

**CITY OF SAN ANTONIO  
INTERDEPARTMENTAL MEMORANDUM  
PUBLIC WORKS DEPARTMENT**

**TO:** Mayor and City Council

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

**THROUGH:** Terry M. Brechtel, City Manager

**COPIES:** Melissa Byrne Vossmer; Andrew Martin; Peter Zanoni ; Milo D. Nitschke; file

**SUBJECT:** Indefinite Delivery Professional Services Agreements for Architectural Services

**DATE:** September 2, 2004

**SUMMARY AND RECOMMENDATIONS**

This ordinance accepts the terms and conditions and authorizes the execution of three (3) Indefinite Delivery Professional Services Agreements for architectural consulting services with Chesney, Morales & Associates, Inc., Kinnison & Associates, Architects, and Nored Architecture, each in an amount not to exceed \$100,000, for a total ordinance amount of \$300,000, for as-needed services regarding time-sensitive issues in connection with City-owned facilities and improvements, potential property acquisitions, construction projects. Each of these agreements will be for a term of one year, with an option to extend all or any one of the agreements for two (2) additional one (1) year periods.

Staff recommends approval of this ordinance.

**BACKGROUND INFORMATION**

The Public Works Department released a solicitation for stand-by, or indefinite delivery architectural professional services in order to enable immediate response to time-sensitive situations that may arise in connection with City-owned property and construction projects.

These professional services may also be utilized as needed during the execution of City projects, as these agreements allow consultants to assemble team members of various disciplines to address the potential issues, and to commence services immediately upon the City's recognition of the requirement for services. Based on recommendations from the Citizen's Bond Oversight Commission (CBOC), and as part of the department's continuing efforts to improve efficiency, Public Works will utilize services under these agreements to expedite project delivery and completion. The professional architectural services provided under these agreements may include, but are not limited to the assessment and evaluation of facilities to include roofing systems, design services for minor interior modifications and improved accessibility for the

systems, design services for minor interior modifications and improved accessibility for the disabled, the provision of documented recommendations for repairs or corrective measures and the development of construction documents for the necessary repairs or improvements, construction phase services and periodic field observations as required. These consultants may also be called upon due to unforeseen issues that may require minimal design services, but are imperative for continued facility operation and the provision of community services or benefits.

Chesney, Morales & Associates, Inc., Kinnison & Associates, Architects, and Nored Architecture were selected by the Public Works Architectural and Engineering Selection Committee as the best-qualified of the seventeen respondents to the City's solicitation. The selection was based on assigned points given for the firms' qualifications and experience. Evaluation criteria also included the firms' design and creative abilities, technical and construction administration capabilities, and the capabilities of the firms' primary sub-consultants. The firms' suitability and familiarity with the anticipated project types was also considered, and additional points were awarded based on the firms' local presence, status as a minority- or woman-owned enterprise and the firms' commitment to the City's Small Business Economic Development Advocacy (SBEDA) Program. The Evaluation/Rating Summary Sheet is included herein as Attachment 1.

This ordinance will approve the execution of three Indefinite Delivery Professional Services Agreements with these firms, each in an amount not to exceed \$100,000. The actual work activities will be allocated in the form of work orders, approved by the Director of Public Works, and delivered by the City on a rotating basis, with the exception of specialized work activities in an instance where the proposed work requires certain qualifications held by a particular firm. Every effort will be made to distribute the individual work orders evenly, so that the amounts expended under these agreements remain equitable among the three firms. In those circumstances where it is necessary to take a firm out of the rotation for a specialized work order, the rotation will be reinstated as quickly as possible.

The term of each of these three Indefinite Delivery Professional Services Agreements shall be for a period of one (1) year from the date of the fully executed agreement, with the option to renew any or all of the agreements for two additional one-year periods, upon approval of the Director of Public Works. The appropriation of any funding exceeding this original authorized amount will require City Council approval.

### **POLICY ANALYSIS**

Approval of this ordinance will be consistent with City Council policy to ensure public safety and will enable prompt response to issues that may arise in or around City-owned facilities and during the execution of City construction projects.

### **FISCAL IMPACT**

This is a one-time capital improvement expenditure included in the FY 04-09 Capital Improvement Program Budget. Funds for these services in an amount not to exceed \$100,000 for each of the three professional services agreements are authorized payable to Chesney, Morales & Associates, Inc., Kinnison & Associates, Architects, and Nored Architecture,

respectively, and shall be allocated as required from project funds. The Director of Finance is authorized to make the necessary transfers when the specific work orders are identified and assigned.

### **COORDINATION**


This request for ordinance has been coordinated with the City Attorney's Office, the Finance Department and the Office of Management and Budget.

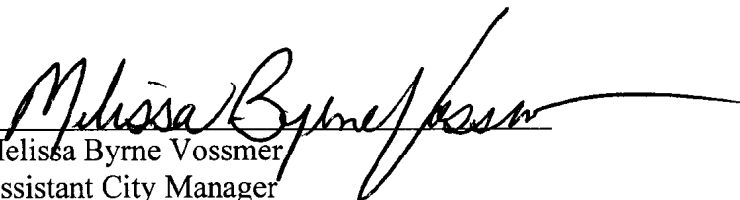
### **SUPPLEMENTARY COMMENTS**

The Discretionary Contracts Disclosure Forms as required by the Ethics Ordinance are included herein as Attachment 5.

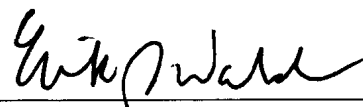
### **ATTACHMENTS**

1. Rating/Evaluation Summary Sheet
2. Professional Services Agreement, Chesney, Morales & Associates, Inc.
3. Professional Services Agreement, Kinnison & Associates, Architects
4. Professional Services Agreement, Nored Architecture
5. Discretionary Contracts Disclosure Forms

 PE 8/29/04  
\_\_\_\_\_  
Thomas G. Wendorf, P. E.  
Director of Public Works

  
\_\_\_\_\_  
Melissa Byrne Vossmer  
Assistant City Manager

Approved:

  
\_\_\_\_\_  
Terry M. Brechtel  
City Manager

**SUMMARY: On-Call Professional Architectural Services**  
CITY OF SAN ANTONIO - ARCHITECT/ENGINEER REVIEW

[illegible]

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
STAND-BY PROFESSIONAL ARCHITECTURAL SERVICES**

**STATE OF TEXAS** }

**COUNTY OF BEXAR** }

This AGREEMENT is made and entered into by and between the City of San Antonio (hereinafter referred to as "**CITY**"), a Texas Municipal Corporation acting by and through its City Manager, pursuant to Ordinance No. \_\_\_\_\_, passed and approved on the \_\_\_\_ day of \_\_\_\_\_, 2004, and **Chesney, Morales & Associates, Inc. by and through its President, Richard G. Morales, AIA**, (hereinafter referred to as "**CONSULTANT**"), both of which may be referred to herein collectively as the "**PARTIES**".

**IN CONSIDERATION** of the mutual covenants, terms, conditions, privileges and obligations herein contained, **CITY** and **CONSULTANT** do hereby agree as follows:

**I. DEFINITIONS**

As used in this AGREEMENT, the following terms shall have meanings as set out below:

1.1 "Director" means the director of **CITY**'s Public Works Department, or the designated project manager identified by the Notice to Proceed.

1.2 "Project" means the capital improvement/construction development undertaking of **CITY** for which **CONSULTANT**'s professional services, as stated in the Scope of Services, are to be provided pursuant to this AGREEMENT.

1.3 "Ab Initio" means from the beginning; from the first act; from the inception. *See Black's Law Dictionary, 5<sup>th</sup> Ed., © 1983.*

1.4 "Respondeat Superior" means let the master answer. This maxim means that a master is liable in certain cases for the wrongful acts of his servant, and a principal for those of his agent. *See Black's Law Dictionary, 5<sup>th</sup> Ed., © 1983.*

**II. PERIOD OF SERVICE**

2.1 **CONSULTANT** shall complete the work described in the Contract Documents, being Attachments "A" and "B" incorporated herein. The City guarantees neither a particular volume of work nor a minimum number of units of work. This is a stand-by agreement and specific requirements as to types, numbers, conditions, procedures and locations pertaining to the work or services provided hereunder will be established by the municipal project manager of the requesting City Department on a case by case basis for each job, request or Work Task provided by the City.

2.2 The term of this AGREEMENT shall commence on the eleventh (11<sup>th</sup>) calendar day after it is approved by the San Antonio City Council or upon execution by both parties, whichever date is later, and shall remain in force for the period of one year. As the enabling Ordinance provides, the City shall retain an option to renew this contract for two (2) additional one (1) year periods. The Director of Public Works shall have the authority to exercise such options at his discretion. In the event such options are exercised and any material provision of the AGREEMENT is modified, such amendment must be approved by the City Council.

2.3 The City may authorize additional calendar days or make adjustments to the Project Schedule and related deliverables, within the existing scope of this AGREEMENT, upon mutual AGREEMENT in writing, between the Director of the Department of Public Works, or his designee and **CONSULTANT**, as to the reasonableness of said additional time or adjustment.

2.4 Both the City and the **CONSULTANT** agree that additional services may be required for this project based upon the duration of construction activities, extended working hours by the **CONSULTANT**, and additional services required by the Owner and that this Contract may be amended to increase the scope of work to include said additional services upon mutual AGREEMENT, and written notification of approval and understanding, from the City and the **CONSULTANT** as to the reasonableness of the scope of work, period of service, and fees for such additional services. Such increase in scope of work and associated payment shall be subject to the approval of the City Council as evidenced by the passage of a City ordinance.

### III. SCOPE OF SERVICES

3.1 The following is a list of all the documents that comprise the Scope of Services for this Project: Each such document is attached hereto and incorporated herein for all purposes. **CONSULTANT** agrees to perform all work required by the Scope of Services set forth herein and in the attached documents.

3.1.1 ATTACHMENT "A": (Scope of Services)

3.1.2 ATTACHMENT "B": (CONSULTANT's Fee Proposal/Price Schedule)

3.1.3 ATTACHMENT "C": (Compensation)

3.2 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.

3.2.1 The **CONSULTANT** under this contract shall provide services that constitute the practice of architecture and additional services within the meaning of Title 6 of the Texas Occupations Code.

3.2.2 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.

#### **IV. COORDINATION WITH THE CITY**

4.1 **CONSULTANT** shall hold periodic conferences with Director, so that the Project will have the full benefit of **CITY's** experience and knowledge of existing needs and be consistent with its current policies and standards. Conferences shall be scheduled as agreed to by Parties. **CITY** shall make available, for **CONSULTANT's** use, all existing data in its possession relative to this Project as may be requested by **CONSULTANT** at no cost to **CONSULTANT**.

4.2 Director shall act on behalf of **CITY** with respect to the work performed under this AGREEMENT. He shall have complete authority to transmit instructions, receive information, and interpret and define **CITY's** policies and decisions with respect to materials, equipment elements and systems pertinent to **CONSULTANT's** services.

4.3 **CITY** shall provide written notice to the **CONSULTANT** of any errors or omissions discovered in the **CONSULTANT's** services, or performance, or of any development that affects the scope or timing of **CONSULTANT's** services.

4.4 **CONSULTANT** shall complete all applications and furnish all required data, as set forth in the Scope of Services, compiled by **CONSULTANT** for **CITY's** use in obtaining any permits or approvals from governmental authorities having jurisdiction over the Project as may be necessary for completion of the Project. **CONSULTANT** shall not be obligated to develop additional data, prepare extensive reports or appear at hearings in order to obtain said permits or approvals, unless compensated therefore as provided in Article V, entitled "Compensation".

#### **V. COMPENSATION**

5.1 In consideration of the professional services performed by **CONSULTANT**, as stated and contained herein, the City shall pay the **CONSULTANT** fees based on the Exhibits attached hereto and, in no event shall the total dollar amount of all invoices during the term of this AGREEMENT exceed one hundred thousand and no/100 dollars (**\$100,000**).

5.2 A negotiated fixed price, or lump-sum amount for each Work Task may be derived based on the scope of services, and will be based substantially on contractual pre-described and not to exceed pre-priced tasks and or hourly rates included in Exhibit "B".

5.3 Payment may also be made based solely on the units of work completed and approved by the Director, and the associated unit price for each Work Task as may be described in **CONSULTANT 's** proposal/fee schedule (Exhibit "B").

5.4 Monthly payments for work performed in the various Work Tasks will be made to Consultant upon Consultant's furnishing itemized invoices reflecting past due amounts invoiced, current billing periods and amounts, and the balance of approved contract funds remaining, in a form acceptable to the Director and indicating the value of services performed to date.

5.5 Consultant must obtain the prior written approval of the City for any additional line items not described in the Contract Documents. Invoices for additional services which are not included in the Documents (not described in the Exhibits hereto), must be supported with letters from the Director approving said services as being appropriately within the scope of this AGREEMENT.

5.4 Payments to the consultant shall be in the amount shown by the monthly billings and other documentation submitted and shall be subject to the City's approval. All services shall be performed to the City's satisfaction, which satisfaction shall be judged by the Director in his or her sole discretion, and the City shall not be liable for any payment under this AGREEMENT for services which are unsatisfactory and which have not been previously approved by the Director. The final payment due hereunder will not be paid until all reports, data, and documents have been submitted, received, accepted and approved by the City.

## **VI. TERMINATION AND/OR SUSPENSION OF WORK**

6.1 For purposes of this AGREEMENT, termination of this AGREEMENT shall mean termination by expiration of the AGREEMENT term or earlier termination pursuant to any of the provisions hereof.

### **6.2 Termination Without Cause.**

6.2.1 This AGREEMENT may be terminated by either party upon written notice in accordance with Article VI. Such notice must specify an effective date of termination, which shall be not less than thirty (30) calendar days after the date of receipt of the notice by the other Party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other Party.

6.2.2 This AGREEMENT may be terminated by **CITY** prior to Director giving **CONSULTANT** written notice to proceed should the Director, at his sole discretion, determine that it is not in **CITY's** best interest to proceed with this AGREEMENT. Such notice shall be provided in accordance with Article VI, and shall be effective upon delivery by **CITY** in accordance with Article VI.

6.2.3 **CITY** shall equitably compensate **CONSULTANT** in accordance with the terms of this AGREEMENT for the Services properly performed prior to the effective date of termination, following inspection and acceptance of same by **CITY**. **CONSULTANT** shall not, however, be entitled to lost or anticipated profits should **CITY** choose to exercise its option to terminate.

6.3 **Termination For Cause.** Upon written notice, **CITY** may terminate this AGREEMENT upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this AGREEMENT:

6.3.1 **CONSULTANT** makes or allows to be made any material misrepresentation or provides any materially misleading information in connection with this AGREEMENT, including, but not limited to, **CONSULTANT's** Interest Statement, or any covenant, obligation, term or condition contained in this AGREEMENT; or

6.3.2 **CONSULTANT** violates or fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this AGREEMENT.



- 6.3.3 **CONSULTANT** attempts to assign this AGREEMENT contrary to the terms hereof; or experiences a change in ownership interest greater than thirty percent (30%), or control of its business entity; or
- 6.3.4 **CONSULTANT** ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this AGREEMENT shall continue); or if a receiver, trustee or liquidator is appointed for it or any substantial part of **CONSULTANT's** assets or properties; or
- 6.3.5 **CONSULTANT** fails to comply in any respect with the insurance requirements set forth in this AGREEMENT; or
- 6.3.6 **CONSULTANT** violates any rule, regulation or law by which **CONSULTANT** is bound or shall be bound while and in performing the services required under this AGREEMENT.
- 6.4 **Termination By Law.** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this AGREEMENT shall automatically terminate as of the effective date of such prohibition.
- 6.5 **Effect of Termination.** Upon a decision to terminate by **CITY**, written notice of such shall be immediately provided to **CONSULTANT** specifying the effective date of termination, notice of which shall be given in accordance with Article VI.
- 6.5.1 Regardless of how this AGREEMENT is terminated, and subject to 6.5.2, **CONSULTANT** shall affect an orderly transfer to **CITY** or to such person(s) or firm(s) as the **CITY** may designate, at no additional cost to **CITY**, all completed or partially completed documents, papers, records, charts, and reports prepared pursuant to this AGREEMENT and any other materials or information produced as a result of or pertaining to the services rendered by **CONSULTANT**, or provided to **CONSULTANT**. Any record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at **CONSULTANT's** sole cost and expense. Payment of compensation due or to become due to **CONSULTANT** is conditioned upon delivery of all such documents.
- 6.5.2 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this AGREEMENT, **CONSULTANT** shall submit to **CITY** its claims, in detail, for the monies owed by **CITY** for services performed under this AGREEMENT through the effective date of termination. Failure by **CONSULTANT** to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of **CITY** and constitute a **Waiver** by **CONSULTANT** of any and all right or claims to collect moneys that

**CONSULTANT** may rightfully be otherwise entitled to for services performed pursuant to this AGREEMENT.

6.5.3 Upon the effective date of expiration or termination of this AGREEMENT, **CONSULTANT** shall cease all operations of work being performed by **CONSULTANT** or any of its subcontractors pursuant to this AGREEMENT.

6.5.4 **Termination not sole remedy.** In no event shall **CITY's** action of terminating this AGREEMENT, whether for cause or otherwise, be deemed an election of **CITY's** remedies, nor shall such termination limit, in any way, at law or at equity, **CITY's** right to seek damages from or otherwise pursue **CONSULTANT** for any default hereunder or other action.

6.6 Right of **CITY** to Suspend Giving Rise to Right of **CONSULTANT** to Terminate.

6.6.1 **CITY** may suspend this AGREEMENT by issuing a signed, written notice of suspension (citing this paragraph) as provided in Article VI, which shall outline the reasons for the suspension and the duration of the suspension. However, it is understood and agreed by the Parties that the total number of days of suspension as reflected in said notice is not guaranteed, and in fact, may be shorter or longer. Such suspension shall take effect upon the date set forth in the notice, or if no date is set forth, immediately upon **CONSULTANT's** receipt of said notice.

6.6.2 **CONSULTANT** may terminate this AGREEMENT in the event such suspension exceeds one hundred and twenty (120) calendar days. **CONSULTANT** may exercise this right to terminate by issuing a signed, written notice of termination, in accordance with Article VI, Notice, (citing this paragraph) to **CITY** after the expiration of one hundred and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by **CITY**.

6.7 Procedures for **CONSULTANT** to follow upon Receipt of Notice of Suspension.

6.7.1 Upon receipt of written notice of suspension, **CONSULTANT** shall, unless the notice otherwise directs, immediately discontinue all services in connection with the performance of this AGREEMENT and cancel all existing orders and contracts.

6.7.2 **CONSULTANT** shall prepare a statement showing in detail the services performed under this AGREEMENT prior to the effective date of suspension.

6.7.3 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 **CITY** but shall be retained by **CONSULTANT** until such time as **CONSULTANT** may exercise the right to terminate.

6.7.4 In the event that **CONSULTANT** exercises the right to terminate after the suspension date as provided by this Article, within thirty (30) calendar days after receipt by **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. Nothing in this section 6.74 shall prevent **CONSULTANT** from submitting invoices for partial payments for work performed prior to the termination date as provided by Article V, Compensation.

- 6.7.5 Additionally, any documents prepared in association with this AGREEMENT shall be delivered to **CITY** by **CONSULTANT**, as a pre-condition to final payment, within thirty (30) calendar days after receipt by **CITY** of **CONSULTANT's** notice of termination.
- 6.7.6 Upon the above conditions being met, **CITY** shall pay **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.
- 6.7.7 **CITY**, as a public entity, has a duty to document the expenditure of public funds. **CONSULTANT** acknowledges this duty on the part of **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 **CONSULTANT** of any portion of the fee for which **CONSULTANT** did not supply such necessary statements and/or documents.

## **VII. INSURANCE REQUIREMENTS**

7.1 Prior to the commencement of any work under this AGREEMENT, **CONSULTANT** shall furnish an original completed Certificate of Insurance to **CITY's** Public Works Department and **CITY's** Risk Management Division executed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate 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 **CITY**. **CITY** shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to **CITY's** Public Works Department and **CITY's** Risk Management Office, and no officer or employee shall have authority to waive this requirement.

7.2 **CONSULTANT's** financial integrity is of interest to **CITY**, therefore, subject to **CONSULTANT's** right to maintain reasonable deductibles in such amounts as are approved by **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 basis, except for professional liability, by companies authorized, approved or admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and amounts:

<u>TYPE</u>	<u>MINIMUM AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. 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	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per; General Aggregate limit of \$2,000,000 occurrence or its equivalent in umbrella or excess liability coverage
4. Business Automobile Liability a. Owned/Leased Vehicles b. Non-Owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. 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 negligent act, malpractice, error or omission in professional services.

7.3 **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 **CITY**. **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 Article VII herein within 10 days of the requested change.

7.4 **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 **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 **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 **CITY** is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of **CITY**.

7.5 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 **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. In the event of cancellation or non-renewal, such notice must be accompanied by a replacement Certificate of Insurance. All notices under this Article shall be given to **CITY** at the following addresses:

City of San Antonio	City of San Antonio
Public Works Department – Capital Programs	Risk Management
P.O. Box 839966	111 Soledad, Suite 1000
San Antonio, Texas 78283-3966	San Antonio, Texas 78205

7.6 If **CONSULTANT** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, **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 **CITY** is an alternative to other remedies **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 **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, **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. A stop work order given to **CONSULTANT** by **CITY** in accordance with this Article shall not constitute a Suspension of Work pursuant to Article VI, Section 6.7.

7.7 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.

7.8 It is agreed that **CONSULTANT's** insurance shall be deemed primary with respect to any insurance or self insurance carried by **CITY** of San Antonio for liability arising out of operations under this AGREEMENT.

## **VIII. INDEMNIFICATION**

8.1 **CONSULTANT**, whose work product is the subject of this AGREEMENT for architectural 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.**

8.2 **CONSULTANT** shall advise **CITY** in writing within 24 hours of any claim or demand against **CITY** or **CONSULTANT** known to **CONSULTANT** related to or arising out of **CONSULTANT's** activities under this AGREEMENT.

8.3 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

## **IX. ASSIGNMENT OF RIGHTS OR DUTIES**

9.1 By entering into this AGREEMENT, **CITY** has approved the use of any subcontractors identified in **CONSULTANT's** Interest Statement. No further approval shall be needed for **CONSULTANT** to use such subcontractors as are identified in **CONSULTANT's** Interest Statement.

9.2 Except as otherwise required herein, **CONSULTANT** may not sell, assign, pledge, transfer or convey any interest in this AGREEMENT nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of **CITY**.

9.3 As a condition of consent, if same is given, **CONSULTANT** shall remain liable for completion of the services outlined in this AGREEMENT in the event of default by the successor consultant, assignee, transferee or subcontractor. Any references in this AGREEMENT to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by **CITY** in accordance with this Article.

9.4 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this AGREEMENT, without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should **CONSULTANT** assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this AGREEMENT, **CITY** may, at its option, terminate this AGREEMENT in accordance with Article VI, Termination, and all rights, titles and interest of **CONSULTANT** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this AGREEMENT. The violation of this provision by **CONSULTANT** shall in no event release **CONSULTANT** from any obligation under the terms of this AGREEMENT, nor shall it relieve or release **CONSULTANT** from the payment of any damages to **CITY**, which **CITY** sustains as a result of such violation.

9.5 **CONSULTANT** agrees to notify Director of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this AGREEMENT, any such change of ownership interest or control of its business entity may be grounds for termination of this AGREEMENT in accordance with Article VI, Termination.

## **X. INDEPENDENT CONTRACTOR**

10.1 **CONSULTANT** covenants and agrees that (s)he is an independent contractor and not an officer, agent, servant, or employee of **CITY**; that **CONSULTANT** shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of respondeat superior shall not apply as between **CITY** and **CONSULTANT**, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **CITY** and **CONSULTANT**.

10.2 No Third Party Beneficiaries - For purposes of this AGREEMENT, including its intended operation and effect, the Parties specifically agree and CONTRACT that: (1) this AGREEMENT only affects matters/disputes between the Parties to this AGREEMENT, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with **CITY** or **CONSULTANT** or both, or that such third parties may benefit incidentally by this AGREEMENT; and (2) the terms of this AGREEMENT are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either **CITY** or **CONSULTANT**.

## **XI. EQUAL EMPLOYMENT OPPORTUNITY**

**CONSULTANT** shall not 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, **CONSULTANT** agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's office.

## **XII. SBEDA REQUIREMENTS**

12.1 **CONSULTANT** hereby acknowledges that it is the policy of the **CITY** of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), 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").

12.2 **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 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.

12.3 **CONSULTANT** shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/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/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. 96754, 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.

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

12.5 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.

12.6 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.

12.7 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**.

12.8 **CITY** shall in no event be obligated to any third party, including any subcontractor of **CONSULTANT**, for performance or services or payment of fees.

### **XIII. 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  
Public Works Department – City Architect's Office  
Attn: Jesse Fernandez  
P.O. Box 839966  
San Antonio, Texas 78283-3966

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

Chesney, Morales & Associates, Inc.  
Attn.: Richard G. Morales, Pres.  
4901 Broadway, Suite 250  
San Antonio, Texas 78209

#### **XIV. INTEREST IN CITY CONTRACTS PROHIBITED**

14.1 **CONSULTANT** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with **CITY** or any **CITY** agency such as **CITY** owned utilities. An officer or employee has a "prohibited financial interest" in a contract with **CITY** or in the sale to **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.

14.2 **CONSULTANT** warrants and certifies, and this AGREEMENT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of **CITY**. **CONSULTANT** further warrants and certifies that it has tendered to **CITY** a Discretionary Contracts Disclosure Statement in compliance with **CITY**'s Ethics Code.

#### **XV. SOLICITATION**

**CONSULTANT** warrants and represents that he has not employed or retained any company or person, other than a bona fide employee working solely for **CONSULTANT**, to solicit or secure this AGREEMENT, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for **CONSULTANT**, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. This representation constitutes a substantial part of the consideration for the making of this AGREEMENT.

#### **XVI. CONTRACT CONSTRUCTION**

All parties have participated fully in the review and revision of this AGREEMENT. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this AGREEMENT.

#### **XVII. FAMILIARITY WITH LAW AND CONTRACT TERMS**

**CONSULTANT** represents that, prior to signing this AGREEMENT, **CONSULTANT** has become thoroughly acquainted with all matters relating to the performance of this AGREEMENT, all applicable laws, and all of the terms and conditions of this AGREEMENT.

### **XVIII. APPLICABLE LAW**

This AGREEMENT shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

### **XIX. VENUE**

The obligations of the parties to this AGREEMENT shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

### **XX. SEVERABILITY**

In the event any one or more paragraphs or portions of this AGREEMENT are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of this AGREEMENT, but such shall be confined to the specific section, sentences, clauses or portions of this AGREEMENT held invalid or unenforceable.

### **XXI. FORCE MAJEURE**

In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

### **XXII. SUCCESSORS**

This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this AGREEMENT, their assigns.

### **XXIII. NON-WAIVER OF PERFORMANCE**

23.1 A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this AGREEMENT shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this AGREEMENT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this AGREEMENT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of CITY, such changes must be approved by the San Antonio City Council.

23.2 No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

#### **XXIV. PARAGRAPH HEADINGS**

The headings of this AGREEMENT are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

#### **XXV. LEGAL AUTHORITY**

The signer of this AGREEMENT for CITY and CONSULTANT each represents, warrants, assures and guarantees that he has full legal authority to execute this AGREEMENT on behalf of CITY and CONSULTANT respectively, and to bind CITY and CONSULTANT to all of the terms, conditions, provisions and obligations herein contained.

#### **XXVI. INCORPORATION OF ATTACHMENTS**

26.1 CONSULTANT understands and agrees that all attachments, including appendices thereto, referred to in this AGREEMENT are intended to be and hereby are incorporated herein and specifically made a part of this AGREEMENT for all purposes. Said attachments are as follows:

ATTACHMENT "A" (Scope of Services)

ATTACHMENT "B" (CONSULTANT's Fee Proposal/Price Schedule)

ATTACHMENT "C" (Compensation)

26.2 In the event of a conflict or inconsistency between any attachment and the terms of this AGREEMENT, the terms of this AGREEMENT shall govern and prevail.

#### **XXVII. ENTIRE AGREEMENT**

27.1 This AGREEMENT, together with its authorizing ordinance and Attachments, as listed in Article XXVI, Incorporation of Attachments, embodies the complete AGREEMENT of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written consent of the parties and approved by ordinance passed by the San Antonio City Council.

27.2 It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

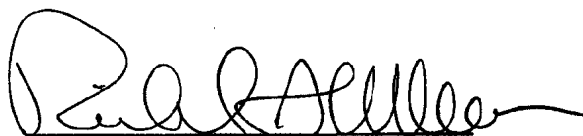
EXECUTED ON THIS, THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2004.

**CITY OF SAN ANTONIO**

**CONSULTANT**

**CHESNEY, MORALES &  
ASSOCIATES, INC.**

\_\_\_\_\_  
CITY MANAGER

  
RICHARD G. MORALES, AIA  
PRESIDENT

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

\_\_\_\_\_  
DATE

APPROVED AS TO FORM:

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

## ATTACHMENT "A"

### (SCOPE OF SERVICES)

#### Scope of Work

- 1.1. The professional architectural services provided under this agreement may include, but are not limited to the assessment and evaluation of facilities to include roofing systems, design services for minor interior modifications and improved accessibility for the disabled, and periodic field observations as required;
- 1.2. The development of recommendations for repairs, the preparation of plans and specifications for, and the oversight of, any required construction, repair, rehabilitation or alteration of a facility or public works improvement as necessary.
- 1.3. The scope of work will be specifically identified in Work Tasks provided by the City and in the subsequent individually negotiated and City-accepted Consultant proposals. The negotiated amount for each specific scope of services may be derived as a fixed price, or lump-sum based substantially on contractual pre-described and not to exceed pre-priced tasks and or hourly rates included in Exhibit "B".
- 1.4. Payment may also be made based solely on the units of work completed and approved by the Director, and the associated unit price for each Work Task as may be described in **CONSULTANT 's** proposal/fee schedule (Exhibit "B").
- 1.5. The Consultant shall commence work on the project once it has been thoroughly briefed regarding the scope of the specific project and has been notified in writing to proceed with the Work.
- 1.6. The Consultant, in consideration for the compensation herein provided, shall render professional architectural consulting services necessary for the development of the Project to final completion.

**ATTACHMENT "B"**

**(CONSULTANT'S FEE PROPOSAL/PRICE SCHEDULE)**

**ATTACHMENT B**  
**Fee Proposal/Price Schedule for**  
**CHESNEY MORALES & ASSOCIATES, INC.**

**Chesney**  
**Morales ARCHITECTS/PLANNERS**  
**& Associates, Inc.**

4901 Broadway / Suite 250  
210-828-9481 Fax 210-828-9719  
San Antonio, Texas 78209

July 7, 2004

City of San Antonio  
Attn: Jesse Fernandez, Architect  
Public Works Department, City Architects Office  
P.O. Box 839966  
San Antonio, TX 78283-3966

Re: Professional Architectural Services for On Call Architectural Consulting Services  
City of San Antonio

Dear Mr. Fernandez:

It is our understanding that Chesney-Morales & Associates, Inc has been selected as one of three firms awarded the On-Call Architectural Consulting Services for the City of San Antonio. We look forward to working with the City on any projects that may arise during the duration of this contract. The team that we submitted in response to the Request for Qualifications (RFQ) for Professional Architectural Services for On-Call Architectural Consulting Services consists of the following:

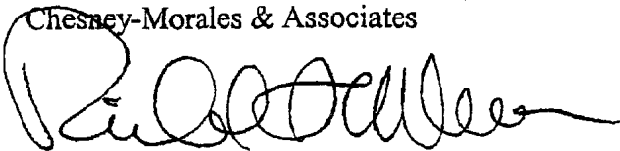
Architectural Services	Chesney-Morales & Associates, Inc
MEP Engineering Services	QuadTech Engineering, Inc
Civil Engineering Services	Bain Medina Bain, Inc
Structural Engineering Services	Lundy & Franke Engineering, Inc
Geotech/Environmental Services	Professional Services Industry, Inc (PSI)

Attached are our hourly billing rates, scope unit fees, and a listing of reimbursables. We are also including this information for the support firms.

Again, we appreciate this opportunity to work with the City of San Antonio.

Sincerely,

Chesney-Morales & Associates



Richard G. Morales, AIA



**Compensation Attachments****Rates/Unit Prices in effect until August 1, 2005**

Chesney-Morales &amp; Associates, Inc

**Labor Hourly Billing Rates, Unit Costs and Reimbursables****Section 1:****Wage classifications for hourly billing**

Principal	\$ 120.00 per hr
Senior Architect	\$ 75.00 per hr
Project Manager	\$ 75.00 per hr
Project Architect	\$ 75.00 per hr
Architect Intern	\$ 60.00 per hr
CADD Manager	\$ 65.00 per hr
Draftpersons	\$ 50.00 per hr
Administrative	\$ 35.00 per hr

**Section 2:****Scope Unit Fee Schedules****Section 3:****Reimbursable Expenses**

Plots (inc color)	\$ 9.00-\$ 70.00 each
Prints	\$ 1.35 each
Color Copies	\$ 0.99 each
Copies	\$ 0.10 each
Overnight Shipping	\$ at cost
Printing (Triangle)	\$ at cost
Postage	\$ at cost
Long Distance Calls	\$ 0.15 per minute (approximate)
Parking	\$ at cost
Mileage	\$ 0.27 per mile
Cost Plus Admin Fee	10%

**Compensation Attachments****Rates/Unit Prices in effect until August 1, 2005**

QuadTech Engineering, Inc

**Labor Hourly Billing Rates, Unit Costs and Reimbursables****Section 1:****Wage classifications for hourly billing**

Principal	\$ 125.00 per hr
Senior Engineer	\$ 100.00 per hr
Project Manager	\$ 100.00 per hr
Project Engineer	
Mechanical	\$ 85.00 per hr
Electrical	\$ 85.00 per hr
Plumbing	\$ 85.00 per hr
Engineer in Training	\$ 75.00 per hr
CADD Operator	\$ 55.00 per hr
Draftspersons	\$ 45.00 per hr
Administrative	\$ 40.00 per hr

**Section 2:****Scope Unit Fee Schedules****Section 3:****Reimbursable Expenses**

Plots	\$ 10.00-\$ 15.00 each
Copies (24 x 36, 30 X 42)	\$ 2.50-\$ 4.00 each
8.5 X 11 copies	\$ 0.10 each
Long Distance Calls/Fax	\$ 2.50 per call
Miscellaneous Expenses	\$ at cost
Mileage	\$ 0.375 per mile

**Compensation Attachments****Rates/Unit Prices in effect until August 1, 2005****Bain Medina Bain, Inc****Labor Hourly Billing Rates, Unit Costs and Reimbursables****Section 1:****Wage classifications for hourly billing**

Principal	\$ 125.00 per hr
Senior Engineer	\$ 120.00 per hr
Project Manager	\$ 110.00 per hr
Project Engineer	
Civil	\$ 90.00 per hr
Engineer in Training	\$ 75.00 per hr
Technician	
Design	\$ 75.00 per hr
Draftspersons	\$ 65.00 per hr
Administrative	\$ 50.00 per hr

**Section 2:****Scope Unit Fee Schedules**

Survey Crew	
Four Person	\$ 145.00 per hr
Three Person	\$ 125.00 per hr
Two Person	\$ 100.00 per hr
GPS Operator	\$ 60.00 per hr

**Computer and CADD In-House Services**

PC CADD	\$ 10.00 per connect hr
PC Stations	\$ 8.00 per connect hr

**Section 3:****Reimbursable Expenses**

Plots	\$ 3.00 each
Paper Plats	\$ 2.00 each
Bluelines	\$ 5.00 each
Single Side Copies	\$ 0.12 each
Double Side Copies	\$ 0.18 each
GBC Type Binding	\$ 2.50 per book
Non-Labor Expenses	\$ at cost

**Compensation Attachments****Rates/Unit Prices in effect until August 1, 2005****Lundy & Franke Engineering, Inc****Labor Hourly Billing Rates, Unit Costs and Reimbursables****Section 1:****Wage classifications for hourly billing**

Principal	\$ 125.00 per hr
Senior Engineer	\$ 120.00 per hr
Project Manager	\$ 110.00 per hr
Project Engineer	
Structural	\$ 90.00 per hr
Engineer in Training	\$ 75.00 per hr
Technician	\$ 75.00 per hr
Draftspersons	\$ 65.00 per hr
Administrative	\$ 50.00 per hr

**Section 2:****Scope Unit Fee Schedules****Section 3:****Reimbursable Expenses**

Plots	\$ 9.00-\$ 13.50 each
Prints	\$ 1.35 each
Copies	\$ 0.10 each
Overnight Shipping	\$ at cost
Outside Printing	\$ at cost
Postage	\$ at cost
Long Distance Calls	\$ 0.15 per minute (approximate)
Parking	\$ at cost
Mileage	\$ 0.35 per mile

**Compensation Attachments****Rates/Unit Prices in effect until August 1, 2005****Professional Service Industries, Inc – Environmental Services****Labor Hourly Billing Rates, Unit Costs and Reimbursables****Section 1:****Wage classifications for hourly billing**

Chief Scientist/Engineer	\$ 150.00 per hr
Certified Industrial Hygienist	\$ 125.00 per hr
Senior Technical Professional	\$ 110.00 per hr
Senior Project Engineer	\$ 95.00 per hr
Project Manager	\$ 90.00 per hr
Project Engineer/Scientist	\$ 75.00 per hr
Staff Engineer/Scientist	\$ 85.00 per hr
Licensed Asbestos/Lead Inspectors	\$ 60.00 per hr
Environmental Technician	\$ 55.00 per hr
CADD Draftsman	\$ 55.00 per hr
Administrative	\$ 45.00 per hr

**Section 2:****Scope Unit Fee Schedules****Laboratory Testing (standard turnaround)**

Asbestos Bulk Samples (PLM)	\$ 25.00 each
TEM Testing	\$125.00 each
Asbestos Point Count	\$ 50.00 each
Total Lead in Paint Chips (AA)	\$ 25.00 each
Total Lead in Air Samples	\$ 25.00 each
IAQ Testing	Quote
Soil/Groundwater Testing	Quote

## Compensation Attachments

Rates/Unit Prices in effect until August 1, 2005

Professional Service Industries, Inc – Geotechnical Engineering Services

### Labor Hourly Billing Rates, Unit Costs and Reimbursables

#### Section 1:

##### Wage classifications for hourly billing

Chief Geotechnical Engineer	\$ 150.00 per hr
Principal Engineer	\$ 115.00 per hr
Senior Project Engineer	\$ 100.00 per hr
Geotechnical Engineer	\$ 85.00 per hr
Geotechnical Project Manager	\$ 90.00 per hr
Engineering Technician	\$ 55.00 per hr

#### Section 2:

##### Scope Unit Fee Schedules

##### Subsurface Drilling and Sampling

Mobilization & Demobilization	\$ 3.50 per mile
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##### Auger Drilling without Sampling

Depth, Feet	Soil Drilling	Rock Coring
0-25	\$ 11.50 plf	\$ 20.50 plf
25-50	\$ 13.00 plf	\$ 25.00 plf
50-100	\$ 16.00 plf	\$ 36.00 plf
100+	Quote	Quote

##### Soil Sampling

Depth, Feet	
0-25	\$ 11.50 per sample
25-50	\$ 15.50 per sample
50-100	\$ 25.00 per sample
100+	Quote

##### Special and/or Insitu Testing

Static Cone Penetrometer	\$ 8.00 plf
Dennison or Piston Sampler	\$ 75.00 each
Other insitu testing w/special equipment	Quote

Set-up charge for rock coring \$ 110.00 per hole

Cost of special equipment or permits for moving drilling equipment about the site - Cost plus 15%

Set-up time per hole, in excess of ½ hour or stand by time \$95.00 per hr

**Section 2:****Scope Unit Fee Schedules Continued****Laboratory Testing**

Visual Classification	\$ 4.50 each
Moisture Content Tests	\$ 5.00 each
Density Determinations	\$ 20.00 each
Hand Penetrometer Tests	\$ 4.50 each
Unconfined Compression Tests w/o	
Stress Versus Strain Curve	\$ 35.00 each
Atterberg Limits Determination	\$ 48.00 each
Percent Swell Tests	\$160.00 each
Permeability Testing	
Falling Head (Fixed Ring)	\$210.00 each
Falling Head (Flexible Wall)	\$345.00 each
Grain Size Analysis, Mechanical	\$ 75.00 each
Percent Passing #200 Sieve	\$ 40.00 each
Hydrometer Analysis	\$160.00 each
Consolidation	\$415.00 each
Triaxial Shear Testing	
Unconsolidated-Undrained	\$120.00 per point
Moisture-Density Relationship	
ASTM D698(Standard Proctor)	\$150.00 each
ASTM D1557 (Modified Proctor)	\$150.00 each
1 pt California Bearing Ratio	
w/o Moisture-Density Curve	\$275.00 each
w/Moisture-Density Curve	\$375.00 each

**Compensation Attachments****Rates/Unit Prices in effect until August 1, 2005**

Professional Service Industries, Inc – Construction Materials Testing &amp; Inspection Services

**Labor Hourly Billing Rates, Unit Costs and Reimbursables****Section 1:****Wage classifications for hourly billing**

Project Manager	\$ 90.00 per hr
Staff Engineer	\$ 85.00 per hr
Senior Project Engineer	\$100.00 per hr
Senior Principal Engineer	\$115.00 per hr
Chief Engineer	\$150.00 per hr

**Section 2:****Scope Unit Fee Schedules****Laboratory Testing Services****Concrete and Aggregates**

Concrete Compression Test	\$ 11.00 each
Concrete Flexural Test	\$ 25.00 each

**Soils**

Moisture/Density Relationship of Soils	\$155.00 each
Atterberg Limits Determination (PI)	\$ 55.00 each
Sieve Analysis ASTM C136	\$ 55.00 each
Percent Passing #200 Sieve	\$ 50.00 each

**Asphalt Concrete Testing**

Extraction and Gradation	\$150.00 each
Molding Specimens	\$ 65.00 per set of 3
Density of Specimens	\$ 45.00 per set of 3
Stability	\$ 75.00 per set of 3
Density and Thickness of Asphalt Cores	\$ 30.00 each
Theoretical Specific Gravity	\$ 70.00

**Steel**

Yield Testing of Existing Coupons	\$ 45.00 each
Cutting of Coupons for Yield Test	\$ 75.00 each



**Compensation Attachments****Rates/Unit Prices in effect until August 1, 2005**

Professional Service Industries, Inc – Field Testing Services

**Labor Hourly Billing Rates, Unit Costs and Reimbursables****Section 1:****Wage classifications for hourly billing**

Engineering Technician	\$ 32.00 per hr
Senior Engineering Technician	\$ 36.00 per hr
Certified Welding Inspector	\$ 65.00 per hr

**Section 2:****Scope Unit Fee Schedules**

Nuclear Density Gauge (min of 3 per trip)	\$ 10.00 per test
Coring Rig	\$ 75.00 per day
Bit Recovery	\$ 5.00 per inch

## Compensation Attachments

**Rates/Unit Prices in effect until August 1, 2005**

Professional Service Industries, Inc – Roof Consulting Services

**Labor Hourly Billing Rates, Unit Costs and Reimbursables**

### Section 1:

#### Wage classifications for hourly billing

Principal Roof Consultant	\$ 130.00 per hr
Registered Structural Engineer	\$ 120.00 per hr
Senior Roof Consultant	\$ 100.00 per hr
Roof Consultant	\$ 90.00 per hr
Roof Specialist	\$ 70.00 per hr
Roof Inspector (QA)	\$ 60.00 per hr
Draftsman	\$ 55.00 per hr
Administrative	\$ 45.00 per hr

### Section 2:

#### Scope Unit Fee Schedules

##### Testing

Filed Roof Cuts (plus personnel rates)	\$ 70.00
Roof Cut Analysis, ASTM D2829, D3617	\$450.00 per cut
Roof Core Analysis	\$ 60.00 per core
Moisture Content, Insulation	\$ 50.00 per specimen
Delmhorst Moisture Probe	\$ 40.00 per test
Aggregate Sieve Analysis	\$ 90.00 per sample

##### Wind Uplift Tests

Mobilization	Quote
Single Test (plus personnel rates)	\$800.00
Additional Tests	\$125.00 each
Fastener Pull Tests (plus personnel rates)	\$300.00
Additional Tests	\$ 50.00 each

##### Surveys

Initial Maintenance Survey	\$750.00 min charge
Annual Maintenance Survey	\$750.00 min charge
Historical Record	\$150.00 per bldg, min charge
Visual Survey	\$750.00 min charge
Moisture Surveys (Nuclear, Infrared)	\$750.00 min charge

**Section 2:****Scope Unit Fee Schedules Continued****Equipment**

Infrared Equipment	\$550.00 per day
Infrared Mobilization	\$200.00 per job
Nuclear Moisture Meter	\$150.00 per day
Capacitance Meter	\$150.00 per day

## **ATTACHMENT "C"**

### **(COMPENSATION)**

On or after the last day of each month, CONSULTANT shall provide City a written invoice for the work performed by CONSULTANT, requested by City during that month, and for which the services have been reviewed and approved by the City. The invoice amount shall be based on the unit prices agreed as shown on Attachment "B". In no event shall the total dollar amount of all invoices during the term of this contract exceed one hundred thousand and no/100 dollars **(\$100,000)**.

**COUNTY OF BEXAR** }

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2.2 The term of this AGREEMENT shall commence on the eleventh (11<sup>th</sup>) calendar day after it is approved by the San Antonio City Council or upon execution by both parties, whichever date is later, and shall remain in force for the period of one year. As the enabling Ordinance provides, the City shall retain an option to renew this contract for two (2) additional one (1) year periods. The Director of Public Works shall have the authority to exercise such options at his discretion. In the event such options are exercised and any material provision of the AGREEMENT is modified, such amendment must be approved by the City Council.

2.3 The City may authorize additional calendar days or make adjustments to the Project Schedule and related deliverables, within the existing scope of this AGREEMENT, upon mutual AGREEMENT in writing, between the Director of the Department of Public Works, or his designee and **CONSULTANT**, as to the reasonableness of said additional time or adjustment.

2.4 Both the City and the **CONSULTANT** agree that additional services may be required for this project based upon the duration of construction activities, extended working hours by the **CONSULTANT**, and additional services required by the Owner and that this Contract may be amended to increase the scope of work to include said additional services upon mutual AGREEMENT, and written notification of approval and understanding, from the City and the **CONSULTANT** as to the reasonableness of the scope of work, period of service, and fees for such additional services. Such increase in scope of work and associated payment shall be subject to the approval of the City Council as evidenced by the passage of a City ordinance.

### **III. SCOPE OF SERVICES**

3.1 The following is a list of all the documents that comprise the Scope of Services for this Project: Each such document is attached hereto and incorporated herein for all purposes. **CONSULTANT** agrees to perform all work required by the Scope of Services set forth herein and in the attached documents.

3.1.1 ATTACHMENT "A": (Scope of Services)

3.1.2 ATTACHMENT "B": (CONSULTANT's Fee Proposal/Price Schedule)

3.1.3 ATTACHMENT "C": (Compensation)

3.2 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.

3.2.1 The **CONSULTANT** under this contract shall provide services that constitute the practice of architecture and additional services within the meaning of Title 6 of the Texas Occupations Code.

3.2.2 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.

#### **IV. COORDINATION WITH THE CITY**

4.1 **CONSULTANT** shall hold periodic conferences with Director, so that the Project will have the full benefit of **CITY's** experience and knowledge of existing needs and be consistent with its current policies and standards. Conferences shall be scheduled as agreed to by Parties. **CITY** shall make available, for **CONSULTANT's** use, all existing data in its possession relative to this Project as may be requested by **CONSULTANT** at no cost to **CONSULTANT**.

4.2 Director shall act on behalf of **CITY** with respect to the work performed under this AGREEMENT. He shall have complete authority to transmit instructions, receive information, and interpret and define **CITY's** policies and decisions with respect to materials, equipment elements and systems pertinent to **CONSULTANT's** services.

4.3 **CITY** shall provide written notice to the **CONSULTANT** of any errors or omissions discovered in the **CONSULTANT's** services, or performance, or of any development that affects the scope or timing of **CONSULTANT's** services.

4.4 **CONSULTANT** shall complete all applications and furnish all required data, as set forth in the Scope of Services, compiled by **CONSULTANT** for **CITY's** use in obtaining any permits or approvals from governmental authorities having jurisdiction over the Project as may be necessary for completion of the Project. **CONSULTANT** shall not be obligated to develop additional data, prepare extensive reports or appear at hearings in order to obtain said permits or approvals, unless compensated therefore as provided in Article V, entitled "Compensation".

#### **V. COMPENSATION**

5.1 In consideration of the professional services performed by **CONSULTANT**, as stated and contained herein, the City shall pay the **CONSULTANT** fees based on the Exhibits attached hereto and, in no event shall the total dollar amount of all invoices during the term of this AGREEMENT exceed one hundred thousand and no/100 dollars (\$100,000).

5.2 A negotiated fixed price, or lump-sum amount for each Work Task may be derived based on the scope of services, and will be based substantially on contractual pre-described and not to exceed pre-priced tasks and or hourly rates included in Exhibit "B".

5.3 Payment may also be made based solely on the units of work completed and approved by the Director, and the associated unit price for each Work Task as may be described in **CONSULTANT 's** proposal/fee schedule (Exhibit "B").

5.4 Monthly payments for work performed in the various Work Tasks will be made to Consultant upon Consultant's furnishing itemized invoices reflecting past due amounts invoiced, current billing periods and amounts, and the balance of approved contract funds remaining, in a form acceptable to the Director and indicating the value of services performed to date.

5.5 Consultant must obtain the prior written approval of the City for any additional line items not described in the Contract Documents. Invoices for additional services which are not included in the Documents (not described in the Exhibits hereto), must be supported with letters from the Director approving said services as being appropriately within the scope of this AGREEMENT.

5.4 Payments to the consultant shall be in the amount shown by the monthly billings and other documentation submitted and shall be subject to the City's approval. All services shall be performed to the City's satisfaction, which satisfaction shall be judged by the Director in his or her sole discretion, and the City shall not be liable for any payment under this AGREEMENT for services which are unsatisfactory and which have not been previously approved by the Director. The final payment due hereunder will not be paid until all reports, data, and documents have been submitted, received, accepted and approved by the City.

## **VI. TERMINATION AND/OR SUSPENSION OF WORK**

6.1 For purposes of this AGREEMENT, termination of this AGREEMENT shall mean termination by expiration of the AGREEMENT term or earlier termination pursuant to any of the provisions hereof.

### **6.2 Termination Without Cause.**

6.2.1 This AGREEMENT may be terminated by either party upon written notice in accordance with Article VI. Such notice must specify an effective date of termination, which shall be not less than thirty (30) calendar days after the date of receipt of the notice by the other Party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other Party.

6.2.2 This AGREEMENT may be terminated by **CITY** prior to Director giving **CONSULTANT** written notice to proceed should the Director, at his sole discretion, determine that it is not in **CITY's** best interest to proceed with this AGREEMENT. Such notice shall be provided in accordance with Article VI, and shall be effective upon delivery by **CITY** in accordance with Article VI.

6.2.3 **CITY** shall equitably compensate **CONSULTANT** in accordance with the terms of this AGREEMENT for the Services properly performed prior to the effective date of termination, following inspection and acceptance of same by **CITY**. **CONSULTANT** shall not, however, be entitled to lost or anticipated profits should **CITY** choose to exercise its option to terminate.

6.3 **Termination For Cause.** Upon written notice, **CITY** may terminate this AGREEMENT upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this AGREEMENT:

6.3.1 **CONSULTANT** makes or allows to be made any material misrepresentation or provides any materially misleading information in connection with this AGREEMENT, including, but not limited to, **CONSULTANT's** Interest Statement, or any covenant, obligation, term or condition contained in this AGREEMENT; or

6.3.2 **CONSULTANT** violates or fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this AGREEMENT.



- 6.3.3 **CONSULTANT** attempts to assign this AGREEMENT contrary to the terms hereof; or experiences a change in ownership interest greater than thirty percent (30%), or control of its business entity; or
- 6.3.4 **CONSULTANT** ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this AGREEMENT shall continue); or if a receiver, trustee or liquidator is appointed for it or any substantial part of **CONSULTANT's** assets or properties; or
- 6.3.5 **CONSULTANT** fails to comply in any respect with the insurance requirements set forth in this AGREEMENT; or
- 6.3.6 **CONSULTANT** violates any rule, regulation or law by which **CONSULTANT** is bound or shall be bound while and in performing the services required under this AGREEMENT.
- 6.4 **Termination By Law.** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this AGREEMENT shall automatically terminate as of the effective date of such prohibition.
- 6.5 **Effect of Termination.** Upon a decision to terminate by **CITY**, written notice of such shall be immediately provided to **CONSULTANT** specifying the effective date of termination, notice of which shall be given in accordance with Article VI.
- 6.5.1 Regardless of how this AGREEMENT is terminated, and subject to 6.5.2, **CONSULTANT** shall affect an orderly transfer to **CITY** or to such person(s) or firm(s) as the **CITY** may designate, at no additional cost to **CITY**, all completed or partially completed documents, papers, records, charts, and reports prepared pursuant to this AGREEMENT and any other materials or information produced as a result of or pertaining to the services rendered by **CONSULTANT**, or provided to **CONSULTANT**. Any record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at **CONSULTANT's** sole cost and expense. Payment of compensation due or to become due to **CONSULTANT** is conditioned upon delivery of all such documents.
- 6.5.2 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this AGREEMENT, **CONSULTANT** shall submit to **CITY** its claims, in detail, for the monies owed by **CITY** for services performed under this AGREEMENT through the effective date of termination. Failure by **CONSULTANT** to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of **CITY** and constitute a **Waiver** by **CONSULTANT** of any and all right or claims to collect moneys that

**CONSULTANT** may rightfully be otherwise entitled to for services performed pursuant to this AGREEMENT.

6.5.3 Upon the effective date of expiration or termination of this AGREEMENT, **CONSULTANT** shall cease all operations of work being performed by **CONSULTANT** or any of its subcontractors pursuant to this AGREEMENT.

6.5.4 **Termination not sole remedy.** In no event shall **CITY's** action of terminating this AGREEMENT, whether for cause or otherwise, be deemed an election of **CITY's** remedies, nor shall such termination limit, in any way, at law or at equity, **CITY's** right to seek damages from or otherwise pursue **CONSULTANT** for any default hereunder or other action.

6.6 Right of **CITY** to Suspend Giving Rise to Right of **CONSULTANT** to Terminate.

6.6.1 **CITY** may suspend this AGREEMENT by issuing a signed, written notice of suspension (citing this paragraph) as provided in Article VI, which shall outline the reasons for the suspension and the duration of the suspension. However, it is understood and agreed by the Parties that the total number of days of suspension as reflected in said notice is not guaranteed, and in fact, may be shorter or longer. Such suspension shall take effect upon the date set forth in the notice, or if no date is set forth, immediately upon **CONSULTANT's** receipt of said notice.

6.6.2 **CONSULTANT** may terminate this AGREEMENT in the event such suspension exceeds one hundred and twenty (120) calendar days. **CONSULTANT** may exercise this right to terminate by issuing a signed, written notice of termination, in accordance with Article VI, Notice, (citing this paragraph) to **CITY** after the expiration of one hundred and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by **CITY**.

6.7 Procedures for **CONSULTANT** to follow upon Receipt of Notice of Suspension.

6.7.1 Upon receipt of written notice of suspension, **CONSULTANT** shall, unless the notice otherwise directs, immediately discontinue all services in connection with the performance of this AGREEMENT and cancel all existing orders and contracts.

6.7.2 **CONSULTANT** shall prepare a statement showing in detail the services performed under this AGREEMENT prior to the effective date of suspension.

6.7.3 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 **CITY** but shall be retained by **CONSULTANT** until such time as **CONSULTANT** may exercise the right to terminate.

6.7.4 In the event that **CONSULTANT** exercises the right to terminate after the suspension date as provided by this Article, within thirty (30) calendar days after receipt by **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. Nothing in this section 6.74 shall prevent **CONSULTANT** from submitting invoices for partial payments for work performed prior to the termination date as provided by Article V, Compensation.

- 6.7.5 Additionally, any documents prepared in association with this AGREEMENT shall be delivered to **CITY** by **CONSULTANT**, as a pre-condition to final payment, within thirty (30) calendar days after receipt by **CITY** of **CONSULTANT's** notice of termination.
- 6.7.6 Upon the above conditions being met, **CITY** shall pay **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.
- 6.7.7 **CITY**, as a public entity, has a duty to document the expenditure of public funds. **CONSULTANT** acknowledges this duty on the part of **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 **CONSULTANT** of any portion of the fee for which **CONSULTANT** did not supply such necessary statements and/or documents.

## **VII. INSURANCE REQUIREMENTS**

7.1 Prior to the commencement of any work under this AGREEMENT, **CONSULTANT** shall furnish an original completed Certificate of Insurance to **CITY's** Public Works Department and **CITY's** Risk Management Division executed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate 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 **CITY**. **CITY** shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to **CITY's** Public Works Department and **CITY's** Risk Management Office, and no officer or employee shall have authority to waive this requirement.

7.2 **CONSULTANT's** financial integrity is of interest to **CITY**, therefore, subject to **CONSULTANT's** right to maintain reasonable deductibles in such amounts as are approved by **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 basis, except for professional liability, by companies authorized, approved or admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and amounts:

<u>TYPE</u>	<u>MINIMUM AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. 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	Combined <u>S</u> ingle <u>L</u> imit for <u>B</u> odily <u>I</u> njury and <u>P</u> roperty <u>D</u> amage of \$1,000,000 per; General Aggregate limit of \$2,000,000 occurrence or its equivalent in umbrella or excess liability coverage
4. Business Automobile Liability a. Owned/Leased Vehicles b. Non-Owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. 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 negligent act, malpractice, error or omission in professional services.

7.3 **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 **CITY**. **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 Article VII herein within 10 days of the requested change.

7.4 **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 **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 **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 **CITY** is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of **CITY**.

7.5 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 **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. In the event of cancellation or non-renewal, such notice must be accompanied by a replacement Certificate of Insurance. All notices under this Article shall be given to **CITY** at the following addresses:

City of San Antonio	City of San Antonio
Public Works Department – Capital Programs	Risk Management
P.O. Box 839966	111 Soledad, Suite 1000
San Antonio, Texas 78283-3966	San Antonio, Texas 78205

7.6 If **CONSULTANT** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, **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 **CITY** is an alternative to other remedies **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 **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, **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. A stop work order given to **CONSULTANT** by **CITY** in accordance with this Article shall not constitute a Suspension of Work pursuant to Article VI, Section 6.7.

7.7 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.

7.8 It is agreed that **CONSULTANT's** insurance shall be deemed primary with respect to any insurance or self insurance carried by **CITY** of San Antonio for liability arising out of operations under this AGREEMENT.

## **VIII. INDEMNIFICATION**

8.1 **CONSULTANT**, whose work product is the subject of this AGREEMENT for architectural 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.**

8.2 **CONSULTANT** shall advise **CITY** in writing within 24 hours of any claim or demand against **CITY** or **CONSULTANT** known to **CONSULTANT** related to or arising out of **CONSULTANT's** activities under this AGREEMENT.

8.3 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

## **IX. ASSIGNMENT OF RIGHTS OR DUTIES**

9.1 By entering into this AGREEMENT, **CITY** has approved the use of any subcontractors identified in **CONSULTANT's** Interest Statement. No further approval shall be needed for **CONSULTANT** to use such subcontractors as are identified in **CONSULTANT's** Interest Statement.

9.2 Except as otherwise required herein, **CONSULTANT** may not sell, assign, pledge, transfer or convey any interest in this AGREEMENT nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of **CITY**.

9.3 As a condition of consent, if same is given, **CONSULTANT** shall remain liable for completion of the services outlined in this AGREEMENT in the event of default by the successor consultant, assignee, transferee or subcontractor. Any references in this AGREEMENT to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by **CITY** in accordance with this Article.

9.4 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this AGREEMENT, without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should **CONSULTANT** assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this AGREEMENT, **CITY** may, at its option, terminate this AGREEMENT in accordance with Article VI, Termination, and all rights, titles and interest of **CONSULTANT** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this AGREEMENT. The violation of this provision by **CONSULTANT** shall in no event release **CONSULTANT** from any obligation under the terms of this AGREEMENT, nor shall it relieve or release **CONSULTANT** from the payment of any damages to **CITY**, which **CITY** sustains as a result of such violation.

9.5 **CONSULTANT** agrees to notify Director of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this AGREEMENT, any such change of ownership interest or control of its business entity may be grounds for termination of this AGREEMENT in accordance with Article VI, Termination.

## **X. INDEPENDENT CONTRACTOR**

10.1 **CONSULTANT** covenants and agrees that (s)he is an independent contractor and not an officer, agent, servant, or employee of **CITY**; that **CONSULTANT** shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of respondeat superior shall not apply as between **CITY** and **CONSULTANT**, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **CITY** and **CONSULTANT**.

10.2 No Third Party Beneficiaries - For purposes of this AGREEMENT, including its intended operation and effect, the Parties specifically agree and CONTRACT that: (1) this AGREEMENT only affects matters/disputes between the Parties to this AGREEMENT, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with **CITY** or **CONSULTANT** or both, or that such third parties may benefit incidentally by this AGREEMENT; and (2) the terms of this AGREEMENT are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either **CITY** or **CONSULTANT**.

## **XI. EQUAL EMPLOYMENT OPPORTUNITY**

**CONSULTANT** shall not 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, **CONSULTANT** agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's office.

## **XII. SBEDA REQUIREMENTS**

12.1 **CONSULTANT** hereby acknowledges that it is the policy of the **CITY** of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), 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").

12.2 **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 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.

12.3 **CONSULTANT** shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/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/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. 96754, 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.

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

12.5 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.

12.6 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.

12.7 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**.

12.8 **CITY** shall in no event be obligated to any third party, including any subcontractor of **CONSULTANT**, for performance or services or payment of fees.

### **XIII. 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  
Public Works Department – City Architect's Office  
Attn: Jesse Fernandez  
P.O. Box 839966  
San Antonio, Texas 78283-3966

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

Kinnison & Associates, Architects  
342 West Woodlawn  
San Antonio, Texas 78212-3394  
Attn: Paul Kinnison, Jr., FAIA

#### **XIV. INTEREST IN CITY CONTRACTS PROHIBITED**

14.1 **CONSULTANT** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with **CITY** or any **CITY** agency such as **CITY** owned utilities. An officer or employee has a "prohibited financial interest" in a contract with **CITY** or in the sale to **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.

14.2 **CONSULTANT** warrants and certifies, and this AGREEMENT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of **CITY**. **CONSULTANT** further warrants and certifies that it has tendered to **CITY** a Discretionary Contracts Disclosure Statement in compliance with **CITY**'s Ethics Code.

#### **XV. SOLICITATION**

**CONSULTANT** warrants and represents that he has not employed or retained any company or person, other than a bona fide employee working solely for **CONSULTANT**, to solicit or secure this AGREEMENT, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for **CONSULTANT**, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. This representation constitutes a substantial part of the consideration for the making of this AGREEMENT.

#### **XVI. CONTRACT CONSTRUCTION**

All parties have participated fully in the review and revision of this AGREEMENT. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this AGREEMENT.

#### **XVII. FAMILIARITY WITH LAW AND CONTRACT TERMS**

**CONSULTANT** represents that, prior to signing this AGREEMENT, **CONSULTANT** has become thoroughly acquainted with all matters relating to the performance of this AGREEMENT, all applicable laws, and all of the terms and conditions of this AGREEMENT.

## **XVIII. APPLICABLE LAW**

This AGREEMENT shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

## **XIX. VENUE**

The obligations of the parties to this AGREEMENT shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

## **XX. SEVERABILITY**

In the event any one or more paragraphs or portions of this AGREEMENT are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of this AGREEMENT, but such shall be confined to the specific section, sentences, clauses or portions of this AGREEMENT held invalid or unenforceable.

## **XXI. FORCE MAJEURE**

In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

## **XXII. SUCCESSORS**

This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this AGREEMENT, their assigns.

## **XXIII. NON-WAIVER OF PERFORMANCE**

23.1 A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this AGREEMENT shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this AGREEMENT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this AGREEMENT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of CITY, such changes must be approved by the San Antonio City Council.

23.2 No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

#### **XXIV. PARAGRAPH HEADINGS**

The headings of this AGREEMENT are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

#### **XXV. LEGAL AUTHORITY**

The signer of this AGREEMENT for CITY and CONSULTANT each represents, warrants, assures and guarantees that he has full legal authority to execute this AGREEMENT on behalf of CITY and CONSULTANT respectively, and to bind CITY and CONSULTANT to all of the terms, conditions, provisions and obligations herein contained.

#### **XXVI. INCORPORATION OF ATTACHMENTS**

26.1 CONSULTANT understands and agrees that all attachments, including appendices thereto, referred to in this AGREEMENT are intended to be and hereby are incorporated herein and specifically made a part of this AGREEMENT for all purposes. Said attachments are as follows:

ATTACHMENT "A" (Scope of Services)

ATTACHMENT "B" (CONSULTANT's Fee Proposal/Price Schedule)

ATTACHMENT "C" (Compensation)

26.2 In the event of a conflict or inconsistency between any attachment and the terms of this AGREEMENT, the terms of this AGREEMENT shall govern and prevail.

#### **XXVII. ENTIRE AGREEMENT**

27.1 This AGREEMENT, together with its authorizing ordinance and Attachments, as listed in Article XXVI, Incorporation of Attachments, embodies the complete AGREEMENT of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written consent of the parties and approved by ordinance passed by the San Antonio City Council.

27.2 It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

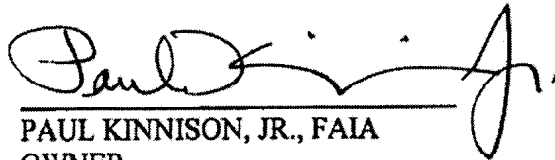
EXECUTED ON THIS, THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2004.

**CITY OF SAN ANTONIO**

**CONSULTANT**

**KINNISON & ASSOCIATES,  
ARCHITECTS**

\_\_\_\_\_  
CITY MANAGER

  
\_\_\_\_\_  
PAUL KINNISON, JR., FAIA  
OWNER

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

\_\_\_\_\_  
DATE

APPROVED AS TO FORM:

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

## ATTACHMENT "A"

### (SCOPE OF SERVICES)

#### Scope of Work

- 1.1. The professional architectural services provided under this agreement may include, but are not limited to the assessment and evaluation of facilities to include roofing systems, design services for minor interior modifications and improved accessibility for the disabled, and periodic field observations as required;
- 1.2. The development of recommendations for repairs, the preparation of plans and specifications for, and the oversight of, any required construction, repair, rehabilitation or alteration of a facility or public works improvement as necessary.
- 1.3. The scope of work will be specifically identified in Work Tasks provided by the City and in the subsequent individually negotiated and City-accepted Consultant proposals. The negotiated amount for each specific scope of services may be derived as a fixed price, or lump-sum based substantially on contractual pre-described and not to exceed pre-priced tasks and or hourly rates included in Exhibit "B".
- 1.4. Payment may also be made based solely on the units of work completed and approved by the Director, and the associated unit price for each Work Task as may be described in **CONSULTANT 's** proposal/fee schedule (Exhibit "B").
- 1.5. The Consultant shall commence work on the project once it has been thoroughly briefed regarding the scope of the specific project and has been notified in writing to proceed with the Work.
- 1.6. The Consultant, in consideration for the compensation herein provided, shall render professional architectural consulting services necessary for the development of the Project to final completion.

**ATTACHMENT “B”**

**(CONSULTANT'S FEE PROPOSAL/PRICE SCHEDULE)**

**ATTACHMENT B**  
**Fee Proposal/Price Schedule for**  
**KINNISON AND ASSOCIATES, ARCHITECTS**

**KINNISON AND ASSOCIATES, ARCHITECTS**

342 West Woodlawn Avenue • San Antonio, Texas 78212-3394  
TEL (210) 732-2248 • FAX (210) 736-5955 • Email [kinnison@kinnison-architects.com](mailto:kinnison@kinnison-architects.com)

July 12, 2004

City of San Antonio, Jesse Fernandez, Architect, Public Works Department, City Architects Office, P.O. Box 839966, San Antonio, TX 78283-3966

Re: Professional Architectural Services for On Call Architectural Consulting Services,  
City of San Antonio

MR. FERNANDEZ: It is our understanding that Kinnison and Associates, Architects has been selected as one of three firms awarded the On-Call Architectural Consulting Services for the City of San Antonio. We look forward to working with the City on any projects that may arise during the duration of this contract. The team that we submitted in response to the Request for Qualifications (RFQ) for Professional Architectural Services for On-Call Architectural Consulting Services consists of the following:

Geotechnical Engineer	Arias & Associates, Inc.
Civil Engineer	San Antonio Design Group
Structural Engineer	Jaster-Quintanilla, San Antonio, LLP
MEP Engineer	KM Ng and Associates, Inc.
Landscape Architect	Place Collaborative, Inc.
Hazardous Materials	STC Environmental
ADA	Tom Ellis
Traffic Consultant	Steitle Traffic Engineering, Inc.

We are attaching our hourly billing rates, scope unit fees, and listing of reimbursable expenses as well as for the support firms.



Thomas R. Sokol, AIA  
TRS/eck

K



# KINNISON AND ASSOCIATES, ARCHITECTS

342 West Woodlawn Avenue - Suite 200 • San Antonio, Texas 78212-3394  
TEL (210) 732-2248 • FAX (210) 736-5955 • EMAIL [kinnison@kinnison-architects.com](mailto:kinnison@kinnison-architects.com)

## MEMORANDUM: HOURLY FEE SCHEDULE

DATE: January 5, 2004

FROM: Paul Kinnison, Jr., FAIA

SUBJECT: Compensation based on hourly rates and reimbursable expenses

### I. HOURLY RATES

<u>Position</u>	<u>Hourly Rates</u>
Principal I	\$110.00
Principal II	\$ 80.00
Architect I	\$ 70.00
Architect II/Sr. Draftsman	\$ 60.00
Intern-Architect I	\$ 45.00
Intern-Architect II	\$ 37.50
Intern-Architect III	\$ 32.50
Architectural-Draftsman I	\$ 27.50
Architectural-Draftsman II	\$ 25.00
Draftsman I	\$ 22.50
Draftsman II	\$ 20.00
Secretary	\$ 30.00

### II. PROFESSIONAL CONSULTANTS

Compensation to professional consultants (structural engineers, geo-technical engineers, mechanical engineers, electrical engineers, civil engineers, interior designers, landscape architects, etc.) will be billed at a multiple of one and one-fifteenth (1.15) times the amount billed to the Architect for such services.

### III. REIMBURSABLE EXPENSES

- A. Cost of long distance telephone calls.
- B. Cost of reproduction of documents (8-1/2" x 11") photocopies \$0.20 each, black line printing \$0.25 per sq. ft., etc.).
- C. Cost of travel (actual cost if by commercial carrier or rent car, \$0.36 per mile if by private car).
- D. Cost of mailing of documents (other than letters).
- E. Cost of out of town travel (actual cost of travel, food and lodging).
- F. Additional Compensation for overtime work when requested by client.
- G. Compensation for reimbursable expenses will be billed at cost.

NOTE: Only those expenses relating directly to the Client's work will be applicable.

**Arias & Associates, Inc.  
Geotechnical Services  
2004 Unit Fee Schedule**

<b><u>Project Preparation and Travel Expenses</u></b>	<b><u>Unit Price</u></b>
In Town Mobilization - Personnel & Equip-Per Day	\$250.00
Out of Town Mobilization - Personnel & Equip-Per Mile	\$ 3.50
Boring Layout, per hour	\$ 50.00
Per Diem Charge - Per Person Day	\$ 90.00
Site Clearing at Cost + 15%	
 <b><u>Field Testing</u></b>	
Soil Drilling and Sampling Up to 40 Feet - Per Foot	\$ 15.00
Soil Drilling and Sampling 40 to 60 Feet - Per Foot	\$ 16.00
Shelby Tube Sample - Each	\$ 8.00
Interior Soil Boring Up to 10 Feet - Each	\$480.00
Rock Core Sampling - Per Foot Up to 40 Feet Deep	\$ 30.00
Rock Core Sampling - Per Foot From 40 to 100 Feet	\$ 34.00
Rock Core Setup Charge	\$200.00
Installation of Observation Well	Per Request
Patch Holes - Each	\$100.00
Grout Boring Hole - Per Foot	\$ 7.50
Standard Penetration Test - Each	\$ 10.00
 <b><u>Laboratory Testing</u></b>	
Atterberg Limits Determination	\$ 55.00
Bearing Ratio Test	\$400.00
Hydrometer Analysis	\$ 90.00
Grain Size Analysis Mechanical	\$ 55.00
Hand Penetrometer Test	\$ 6.00
Material Finer than No. 200 Sieve	\$ 35.00
Moisture Content Test & Visual Classification	\$ 14.00
Moisture Density Relationship	\$165.00
Percent Swell - Each	\$110.00
Unconfined Compressive Strength - Each	\$ 37.00
Unit Dry Density	\$ 19.00
 <b><u>Engineering and Technical Services</u></b>	
Principal Engineer - Per Hour	\$150.00
Senior Project Engineer - Per Hour	\$100.00
Engineer-In-Training- Per Hour	\$ 60.00
Senior Engineering Geologist - Per Hour	\$ 60.00
Senior Engineering Technician	\$ 40.00
Secretarial Services - Per Hour	\$ 35.00

Other Services Quoted Upon Request

**\*Rates are good through August 2005.**

**Arias & Associates, Inc**  
**Construction Materials Services**  
**2004 Unit Fee Schedule**

<u>Field Services</u>	<u>Unit Price</u>
1.1 Concrete Placement Observation	\$34.00/hr
1.2 Soil Technician	\$34.00/hr
1.2.1 Soil Density Test	\$16.00/ea
1.2 Reinforcing Steel Observation	\$38.00/hr
1.3 Drilled Pier Observation	\$38.00/hr
1.4 Asphaltic Concrete Observation	\$38.00/hr
1.5 Structural Steel Observation (CWI)	\$65.00/hr
1.6 Vehicle Travel Charges (in-town)	\$15.00/per trip
1.7 Vehicle Travel Charges (out-of-town)	\$0.50/mile
1.8 Sample Pick-Up	\$34.00/hr
1.9 Per Diem	\$90.00/day
 <u>Laboratory Testing-Soil</u>	
2.1 Moisture Content Test and Visual Classification	\$14.00/ea
2.2 Atterberg Limits	\$58.00/ea
2.3 Sieve Analysis (wet sieve)	\$60.00/ea
2.4 Percent Passing No. 200 Sieve	\$30.00/ea
2.5 Moisture Density Relationship	\$175.00/ea
2.6 Percent Free Swell Test	\$110.00/ea
 <u>Laboratory Testing-Concrete and Aggregate</u>	
3.1 Aggregate Sieve Analysis	\$60.00/ea
3.2 Specific Gravity of Aggregate	\$32.00/ea
3.3 Absorption of Aggregate	\$27.00/ea
3.4 Unit Weight of Aggregate	\$36.00/ea
3.5 Concrete Compressive Test (6" x 12" Cylinders)	\$15.00/ea
3.6 Contractor Made Concrete Compressive Test (6" x 12" Cylinders, minimum of 3)	\$22.00/ea
3.7 Beam Flexural Strength	\$29.00/ea
 <u>Laboratory Testing-Asphalt</u>	
4.1 Mix Design (Hveem or Marshall Method)	On Request
4.2 Molding Test Specimens/Lab Densities (3 per set)	\$130.00/set
4.3 Determine Hveem or Marshall Stability (3 per set)	\$68.00/set
4.4 Determine Maximum Theoretical Density	\$68.00/ea
4.5 Extraction (percent of bitumen and aggregate gradation)	\$129.00/ea
4.6 Laboratory Density of Field Cut Specimen	\$27.00/ea
 <u>Consulting Services</u>	
5.1 Principal Engineer	\$135.00/hr
5.2 Senior Geotechnical Engineer	\$90.00/hr
5.3 Senior Geologist	\$65.00/hr
5.4 Project Manager	\$65.00/hr
5.5 Administrative Processing	\$40.00/hr
5.6 Report Preparation and Review	\$35.00/hr

**Rates for other services quoted on request**

**Notes:**

Minimum call-out charge for technician and equipment is 3 hours. Minimum call-out charge for sample pickup is 2 hours. Out-of-town vehicle charges applicable outside of Bexar County. Charges are accrued portal to portal from laboratory. Overtime rates of 1.4 times hourly rated noted are applicable to time worked in excess of 8 hours per day, Monday through Friday, hours worked before 6 a.m. or after 6:00 p.m., and all hours worked on Saturdays, Sundays, and holidays.

**\*Rates are good through August 2005.**

**San Antonio Design Group Inc.**  
**1716 S. San Marcos #202**  
**San Antonio, Texas 78207**  
**(210) 226-6545**

**RE: Labor Hourly Billing Rates, Unit Costs and Reimbursables.**

**Section 1:**

**Wage classification for hourly billing**

**Civil Engineering & Survey Personnel:**

Principal	\$95.00 /Hour
Senior Project Engineer	\$95.00 /Hour
Project Engineer	\$90.00 /Hour
Staff Engineer	\$85.00 /Hour
Senior Staff Surveyor	\$85.00 /Hour
Project Manager	\$75.00 /Hour
Project Surveyor	\$75.00 /Hour
Senior Engineering/Survey Technician	\$65.00 /Hour
Engineering/Survey Technician	\$55.00 /Hour
Draftsman I	\$45.00 /Hour
Clerical/Messenger	\$35.00 /Hour

**Section 2:**

**Scope Unit Fee Schedule**

**Survey Crews:**

Survey crews are available at fixed hourly rates. Hourly rates include normal supplies used in the field, such as laths, guards, flagging, etc.

One (1) man field crew	\$50.00 /Hour
Two (2) man field crew	\$86.00 /Hour
Three (3) man field crew	\$108.00 /Hour
Four (4) man field crew	\$130.00 /Hour

All land surveying projects will have the appropriate state and local sales tax added onto rates shown.

**Section 3:**

**Reimbursable Expenses**

All purchased services are billed at actual cost plus 10%. These services include but are not limited to out of house reproduction, approved subcontract services and special supplies.

This hourly schedule is good until August 31, 2005.

**Jaster-Quintanilla San Antonio, LLP**

**Labor Hourly Billing Rates, Unit Costs and Reimbursables through August 1, 2005.**

**Section 1:**

**Wage classifications for hourly billing**

Principal/Managing Partner	\$125.00/hour
Project Manager	115.00/hour
Senior Project Engineer	\$95.00/hour
Project Engineer	\$85.00/hour
Technician/CAD Operator	\$65.00/hour
Administrative	\$45.00/hour

**Section 2:**

**Scope Unit Fee Schedules**

N/A

**Section 3:**

**Reimbursable Expenses**

Paper Plots	\$2.50 Per Sheet
Single Side Copies	\$0.10 Per Sheet
Double Side Copies	\$0.15 Per Sheet
Binding	\$2.50 Per Book
Mileage	\$0.35 Per Mile

K.M. NG & ASSOCIATES, INC.  
6243 I.H. 10 West, Suite 200  
San Antonio, Texas 78201-2022  
[office@kmng.com](mailto:office@kmng.com)

Tel: 210/736-6623  
Fax: 210/736-9258  
<http://www.kmng.com>

### STANDARD HOURLY RATES

1-Jul-04

Principal	\$ 100.00
Project Manager	\$ 88.40
Senior Engineer	\$ 83.20
Staff Engineer	\$ 72.80
Designer	\$ 52.00
CADD Technician	\$ 46.80
Clerical Staff	\$ 38.48
Surveyors (3-Man Crew with vehicle and equipment)	\$ 98.80

These rates are effective from July 1, 2004, through July 31, 2005



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Kung M. Ng, P.E., R.P.L.S.

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July 9, 2004

**Reimbursable Expenses**  
**1 July 2004**

**Reprographics**

**Size**

	<b>A</b>	<b>B</b>	<b>D</b>
ANSI	8.5"x 11"	11"x 17"	22"x 34"
Arch	9"x 12"	12"x 18"	24"x 36"
Area (S.F.)	N/A	2.00	6.00

**Copies**

Photocopies (B&W)	\$ 0.10	\$ 0.16	N/A
Color Copies	\$ 1.00	\$ 2.00	N/A
Bluelines	\$ 0.13 per SF	\$ 0.26	\$ 0.78

**Original Plots**

Black & White	\$ 0.27 per SF	N/A	\$ 0.54	\$ 1.62
Color on Bond	\$ 0.43 per SF	N/A	\$ 0.86	\$ 2.58
Mylar	\$ 1.62 per SF	N/A	\$ 3.24	\$ 9.72

**Scans**

Optical Character Recognition	\$ 2.15
Additional Pages	\$ 1.10

**Binding**

Comb w/ Covers	\$ 4.25
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**Mileage**

\$ 0.36 per mile

# STC

Environmental Services Inc.  
Environmental Scientists and Engineers

4754 RESEARCH DRIVE

SAN ANTONIO, TEXAS 78240

Office (210) 696-6286 / FAX (210) 696-8761

July 9, 2004

Kinnison and Associates, Architects  
342 West Woodlawn Avenue, Suite 200  
San Antonio, Texas 78212-3394

RE: Fees For Architectural Teams On-Call for the City of San Antonio, Texas

Mr. Kinnison:

Per your request of July 7, 2004 the following fees and unit costs are provided for asbestos and lead consulting services.

<u>Services</u>	<u>Unit Price</u>
Lead/Asbestos Inspector	\$60.00/hr
Asbestos/Lead Report	\$60.00/hr
Asbestos/Lead Abatement Documentation Preparation	\$60.00/hr
Asbestos Bulk Samples (24 hr turn)	\$15.00/sample
Lead Bulk Samples (24 hr turn)	\$15.00/sample

The prices will be valid through August 2005.

If you have any questions or need any additional information please contact our office at (210) 696-6286.

Respectfully,



David O. Scheiding, P.E.  
President – Principal Engineer

DOS/mjs



VIA FACSIMILE 736-5955

July 9, 2004

Mr. Paul Kinneson, AIA  
Kinneson and Associates Architects  
342 West Woodlawn Ave., Suite 200  
San Antonio, Texas 78212

Re: On-Call Architectural Consulting Services

Dear Mr. Kinneson:

Congratulations on being selected for the above referenced City project(s). We are excited to be included as part of your team. I have outlined below the specific information you requested regarding our firm's hourly billing rates, etc. for submittal to the City.

Principal	\$75.00/hour
Senior Architect	\$60.00/hour
Project Manager	\$75.00/hour
Project Architect	\$75.00/hour
Architect in-training	\$50.00/hour
CADD Operator/Draftsperson	\$40.00/hour
Administrative	\$35.00/hour

Reimbursable Expenses include but are not limited to: Mileage at \$.40 per mile, drawing and document reproduction is at cost plus 10% plus an administrative fee of 15%.

If you need any additional information, please do not hesitate to contact me.

Sincerely,

  
Larry A. Hicks, ASLA

/ch

Tom Ellis, AIA  
13535 Norland  
San Antonio, Texas 78232  
(210) 490-7344  
[TELLISAIA@aol.com](mailto:TELLISAIA@aol.com)

The Hourly Bill Rates are good until August 2005

Hourly Billing Rate

Texas Accessibility Standards	\$65.00/hour
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Scope Unit Fee Schedules

Plan Review	\$400 each
Site Inspection	\$325 each
Plan Review and Site Inspection	\$100
Processing fee	

Reimbursable Expenses

Mileage Expense	\$0.36 per mile
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**Steitle Traffic Engineering, Inc.**  
**David C. Steitle, P.E.**  
**20770 Hwy 281 N., Suite 108-435**  
**San Antonio, Texas 78258**  
**Ph 210-366-9458**  
**Fax 210-366-9508**  
dcsteitle@aol.com

### **Compensation Attachments**

All attachments should look similar in format. You may have to retype the hourly rates submitted to you by your consultants.

The rates shown will good through August 2005.

#### **Name of Firm** **Labor Hourly Billing Rates, Unit Costs and Reimbursables**

##### **Section I:**

**Wage classifications for hourly billing (use only applicable)**

Principal (or Managing Partner).....	\$95/hour
Senior Engineer (or Architect).....	\$95/hour
Project Manager.....	\$95/hour
Project Engineer (or Architect), (identify different type of engineer or consultant, i.e. roofing, environmental, geologist).....	\$95/hour
Engineer (or Architect) in Training.....	\$65/hour
Technician (or CADD Operator) (identify field, laboratory manager, materials consultant).....	\$65/hour
Draftsperson.....	\$45/hour
Administrative (or clerical/secretary).....	\$35/hour

## **ATTACHMENT "C"**

### **(COMPENSATION)**

On or after the last day of each month, CONSULTANT shall provide City a written invoice for the work performed by CONSULTANT, requested by City during that month, and for which the services have been reviewed and approved by the City. The invoice amount shall be based on the unit prices agreed as shown on Attachment "B". In no event shall the total dollar amount of all invoices during the term of this contract exceed one hundred thousand and no/100 dollars (\$100,000).

**PROFESSIONAL SERVICES AGREEMENT  
FOR  
STAND-BY PROFESSIONAL ARCHITECTURAL SERVICES**

**STATE OF TEXAS** }

**COUNTY OF BEXAR** }

This AGREEMENT is made and entered into by and between the City of San Antonio (hereinafter referred to as "**CITY**"), a Texas Municipal Corporation acting by and through its City Manager, pursuant to Ordinance No. \_\_\_\_\_, passed and approved on the \_\_\_\_ day of \_\_\_\_\_, 2004, and **Nored Architecture by and through its Owner, Catherine Nored**, (hereinafter referred to as "**CONSULTANT**"), both of which may be referred to herein collectively as the "**PARTIES**".

**IN CONSIDERATION** of the mutual covenants, terms, conditions, privileges and obligations herein contained, **CITY** and **CONSULTANT** do hereby agree as follows:

### **I. DEFINITIONS**

As used in this AGREEMENT, the following terms shall have meanings as set out below:

1.1 "Director" means the director of **CITY**'s Public Works Department, or the designated project manager identified by the Notice to Proceed.

1.2 "Project" means the capital improvement/construction development undertaking of **CITY** for which **CONSULTANT**'s professional services, as stated in the Scope of Services, are to be provided pursuant to this AGREEMENT.

1.3 "Ab Initio" means from the beginning; from the first act; from the inception. *See Black's Law Dictionary, 5<sup>th</sup> Ed., © 1983.*

1.4 "Respondeat Superior" means let the master answer. This maxim means that a master is liable in certain cases for the wrongful acts of his servant, and a principal for those of his agent. *See Black's Law Dictionary, 5<sup>th</sup> Ed., © 1983.*

### **II. PERIOD OF SERVICE**

2.1 **CONSULTANT** shall complete the work described in the Contract Documents, being Attachments "A" and "B" incorporated herein. The City guarantees neither a particular volume of work nor a minimum number of units of work. This is a stand-by agreement and specific requirements as to types, numbers, conditions, procedures and locations pertaining to the work or services provided hereunder will be established by the municipal project manager of the requesting City Department on a case by case basis for each job, request or Work Task provided by the City.

2.2 The term of this AGREEMENT shall commence on the eleventh (11<sup>th</sup>) calendar day after it is approved by the San Antonio City Council or upon execution by both parties, whichever date is later, and shall remain in force for the period of one year. As the enabling Ordinance provides, the City shall retain an option to renew this contract for two (2) additional one (1) year periods. The Director of Public Works shall have the authority to exercise such options at his discretion. In the event such options are exercised and any material provision of the AGREEMENT is modified, such amendment must be approved by the City Council.

2.3 The City may authorize additional calendar days or make adjustments to the Project Schedule and related deliverables, within the existing scope of this AGREEMENT, upon mutual AGREEMENT in writing, between the Director of the Department of Public Works, or his designee and **CONSULTANT**, as to the reasonableness of said additional time or adjustment.

2.4 Both the City and the **CONSULTANT** agree that additional services may be required for this project based upon the duration of construction activities, extended working hours by the **CONSULTANT**, and additional services required by the Owner and that this Contract may be amended to increase the scope of work to include said additional services upon mutual AGREEMENT, and written notification of approval and understanding, from the City and the **CONSULTANT** as to the reasonableness of the scope of work, period of service, and fees for such additional services. Such increase in scope of work and associated payment shall be subject to the approval of the City Council as evidenced by the passage of a City ordinance.

### **III. SCOPE OF SERVICES**

3.1 The following is a list of all the documents that comprise the Scope of Services for this Project: Each such document is attached hereto and incorporated herein for all purposes. **CONSULTANT** agrees to perform all work required by the Scope of Services set forth herein and in the attached documents.

3.1.1 ATTACHMENT "A": (Scope of Services)

3.1.2 ATTACHMENT "B": (CONSULTANT's Fee Proposal/Price Schedule)

3.1.3 ATTACHMENT "C": (Compensation)

3.2 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.

3.2.1 The **CONSULTANT** under this contract shall provide services that constitute the practice of architecture and additional services within the meaning of Title 6 of the Texas Occupations Code.

3.2.2 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.

#### **IV. COORDINATION WITH THE CITY**

4.1 **CONSULTANT** shall hold periodic conferences with Director, so that the Project will have the full benefit of **CITY's** experience and knowledge of existing needs and be consistent with its current policies and standards. Conferences shall be scheduled as agreed to by Parties. **CITY** shall make available, for **CONSULTANT's** use, all existing data in its possession relative to this Project as may be requested by **CONSULTANT** at no cost to **CONSULTANT**.

4.2 Director shall act on behalf of **CITY** with respect to the work performed under this AGREEMENT. He shall have complete authority to transmit instructions, receive information, and interpret and define **CITY's** policies and decisions with respect to materials, equipment elements and systems pertinent to **CONSULTANT's** services.

4.3 **CITY** shall provide written notice to the **CONSULTANT** of any errors or omissions discovered in the **CONSULTANT's** services, or performance, or of any development that affects the scope or timing of **CONSULTANT's** services.

4.4 **CONSULTANT** shall complete all applications and furnish all required data, as set forth in the Scope of Services, compiled by **CONSULTANT** for **CITY's** use in obtaining any permits or approvals from governmental authorities having jurisdiction over the Project as may be necessary for completion of the Project. **CONSULTANT** shall not be obligated to develop additional data, prepare extensive reports or appear at hearings in order to obtain said permits or approvals, unless compensated therefore as provided in Article V, entitled "Compensation".

#### **V. COMPENSATION**

5.1 In consideration of the professional services performed by **CONSULTANT**, as stated and contained herein, the City shall pay the **CONSULTANT** fees based on the Exhibits attached hereto and, in no event shall the total dollar amount of all invoices during the term of this AGREEMENT exceed one hundred thousand and no/100 dollars (\$100,000).

5.2 A negotiated fixed price, or lump-sum amount for each Work Task may be derived based on the scope of services, and will be based substantially on contractual pre-described and not to exceed pre-priced tasks and or hourly rates included in Exhibit "B".

5.3 Payment may also be made based solely on the units of work completed and approved by the Director, and the associated unit price for each Work Task as may be described in **CONSULTANT's** proposal/fee schedule (Exhibit "B").

5.4 Monthly payments for work performed in the various Work Tasks will be made to Consultant upon Consultant's furnishing itemized invoices reflecting past due amounts invoiced, current billing periods and amounts, and the balance of approved contract funds remaining, in a form acceptable to the Director and indicating the value of services performed to date.

5.5 Consultant must obtain the prior written approval of the City for any additional line items not described in the Contract Documents. Invoices for additional services which are not included in the Documents (not described in the Exhibits hereto), must be supported with letters from the Director approving said services as being appropriately within the scope of this AGREEMENT.

5.4 Payments to the consultant shall be in the amount shown by the monthly billings and other documentation submitted and shall be subject to the City's approval. All services shall be performed to the City's satisfaction, which satisfaction shall be judged by the Director in his or her sole discretion, and the City shall not be liable for any payment under this AGREEMENT for services which are unsatisfactory and which have not been previously approved by the Director. The final payment due hereunder will not be paid until all reports, data, and documents have been submitted, received, accepted and approved by the City.

## **VI. TERMINATION AND/OR SUSPENSION OF WORK**

6.1 For purposes of this AGREEMENT, termination of this AGREEMENT shall mean termination by expiration of the AGREEMENT term or earlier termination pursuant to any of the provisions hereof.

### **6.2 Termination Without Cause.**

6.2.1 This AGREEMENT may be terminated by either party upon written notice in accordance with Article VI. Such notice must specify an effective date of termination, which shall be not less than thirty (30) calendar days after the date of receipt of the notice by the other Party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other Party.

6.2.2 This AGREEMENT may be terminated by **CITY** prior to Director giving **CONSULTANT** written notice to proceed should the Director, at his sole discretion, determine that it is not in **CITY's** best interest to proceed with this AGREEMENT. Such notice shall be provided in accordance with Article VI, and shall be effective upon delivery by **CITY** in accordance with Article VI.

6.2.3 **CITY** shall equitably compensate **CONSULTANT** in accordance with the terms of this AGREEMENT for the Services properly performed prior to the effective date of termination, following inspection and acceptance of same by **CITY**. **CONSULTANT** shall not, however, be entitled to lost or anticipated profits should **CITY** choose to exercise its option to terminate.

6.3 **Termination For Cause.** Upon written notice, **CITY** may terminate this AGREEMENT upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this AGREEMENT:

6.3.1 **CONSULTANT** makes or allows to be made any material misrepresentation or provides any materially misleading information in connection with this AGREEMENT, including, but not limited to, **CONSULTANT's** Interest Statement, or any covenant, obligation, term or condition contained in this AGREEMENT; or

6.3.2 **CONSULTANT** violates or fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this AGREEMENT.



- 6.3.3 **CONSULTANT** attempts to assign this AGREEMENT contrary to the terms hereof; or experiences a change in ownership interest greater than thirty percent (30%), or control of its business entity; or
- 6.3.4 **CONSULTANT** ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this AGREEMENT shall continue); or if a receiver, trustee or liquidator is appointed for it or any substantial part of **CONSULTANT's** assets or properties; or
- 6.3.5 **CONSULTANT** fails to comply in any respect with the insurance requirements set forth in this AGREEMENT; or
- 6.3.6 **CONSULTANT** violates any rule, regulation or law by which **CONSULTANT** is bound or shall be bound while and in performing the services required under this AGREEMENT.
- 6.4 **Termination By Law.** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this AGREEMENT shall automatically terminate as of the effective date of such prohibition.
- 6.5 **Effect of Termination.** Upon a decision to terminate by **CITY**, written notice of such shall be immediately provided to **CONSULTANT** specifying the effective date of termination, notice of which shall be given in accordance with Article VI.
- 6.5.1 Regardless of how this AGREEMENT is terminated, and subject to 6.5.2, **CONSULTANT** shall affect an orderly transfer to **CITY** or to such person(s) or firm(s) as the **CITY** may designate, at no additional cost to **CITY**, all completed or partially completed documents, papers, records, charts, and reports prepared pursuant to this AGREEMENT and any other materials or information produced as a result of or pertaining to the services rendered by **CONSULTANT**, or provided to **CONSULTANT**. Any record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at **CONSULTANT's** sole cost and expense. Payment of compensation due or to become due to **CONSULTANT** is conditioned upon delivery of all such documents.
- 6.5.2 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this AGREEMENT, **CONSULTANT** shall submit to **CITY** its claims, in detail, for the monies owed by **CITY** for services performed under this AGREEMENT through the effective date of termination. Failure by **CONSULTANT** to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of **CITY** and constitute a **Waiver** by **CONSULTANT** of any and all right or claims to collect moneys that

**CONSULTANT** may rightfully be otherwise entitled to for services performed pursuant to this AGREEMENT.

6.5.3 Upon the effective date of expiration or termination of this AGREEMENT, **CONSULTANT** shall cease all operations of work being performed by **CONSULTANT** or any of its subcontractors pursuant to this AGREEMENT.

6.5.4 **Termination not sole remedy.** In no event shall **CITY's** action of terminating this AGREEMENT, whether for cause or otherwise, be deemed an election of **CITY's** remedies, nor shall such termination limit, in any way, at law or at equity, **CITY's** right to seek damages from or otherwise pursue **CONSULTANT** for any default hereunder or other action.

6.6 Right of **CITY** to Suspend Giving Rise to Right of **CONSULTANT** to Terminate.

6.6.1 **CITY** may suspend this AGREEMENT by issuing a signed, written notice of suspension (citing this paragraph) as provided in Article VI, which shall outline the reasons for the suspension and the duration of the suspension. However, it is understood and agreed by the Parties that the total number of days of suspension as reflected in said notice is not guaranteed, and in fact, may be shorter or longer. Such suspension shall take effect upon the date set forth in the notice, or if no date is set forth, immediately upon **CONSULTANT's** receipt of said notice.

6.6.2 **CONSULTANT** may terminate this AGREEMENT in the event such suspension exceeds one hundred and twenty (120) calendar days. **CONSULTANT** may exercise this right to terminate by issuing a signed, written notice of termination, in accordance with Article VI, Notice, (citing this paragraph) to **CITY** after the expiration of one hundred and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by **CITY**.

6.7 Procedures for **CONSULTANT** to follow upon Receipt of Notice of Suspension.

6.7.1 Upon receipt of written notice of suspension, **CONSULTANT** shall, unless the notice otherwise directs, immediately discontinue all services in connection with the performance of this AGREEMENT and cancel all existing orders and contracts.

6.7.2 **CONSULTANT** shall prepare a statement showing in detail the services performed under this AGREEMENT prior to the effective date of suspension.

6.7.3 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 **CITY** but shall be retained by **CONSULTANT** until such time as **CONSULTANT** may exercise the right to terminate.

6.7.4 In the event that **CONSULTANT** exercises the right to terminate after the suspension date as provided by this Article, within thirty (30) calendar days after receipt by **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. Nothing in this section 6.74 shall prevent **CONSULTANT** from submitting invoices for partial payments for work performed prior to the termination date as provided by Article V, Compensation.

- 6.7.5 Additionally, any documents prepared in association with this AGREEMENT shall be delivered to **CITY** by **CONSULTANT**, as a pre-condition to final payment, within thirty (30) calendar days after receipt by **CITY** of **CONSULTANT**'s notice of termination.
- 6.7.6 Upon the above conditions being met, **CITY** shall pay **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.
- 6.7.7 **CITY**, as a public entity, has a duty to document the expenditure of public funds. **CONSULTANT** acknowledges this duty on the part of **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 **CONSULTANT** of any portion of the fee for which **CONSULTANT** did not supply such necessary statements and/or documents.

## **VII. INSURANCE REQUIREMENTS**

7.1 Prior to the commencement of any work under this AGREEMENT, **CONSULTANT** shall furnish an original completed Certificate of Insurance to **CITY**'s Public Works Department and **CITY**'s Risk Management Division executed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate 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 **CITY**. **CITY** shall have no duty to pay or perform under this AGREEMENT until such certificate shall have been delivered to **CITY**'s Public Works Department and **CITY**'s Risk Management Office, and no officer or employee shall have authority to waive this requirement.

7.2 **CONSULTANT's** financial integrity is of interest to **CITY**, therefore, subject to **CONSULTANT's** right to maintain reasonable deductibles in such amounts as are approved by **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 basis, except for professional liability, by companies authorized, approved or admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and amounts:

<u>TYPE</u>	<u>MINIMUM AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. 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	<u>Combined Single Limit for Bodily Injury and Property Damage</u> of \$1,000,000 per; General Aggregate limit of \$2,000,000 occurrence or its equivalent in umbrella or excess liability coverage
4. Business Automobile Liability a. Owned/Leased Vehicles b. Non-Owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. 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 negligent act, malpractice, error or omission in professional services.

7.3 **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 **CITY**. **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 Article VII herein within 10 days of the requested change.

7.4 **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 **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 **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 **CITY** is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of **CITY**.

7.5 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 **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. In the event of cancellation or non-renewal, such notice must be accompanied by a replacement Certificate of Insurance. All notices under this Article shall be given to **CITY** at the following addresses:

City of San Antonio	City of San Antonio
Public Works Department – Capital Programs	Risk Management
P.O. Box 839966	111 Soledad, Suite 1000
San Antonio, Texas 78283-3966	San Antonio, Texas 78205

7.6 If **CONSULTANT** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, **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 **CITY** is an alternative to other remedies **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 **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, **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. A stop work order given to **CONSULTANT** by **CITY** in accordance with this Article shall not constitute a Suspension of Work pursuant to Article VI, Section 6.7.

7.7 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.

7.8 It is agreed that **CONSULTANT's** insurance shall be deemed primary with respect to any insurance or self insurance carried by **CITY** of San Antonio for liability arising out of operations under this AGREEMENT.

## **VIII. INDEMNIFICATION**

8.1 **CONSULTANT**, whose work product is the subject of this AGREEMENT for architectural 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.**

8.2 **CONSULTANT** shall advise **CITY** in writing within 24 hours of any claim or demand against **CITY** or **CONSULTANT** known to **CONSULTANT** related to or arising out of **CONSULTANT's** activities under this AGREEMENT.

8.3 The provisions of this section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

## **IX. ASSIGNMENT OF RIGHTS OR DUTIES**

9.1 By entering into this AGREEMENT, **CITY** has approved the use of any subcontractors identified in **CONSULTANT's** Interest Statement. No further approval shall be needed for **CONSULTANT** to use such subcontractors as are identified in **CONSULTANT's** Interest Statement.

9.2 Except as otherwise required herein, **CONSULTANT** may not sell, assign, pledge, transfer or convey any interest in this AGREEMENT nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of **CITY**.

9.3 As a condition of consent, if same is given, **CONSULTANT** shall remain liable for completion of the services outlined in this AGREEMENT in the event of default by the successor consultant, assignee, transferee or subcontractor. Any references in this AGREEMENT to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by **CITY** in accordance with this Article.

9.4 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this AGREEMENT, without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should **CONSULTANT** assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this AGREEMENT, **CITY** may, at its option, terminate this AGREEMENT in accordance with Article VI, Termination, and all rights, titles and interest of **CONSULTANT** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this AGREEMENT. The violation of this provision by **CONSULTANT** shall in no event release **CONSULTANT** from any obligation under the terms of this AGREEMENT, nor shall it relieve or release **CONSULTANT** from the payment of any damages to **CITY**, which **CITY** sustains as a result of such violation.

9.5 **CONSULTANT** agrees to notify Director of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this AGREEMENT, any such change of ownership interest or control of its business entity may be grounds for termination of this AGREEMENT in accordance with Article VI, Termination.

## **X. INDEPENDENT CONTRACTOR**

10.1 **CONSULTANT** covenants and agrees that (s)he is an independent contractor and not an officer, agent, servant, or employee of **CITY**; that **CONSULTANT** shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors; that the doctrine of respondeat superior shall not apply as between **CITY** and **CONSULTANT**, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **CITY** and **CONSULTANT**.

10.2 No Third Party Beneficiaries - For purposes of this AGREEMENT, including its intended operation and effect, the Parties specifically agree and CONTRACT that: (1) this AGREEMENT only affects matters/disputes between the Parties to this AGREEMENT, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with **CITY** or **CONSULTANT** or both, or that such third parties may benefit incidentally by this AGREEMENT; and (2) the terms of this AGREEMENT are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either **CITY** or **CONSULTANT**.

## **XI. EQUAL EMPLOYMENT OPPORTUNITY**

**CONSULTANT** shall not 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, **CONSULTANT** agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's office.

## **XII. SBEDA REQUIREMENTS**

12.1 **CONSULTANT** hereby acknowledges that it is the policy of the **CITY** of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), 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").

12.2 **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 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.

12.3 **CONSULTANT** shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/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/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. 96754, 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.

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

12.5 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.

12.6 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.

12.7 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**.

12.8 **CITY** shall in no event be obligated to any third party, including any subcontractor of **CONSULTANT**, for performance or services or payment of fees.

### **XIII. 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  
Public Works Department – City Architect's Office  
Attn: Jesse Fernandez  
P.O. Box 839966  
San Antonio, Texas 78283-3966

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

Nored Architecture  
915 S. Alamo  
San Antonio, Texas 78205  
Attn: Catherine Nored

#### **XIV. INTEREST IN CITY CONTRACTS PROHIBITED**

14.1 **CONSULTANT** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with **CITY** or any **CITY** agency such as **CITY** owned utilities. An officer or employee has a "prohibited financial interest" in a contract with **CITY** or in the sale to **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.

14.2 **CONSULTANT** warrants and certifies, and this AGREEMENT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of **CITY**. **CONSULTANT** further warrants and certifies that it has tendered to **CITY** a Discretionary Contracts Disclosure Statement in compliance with **CITY**'s Ethics Code.

#### **XV. SOLICITATION**

**CONSULTANT** warrants and represents that he has not employed or retained any company or person, other than a bona fide employee working solely for **CONSULTANT**, to solicit or secure this AGREEMENT, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for **CONSULTANT**, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this AGREEMENT. This representation constitutes a substantial part of the consideration for the making of this AGREEMENT.

#### **XVI. CONTRACT CONSTRUCTION**

All parties have participated fully in the review and revision of this AGREEMENT. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this AGREEMENT.

#### **XVII. FAMILIARITY WITH LAW AND CONTRACT TERMS**

**CONSULTANT** represents that, prior to signing this AGREEMENT, **CONSULTANT** has become thoroughly acquainted with all matters relating to the performance of this AGREEMENT, all applicable laws, and all of the terms and conditions of this AGREEMENT.

### **XVIII. APPLICABLE LAW**

This AGREEMENT shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

### **XIX. VENUE**

The obligations of the parties to this AGREEMENT shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

### **XX. SEVERABILITY**

In the event any one or more paragraphs or portions of this AGREEMENT are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of this AGREEMENT, but such shall be confined to the specific section, sentences, clauses or portions of this AGREEMENT held invalid or unenforceable.

### **XXI. FORCE MAJEURE**

In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

### **XXII SUCCESSORS**

This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this AGREEMENT, their assigns.

### **XXIII. NON-WAIVER OF PERFORMANCE**

23.1 A waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this AGREEMENT shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this AGREEMENT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this AGREEMENT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of CITY, such changes must be approved by the San Antonio City Council.

23.2 No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

#### **XXIV. PARAGRAPH HEADINGS**

The headings of this AGREEMENT are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

#### **XXV. LEGAL AUTHORITY**

The signer of this AGREEMENT for CITY and CONSULTANT each represents, warrants, assures and guarantees that he has full legal authority to execute this AGREEMENT on behalf of CITY and CONSULTANT respectively, and to bind CITY and CONSULTANT to all of the terms, conditions, provisions and obligations herein contained.

#### **XXVI. INCORPORATION OF ATTACHMENTS**

26.1 CONSULTANT understands and agrees that all attachments, including appendices thereto, referred to in this AGREEMENT are intended to be and hereby are incorporated herein and specifically made a part of this AGREEMENT for all purposes. Said attachments are as follows:

ATTACHMENT "A" (Scope of Services)

ATTACHMENT "B" (CONSULTANT's Fee Proposal/Price Schedule)

ATTACHMENT "C" (Compensation)

26.2 In the event of a conflict or inconsistency between any attachment and the terms of this AGREEMENT, the terms of this AGREEMENT shall govern and prevail.

#### **XXVII. ENTIRE AGREEMENT**

27.1 This AGREEMENT, together with its authorizing ordinance and Attachments, as listed in Article XXVI, Incorporation of Attachments, embodies the complete AGREEMENT of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written consent of the parties and approved by ordinance passed by the San Antonio City Council.

27.2 It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

EXECUTED ON THIS, THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2004.

**CITY OF SAN ANTONIO**

**CONSULTANT**

**NORED ARCHITECTURE**

\_\_\_\_\_  
CITY MANAGER

\_\_\_\_\_  
CATHERINE NORED,  
OWNER

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

\_\_\_\_\_  
DATE

APPROVED AS TO FORM:

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

## **ATTACHMENT "A"**

### **(SCOPE OF SERVICES)**

#### Scope of Work

- 1.1. The professional architectural services provided under this agreement may include, but are not limited to the assessment and evaluation of facilities to include roofing systems, design services for minor interior modifications and improved accessibility for the disabled, and periodic field observations as required;
- 1.2. The development of recommendations for repairs, the preparation of plans and specifications for, and the oversight of, any required construction, repair, rehabilitation or alteration of a facility or public works improvement as necessary.
- 1.3. The scope of work will be specifically identified in Work Tasks provided by the City and in the subsequent individually negotiated and City-accepted Consultant proposals. The negotiated amount for each specific scope of services may be derived as a fixed price, or lump-sum based substantially on contractual pre-described and not to exceed pre-priced tasks and or hourly rates included in Exhibit "B".
- 1.4. Payment may also be made based solely on the units of work completed and approved by the Director, and the associated unit price for each Work Task as may be described in **CONSULTANT 's** proposal/fee schedule (Exhibit "B").
- 1.5. The Consultant shall commence work on the project once it has been thoroughly briefed regarding the scope of the specific project and has been notified in writing to proceed with the Work.
- 1.6. The Consultant, in consideration for the compensation herein provided, shall render professional architectural consulting services necessary for the development of the Project to final completion.

**ATTACHMENT “B”**

**(CONSULTANT'S FEE PROPOSAL/PRICE SCHEDULE)**

**ATTACHMENT B**  
**Fee Proposal/Price Schedule for**  
**NORED ARCHITECTURE**

**NORED ARCHITECTURE**  
**915 S. Alamo**  
**San Antonio, Texas 78205**  
**210.229.9693 fx.223.8892**

14 July 2004

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

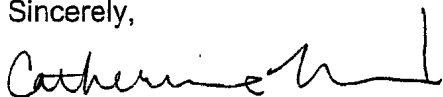
Dear Mr. Fernandez;

It is our understanding that Nored Architecture has been selected as one of the three firms awarded the On-Call Architectural Consulting Services for the City of San Antonio. We look forward to working with the City on any projects that may arise during the duration of this contract. The team that we submitted in response to the Request for Qualifications (RFQ) for Professional Architectural Services for On-Call Architectural Consulting Services consists of the following.

Structural Engineering.....AccuTech Consultants, LLC  
M.E.P. Engineering..... Quadtech Engineering, Inc.  
Civil Engineering..... Flores & Co., Inc.  
Landscape Architects..... Place Collaborative, Inc.

We are attaching our hourly billing rates, scope unit fees, and listing of reimbursables as well as for the support firms. Please note that all fees will be in effect until August 1, 2005.

Sincerely,



Catherine Nored

N



**NORED ARCHITECTURE**  
**915 S. Alamo**  
**San Antonio, Texas 78205**  
**210.229.9693 fx.223.8892**

**SCHEDULE OF SALARIES – Nored Architecture**

Principal..... \$120.00/hr.  
Registered Architect..... \$90.00/hr.  
Project Manager..... \$65.00/hr.  
Intern..... \$50.00/hr.  
Clerical..... \$35.00/hr.

**Reimbursable Expenses:**

Mileage: .45 over 100 miles  
Plotting: \$15 per sheet  
Photography: \$4.50 per sheet  
Long Distance Calls/Fax: \$2.50 per call

All reimbursable expenses will include an additional 15%. For projects within a historic district other reimbursable expenses may include, but are not limited to, costs for presentation boards, models and/or photography.

**NORED ARCHITECTURE**  
**915 S. Alamo**  
**San Antonio, Texas 78205**  
**210.229.9693 fx.223.8892**

**SCHEDULE OF SALARIES – AccuTech Consultants, LLC**

Principal.....	\$150.00/hr.
Project Manager.....	\$125.00/hr.
Senior Engineer.....	\$110.00/hr.
Engineer.....	\$95.00/hr.
Graduate Engineer II.....	\$80.00/hr.
Graduate Engineer I.....	\$70.00/hr.
Senior Technician.....	\$65.00/hr.
Technician II.....	\$55.00/hr.
Technician I.....	\$40.00/hr.
Clerical/Administration.....	\$40.00/hr.

**NORED ARCHITECTURE  
915 S. Alamo  
San Antonio, Texas 78205  
210.229.9693 fx.223.8892**

**SCHEDULE OF SALARIES – QuadTech Engineering Inc.**

Principal.....	\$125.00/hr.
Project Manager.....	\$100.00/hr.
Senior Engineer/Architect.....	\$100.00/hr.
Project Engineer/Architect....	\$85.00/hr.
Engineer/Architect –Training.	\$75.00/hr.
Technician (or CAD).....	\$55.00/hr.
Draftsperson.....	\$45.00/hr.
Clerical/Administration.....	\$40.00/hr.

Reimbursable Expenses (Amount x Reimbursable Rate = Amount Billed):

Mileage:	\$.375/mile
Plotting:	\$10.00/15.00 ea.
Large Copies:	\$2.50/4 ea.
Long Distance Phone/Fax	\$2.50/call
8 ½ x 11 Copies:	\$.10/ ea.
Miscellaneous Expenses	\$ Cost
Outside Consultants	\$ Cost

## **ATTACHMENT "C"**

### **(COMPENSATION)**

On or after the last day of each month, CONSULTANT shall provide City a written invoice for the work performed by CONSULTANT, requested by City during that month, and for which the services have been reviewed and approved by the City. The invoice amount shall be based on the unit prices agreed as shown on Attachment "B". In no event shall the total dollar amount of all invoices during the term of this contract exceed one hundred thousand and no/100 dollars **(\$100,000)**.

## city of San Antonio

Attachment #5

**DISCRETIONARY CONTRACTS DISCLOSURE****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;

Richard G. Morales, AIA

(2) the identity of any **business entity**<sup>1</sup> that would be a party to the discretionary contract: Chesney Morales & Associates, Inc and the name of:

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

QuadTech Engineering  
Lundy & Franke Engineering

Bain Medina Bain, Inc  
Professional Services Industry, Inc (PSI)

(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

(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.

N/A

<sup>1</sup> 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.

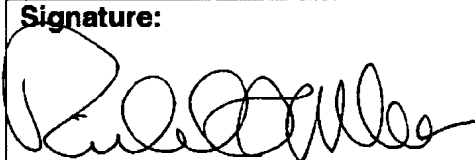
**DISCRETIONARY CONTRACTS DISCLOSURE FORM, CONTINUED****Political Contributions**

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:
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 question<sup>2</sup> 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.

N/A		
Signature: 	Title: Principal  Company: Chesney Morales & Assoc., Inc	Date: 07/12/2004

<sup>2</sup> 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.

(ATTACHMENT 3)  
City of San Antonio  
Discretionary Contracts Disclosure\*  
*For use of this form, see City of San Antonio Ethics Code, Part D, Section 1 & 2*  
*Attach additional sheets if space provided is not sufficient.*  
*State Not Applicable for questions that do not apply.*

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

**Disclosure of Parties, Owners, and Closely Related Persons**

For this 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;

<b>Kinnison and Associates, Architects</b> <b>Arias &amp; Associates</b> <b>San Antonio Design Group</b> <b>Jaster Quintanilla</b> <b>K.M. Ng &amp; Associates, Inc.</b> <b>Place Collaborative</b> <b>STC Environmental</b> <b>Tom Ellis (none)</b> <b>Steitle Traffic Engineering, Inc.</b>
---

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

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

N/A
-----

(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 part to the discretionary contract;

N/A
-----

(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

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 member of City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an entity include but are not limited to contributions made through the officers, owners, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
N/A		

### Disclosure in Proposals

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

Signature:  Thomas R. Sokol, AIA	Title: Owner  Company: Kinnison and Associates, Architects	Date:  12 July 2004
---	--	---------------------------

<sup>1</sup> 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, required recusal or required careful consideration of whether or not recusal is required.



**city of San Antonio**  
**DISCRETIONARY CONTRACTS DISCLOSURE**

**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;

CATHERINE NORED

(2) the identity of any **business entity**<sup>1</sup> that would be a party to the discretionary contract: and the name of:

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

NORED ARCHITECTURE

(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

(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.

N/A

<sup>1</sup> 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 FORM, CONTINUED

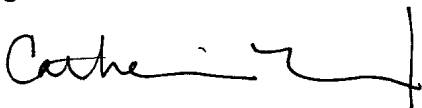
### Political Contributions

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:
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 question<sup>2</sup> 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: OWNER Company: NORED ARCHITECTURE	Date: 7.14.04

<sup>2</sup> 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.