determine the item's existence, condition, location and disposition instructions if applicable.

Performance Audit

The City shall have the right to conduct a performance audit and evaluation of Contractor at such times as the City deems necessary. The Contractor shall fully cooperate with any such performance audit. The City may employ consultants at the City's expense to assist the City in audits. The Contractor agrees to give the City and its consultants access to all reports, data, schedules, etc., which may be required to conduct said performance audit.

- A. The City reserves the right to dispatch auditors of its choosing to any site where any phase of the programs is being conducted, controlled or advanced in any way. Such sites may include the home office, any branch office or other locals of the Contractor such as sites or the activities performed therein have any relation to the program covered by this Contract.
- B. When an audit or examination determines that the Contractor has expended funds which are questioned by the City, the Contractor shall be notified and given an opportunity to address the questioned costs.
- C. The City shall exercise its right to collect the debt through one of the two methods listed below:
 - 1. CITY shall notify Contractor of any disallowed expenses. The City may, at its option, demand repayment in cash from the Contractor of all disallowed costs from funds other than those given under this Contract. Cash settlement will be the normal method of repayment to the City.
 - 2. Should Contractor continue to use assessment funds for ineligible expenses the City may, at its option, withhold any or all of its payments to the Contractor hereunder and draw back unexpended funds to collect the debt.
- D. All expenses associated with the collection of delinquent debts will be the sole responsibility of the Contractor and shall not be paid from any program funds received by the Contractor under this Contract.
- E. The City shall have the authority to make physical inspections and to require such physical safeguarding devices as locks, alarms, safes, fire extinguishers, sprinkler systems, etc. to safeguard property and/or equipment authorized by this Contract.

SECTION 28.

Notices

Any notice, bill, invoice or report required by this contract shall be conclusively determined to have been delivered at the time same is deposited in the United States mail, in a sealed envelope with sufficient postage attached, to the appropriate address listed below:

City of San Antonio
ATTN: City Manager
PO Box 839966
San Antonio, TX 78283-3966

Centro San Antonio Management Corporation
ATTN: President
515 E. Houston St. Suite 100
San Antonio, TX 78205-1955

SECTION 29.

Headings Disregarded

The titles of the several sections, subsections and paragraphs set forth in this contract are inserted for convenience of reference only and shall be disregarded in constructing or interpreting any of the provisions of this contract.

SECTION 30.

Venue, Jurisdiction, and Legal Expenses

Should any action, whether real or asserted, at law or in equity, arise out of the execution of this contract, venue for said action shall lie in Bexar County, Texas. This contract and any action in connection herewith shall be governed, constructed and enforced by the laws of the State of Texas.

Under no circumstances will the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity. During the term of this Agreement, if Contractor files and/or pursues an adversarial proceeding against the City then, at the City's option, this Agreement and all access to the funding provided for hereunder may terminate if Contractor is in violation of this paragraph.

Contractor, at the City's option, could be ineligible for consideration to receive any future funding while any adversarial proceeding against the City remains unresolved. For purpose of this Article, "adversarial proceedings" include any cause of action filed by the Contractor in a state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

SECTION 31.

Severability

In case one or more of the provisions contained in this contract shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this contract, which shall be constructed as if such invalid, illegal or unenforceable provision had never been contained herein.

SECTION 32.

Non-waiver

The failure of any party to insist upon the performance of any term or provision of this contract or to exercise any right herein conferred shall not be constructed as a waiver or relinquishment to any extent of the party's rights to assert or rely upon any such term or rights on any future occasion.

SECTION 33.

Entirety of Agreement

This written instrument and all attachments incorporated herein by reference constitute the entire agreement by the parties hereto concerning the work and services to be performed hereunder, and any prior or contemporaneous oral or written agreements which purport to vary from the terms hereof shall be void.

SECTION 34.

Use of Right-of-way

It is understood that the City, by execution of this Agreement, does not impair or relinquish the City's right to use its rights-of-way for public purposes, nor shall use of the land under this Agreement ever be construed as abandonment by the City of such land acquired for public purposes, and the City does not purport to grant any interest in the land described herein but merely consents to the use of City rights-of-way within the PID by the Contractor, its agents, servants, employees or subcontractors for the improvements and/or services to be provided, furnished or performed by the Contractor as set forth in the PID's approved annual *Service and Assessment Plan* and in accordance with this contract.

SECTION 35.

Effective Date

This written contract is made and entered as of _____, 2004.

WITNESS the following signatures and seals this _____ day of _____, 2004.

**CENTRO SAN ANTONIO
MANAGEMENT CORPORATION**
a Texas Non-profit Corporation

CITY OF SAN ANTONIO,
a Municipal Corporation

Ben E. Brewer III
President

Terry M. Brechtel
CITY MANAGER

ATTEST:

ATTEST:

Name: _____

Leticia Vacek

Title: _____

CITY CLERK

APPROVED AS TO FORM

Andrew Martin
CITY ATTORNEY