

AGENDA ITEM NO. **42(B)**

**CITY OF SAN ANTONIO  
PUBLIC WORKS DEPARTMENT  
CITY COUNCIL AGENDA MEMORANDUM**

TO: Mayor and City Council

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

SUBJECT: Houston and Commerce Underpass (Houston and Commerce at IH-37)  
Enhancements Project – Establishing Interlocal Funding Agreements with St. Paul  
Square and Bexar County

DATE: March 31, 2005

**SUMMARY AND RECOMMENDATIONS**

This Ordinance authorizes the Interim City Manager or his designee to enter into two separate Funding Agreements in connection with the Houston and Commerce Underpass Enhancements Project. The first funding agreement is with the St. Paul Square Association, Inc. ("SPSA") accepting the amount of \$50,000.00 and the second is with Bexar County accepting the amount of \$155,000.00.

This Ordinance also appropriates city funding of \$150,000 from general obligations of the city, authorizes the Interim City Manager or his designee to enter into an agreement and authorizes payment in the total amount of \$319,500 to Bill FitzGibbons for construction services and authorizes \$35,500 in construction contingency expenses, in connection with the Houston and Commerce Underpass (Houston and Commerce at IH-37) Enhancements Project located in Districts 1 and 2, and provides for payment.

Staff recommends approval of this Ordinance.

**BACKGROUND INFORMATION**

The Houston and Commerce Underpass (Houston and Commerce at IH-37) Enhancements Project is a TxDOT project that provides for the construction and supply of aesthetic metal fixtures and lighting equipment at these intersections which have long been considered barriers to redevelopment and business revitalization east of downtown. TxDOT and the City selected Bill FitzGibbons to coordinate aesthetic enhancements into this TxDOT projects design and construction plans in accordance with the City policies for artist selection.

The total project cost is estimated at \$1,055,000. TxDOT is providing funding in the amount of \$700,000 and will be responsible for the installation of all aesthetic improvements provided by the city as well as completing construction of the related site improvements. The City, SPSA, and Bexar County will contribute \$355,000 towards this project. Those contributions are as follows: City contribution is \$150,000; SPSA, through a resolution passed on February 25, 2004, pledged to provide \$50,000 to the City of San Antonio to enhance underpass areas that would integrate St Paul Square with the larger downtown area; and Bexar County Commissioners Court approved a motion on March 17, 2004 to authorize the expenditure of \$155,000 from the Tax

Increment Reinvestment Zone (TIRZ) #11 to enhance East Houston and East Commerce areas that are under IH 37 located in Precinct No. 4.

On October 6, 2003 the Historic Design and Review Commission voted unanimously to approve the design's certificate of appropriateness for the site improvements and additional aesthetic materials, treatment, and lighting equipment to be added to the facility.

The installation of aesthetic improvements at downtown IH-37 underpasses will provide improved pedestrian safety by increasing illumination levels underneath the bridge, while creating a strong and prominent visual appearance to the IH-37 bridge area for downtown visitors, thereby improving east-west pedestrian and vehicular traffic flow for these strategically located underpass thoroughfares connecting the central business district to the east side of downtown. Construction on this project is anticipated to be complete by September 30, 2005.

### **POLICY ANALYSIS**

Approval of this ordinance will be a continuation of City Council policy to collaborate with other governmental agencies in the development and construction of City infrastructure. Additionally, the Houston and Commerce Underpass (Houston and Commerce at IH-37) Enhancements Project is consistent with city policy to leverage funds through challenge matches with private entities to support infrastructure improvements. The total outside contribution is \$905,000, which represents 85% of the project's construction costs.

### **FISCAL IMPACT**

This is a one-time capital improvement expenditure within budget and included in the FY05-FY10 Capital Improvement Program Budget. Of the \$355,000 amount, \$50,000 is funded from SPSA, \$155,000 is funded by Bexar County and \$150,000 is funded by the City. Of the \$150,000 in City funding; \$108,562 is available from 2003-2007 General Obligation Street Improvement Bond funds and \$41,438 is available from Certificates of Obligation and are authorized payable as follows:

\$319,500 payable to Bill FitzGibbons for construction services

\$ 35,500 payable for miscellaneous construction contingency

### **COORDINATION**

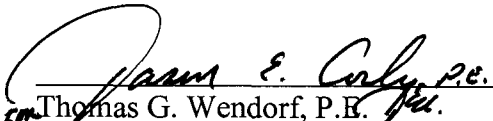
This request for ordinance has been coordinated with the Office of Management and Budget, the Finance Department, the City Attorney's Office, the Economic Development Department, the Planning Department, the Parks and Recreation Department, the Texas Department of Transportation, Bexar County, the St. Paul Square Association, Inc., the Downtown Alliance, and the San Antonio Greater Chamber of Commerce.


## SUPPLEMENTARY COMMENTS

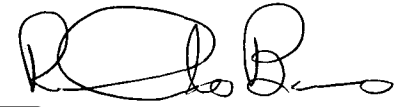
A Discretionary Contract Disclosure Form is attached.

## ATTACHMENTS

1. Project Map
2. Interlocal Funding Agreement – SPSA
3. Interlocal Funding Agreement – Bexar County
4. Agreement – Bill FitzGibbons

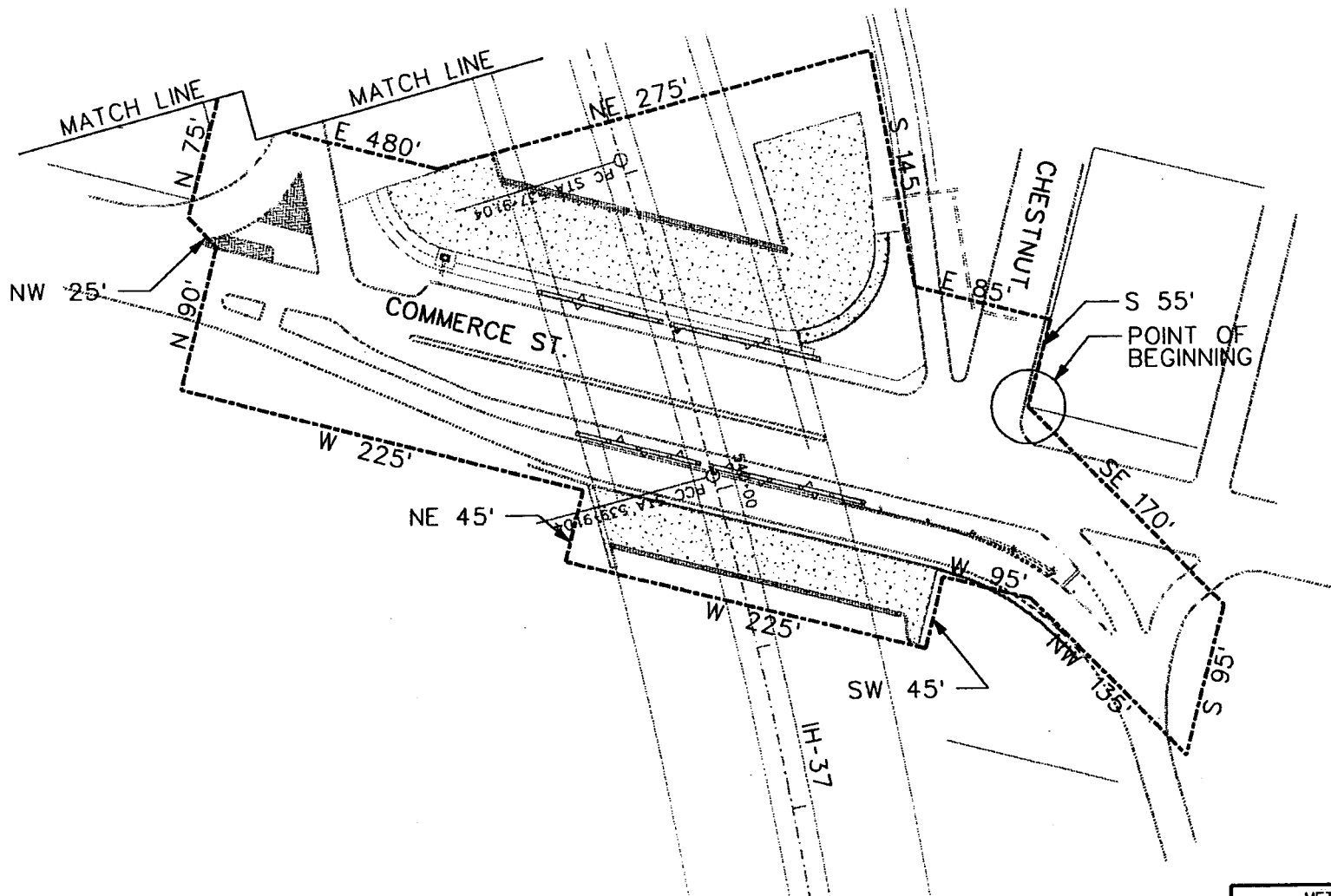
  
Thomas G. Wendorf, P.E.  
Director of Public Works

  
Melissa Byrne Vossmer  
Assistant City Manager

  
J. Rolando Bono  
Interim City Manager

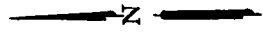
Plotted on 10x14

Design Engineer: M.F.L.

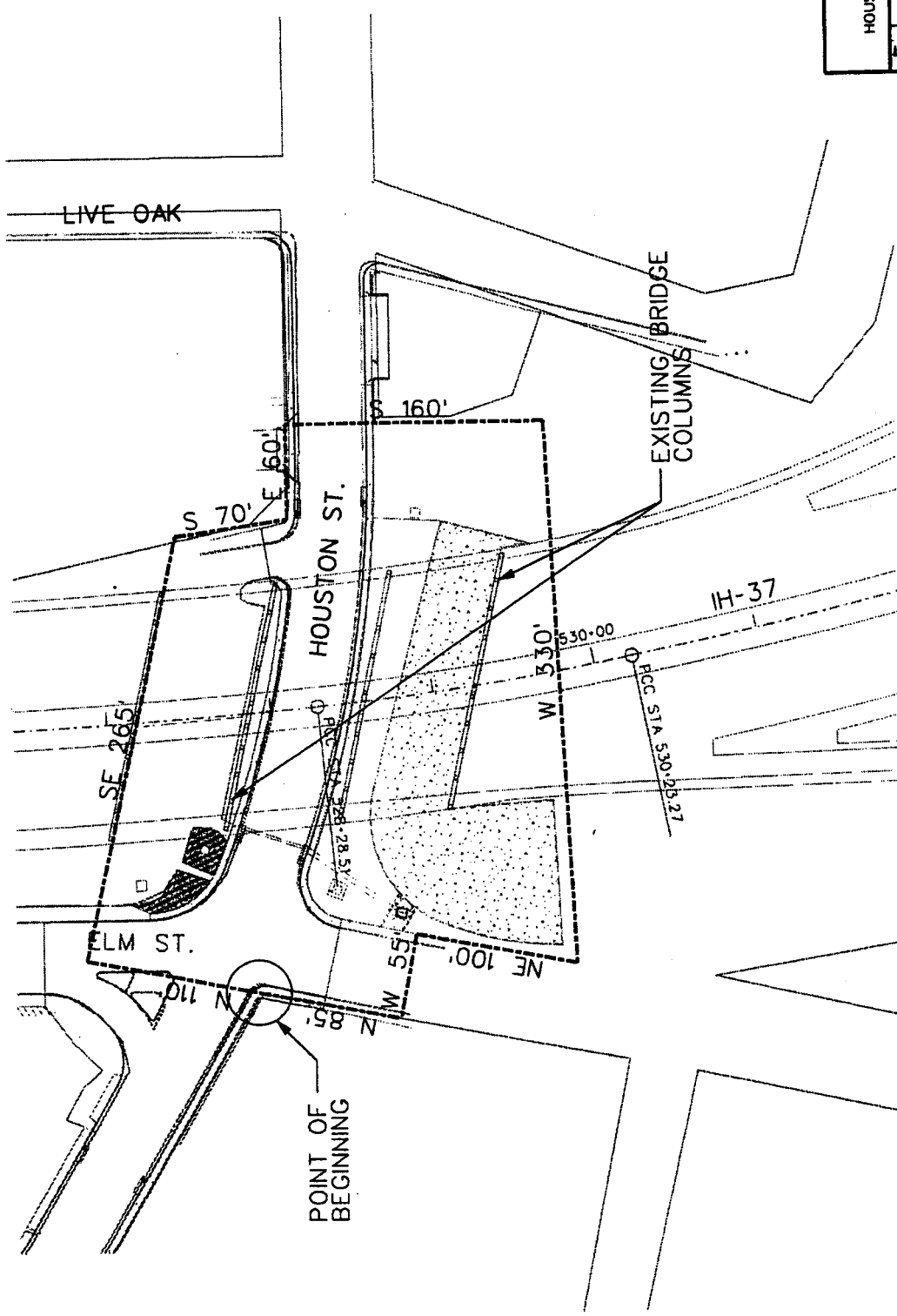


N  
SCALE: 1" = 60'

| METES AND BOUNDS<br>FOR<br>COMMERCE STREET BOUNDARY<br>(SHEET 1 OF 2) |             |         |     |       |       |        |        |     |     |
|---|-------------|---------|-----|-------|-------|--------|--------|-----|-----|
| DATE  | PROJECT NO. |         |     |       |       |        |        |     |     |
| BY  | CL 10-0-10  |         |     |       |       |        |        |     |     |
| CHK   | CONTROL     | SECTION | JOB | DIST. | STATE | COUNTY | HOWARD | NO. | 101 |
| CL  | 0075        | 00      | 100 | SAT   | TX    | BECK   | H 37   |     |     |



SCALE: 1" = 60'



| METES AND BOUNDS FOR HOUSTON STREET BOUNDARY |     |     |     |       |       |       |       |       |       |
|--|-----|-----|-----|-------|-------|-------|-------|-------|-------|
| ACRES  | 1/4 | 1/2 | 3/4 | 1     | 1 1/4 | 1 1/2 | 1 3/4 | 2     | 2 1/4 |
| 1/4  | 1/2 | 3/4 | 1   | 1 1/4 | 1 1/2 | 1 3/4 | 2     | 2 1/4 | 2 1/2 |
| 1/4  | 1/2 | 3/4 | 1   | 1 1/4 | 1 1/2 | 1 3/4 | 2     | 2 1/4 | 2 1/2 |
| 1/4  | 1/2 | 3/4 | 1   | 1 1/4 | 1 1/2 | 1 3/4 | 2     | 2 1/4 | 2 1/2 |
| 1/4  | 1/2 | 3/4 | 1   | 1 1/4 | 1 1/2 | 1 3/4 | 2     | 2 1/4 | 2 1/2 |
| 1/4  | 1/2 | 3/4 | 1   | 1 1/4 | 1 1/2 | 1 3/4 | 2     | 2 1/4 | 2 1/2 |
| 1/4  | 1/2 | 3/4 | 1   | 1 1/4 | 1 1/2 | 1 3/4 | 2     | 2 1/4 | 2 1/2 |
| 1/4  | 1/2 | 3/4 | 1   | 1 1/4 | 1 1/2 | 1 3/4 | 2     | 2 1/4 | 2 1/2 |
| 1/4  | 1/2 | 3/4 | 1   | 1 1/4 | 1 1/2 | 1 3/4 | 2     | 2 1/4 | 2 1/2 |
| 1/4  | 1/2 | 3/4 | 1   | 1 1/4 | 1 1/2 | 1 3/4 | 2     | 2 1/4 | 2 1/2 |

Plotted on: 10/1/83

Design Firm: 8/1/83

**INTERLOCAL AGREEMENT  
BY AND BETWEEN  
ST. PAUL SQUARE ASSOCIATION, INC.  
AND  
THE CITY OF SAN ANTONIO  
PERTAINING TO UNDERPASS ENHANCEMENT AT IH-37 AT COMMERCE  
AND IH-37 AT HOUSTON STREET**

WHEREAS, ST. PAUL SQUARE ASSOCIATION, INC. (the "Association") was formed in 1979 with the charge to revitalize the Southern Pacific National Register Historic District a/k/a St. Paul Square in downtown San Antonio, Texas;

WHEREAS, the Association has long viewed IH 37 as a barrier to redevelopment efforts in the St. Paul Square area

WHEREAS, the Association has worked diligently on many fronts to advance projects which would integrate St Paul Square with the larger downtown; and

WHEREAS, the Association has approached the CITY OF SAN ANTONIO (the "City") regarding the installation of aesthetic improvements to enhance and serve the underpass areas on IH 37 @ Commerce Street and on IH 37 @ E. Houston Street; and

WHEREAS, in view of the deteriorated aesthetic environment underneath IH 37 bridges downtown that has resulted in diminished east/west pedestrian traffic flow and a hindrance to redevelopment expansion east of downtown, and in particular the St. Paul Square, Sunset Station, and Alamodome areas, the Association and the City have mutually determined that it would be in their collective best interests, as well as in the best interests of the Association membership to enthusiastically support the worthy project; and

WHEREAS, the Association and the City desire to enter into an Interlocal Agreement to implement the installation of aesthetic improvements pursuant to statutory authority existing pursuant to Chapter 791 of the Texas Government Code.

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration the Association and the City agree as follows:

1. The Association shall contribute to the City the sum of \$50,000.00 toward the cost of fabrication and supply of artistic enhancement materials to be installed at the IH underpasses at IH 37 at Commerce Street and at IH 37 at E. Houston Street.

2. Other than the contribution of the Association herein expressly set forth, the City shall be responsible for the remaining costs attributable to the cost of fabrication and supply of artistic enhancement materials and maintenance of the artistic enhancement materials, and all installation costs of artistic enhancement materials shall become the responsibility of the Texas Department of Transportation.

3. The City represents to the Association that the artistic enhancements materials will be installed in a manner that is in full compliance with any and all bidding and/or purchasing procedures required by Texas statute for political subdivisions.

**DATED and effective as of \_\_\_\_\_, 2005.**

**ST. PAUL SQUARE ASSOCIATION, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF SAN ANTONIO**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS                }  
  }  
COUNTY OF BEXAR            }        INTERLOCAL AGREEMENT BETWEEN THE  
  }               CITY OF SAN ANTONIO AND  
  }        BEXAR COUNTY WITHIN ITS BOUNDARIES

This CONTRACT is hereby 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 Manger pursuant to Ordinance No. \_\_\_\_\_ dated \_\_\_\_\_, and BEXAR COUNTY, a political subdivision of the State of Texas, (hereinafter referred to as "COUNTY"), acting by and through its \_\_\_\_\_, hereto duly authorized, (collectively the "PARTIES"), pursuant to authority granted under the Interlocal Cooperation Act, Texas Government Code 791.001 et seq.

**WITNESSETH:**

**WHEREAS**, it is the mission of the COUNTY to build a better community through quality services for citizens of San Antonio and the San Antonio metropolitan area; and

**WHEREAS**, it is the mission of the CITY to insure the health, safety, and welfare of its citizens, including those served by the COUNTY, as embodied in the numerous codes and regulations controlling construction activities within the City of San Antonio; and

**WHEREAS**, the PARTIES recognize the IH 37 underpass area located at East Commerce and at East Houston has long been considered to be a barrier to redevelopment efforts east of downtown San Antonio; and

**WHEREAS**, the COUNTY recognizes the efforts already underway by both the State of Texas Department of Transportation (hereinafter referred to as "STATE"), and the CITY, to aesthetically enhance East Houston and East Commerce areas that are under IH 37 located in Precinct No. 4; and

**WHEREAS**, the PARTIES view the enhancement efforts as a worthwhile project in which their collective cooperation will make possible the achievement of downtown and east side master plan goals and will support established Tax Increment Reinvestment Zone #11 (Inner City) property improvements through maximizing use of tax dollars for the benefit of both PARTIES, as well as the affected citizenry; and

**NOW THEREFORE**, the PARTIES hereto severally and collectively agree and, by execution hereof, are bound to the mutual obligations herein contained and to the performance and accomplishment of tasks hereinafter described:

**I.     PURPOSE**

- 1.01   This CONTRACT is entered into between the CITY and the COUNTY for the purpose of appropriating a one-time expenditure in the amount of \$155,000 from the TIRZ #11 and authorizing the transfer of said funds to CITY for implementation of enhancements to the East Houston and East Commerce areas that are under IH 37 located in Precinct No.4.



- 1.02 It is understood and agreed by the PARTIES hereto that the CITY shall provide certain art/aesthetic materials to STATE's for installation by STATE contractor through funding from the STATE's Construction Landscape Program.

## II. TERM

- 2.01 Except as may otherwise be provided in this CONTRACT, the term hereof is to begin at the time of execution by all PARTIES hereto and shall continue thereafter for a period of three (3) years.
- 2.02 This CONTRACT shall terminate in the event a PARTY, through its governing body, fails to appropriate sufficient funding to meet its obligations under this CONTRACT. Sums paid under this CONTRACT, if any, shall be paid only from current revenues available to the paying PARTY.
- 2.03 Notwithstanding any other provision herein, either PARTY may terminate its participation in this CONTRACT, with or without cause, upon sixty (60) days written notice to the other PARTY.

## III. LIAISONS AND NOTICES

- 3.01 Unless written notification to the contrary is received by CITY, the COUNTY's Infrastructure Services Department Director, or his/her designee, shall be its designated representative responsible for the management of this CONTRACT.
- 3.02 Unless written notification by CITY to the contrary is received by the COUNTY, the CITY's Public Works Department Director, or his designee, shall be CITY's designated representative responsible for management of this CONTRACT.
- 3.03 Communications between CITY and COUNTY shall be directed to the designated representatives of each PARTY, as set out in this ARTICLE III.
- 3.04 For purposes of this CONTRACT, all official communications and notices among the PARTIES shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth on Exhibit "A" attached hereto and incorporated herein for all purposes.
- 3.05 Notice of change of address by any PARTY must be made in writing and delivered to all other PARTIES' last known address within five (5) business days of such change.

## IV. LEGAL AUTHORITY

- 4.01 The PARTIES represent, warrant, assure and guarantee that they possess the legal authority, pursuant to any proper, appropriate and official motion, resolution, ordinance or action passed or taken, to enter into this CONTRACT and to perform the responsibilities herein set out.

## V. CHANGES AND AMENDMENTS

- 5.01 Except when the terms of this CONTRACT expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall only be by written amendment formally approved by the governing body of the PARTIES.
- 5.02 It is understood and agreed by the PARTIES hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this CONTRACT and that any such changes shall be automatically incorporated into this CONTRACT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

#### VI. ASSIGNMENTS

- 6.01 No Party hereto shall transfer, pledge or otherwise assign this CONTRACT, any interest in and to same, or any claim arising thereunder. This CONTRACT is not assignable in any respect. Any attempt at transfer, pledge or other assignment shall be void ab initio and shall confer no rights upon any third person.

#### VII. SEVERABILITY OF PROVISIONS

- 7.01 If any clause or provision of this CONTRACT is held invalid, illegal or unenforceable under present or future federal, state or local laws, then and in that event it is the intention of the PARTIES hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this CONTRACT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein.

#### VIII. ENTIRE AGREEMENT

- 8.01 This CONTRACT constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this CONTRACT shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and duly executed by the parties.

#### IX. PARTIES BOUND

- 9.01 This CONTRACT shall be binding on and inure to the benefit of the PARTIES hereto and their respective legal representatives, successors and assigns, except as otherwise expressly provided herein.

#### X. GENDER

- 10.01 Words of gender used in this CONTRACT shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

#### XI. RELATIONSHIP OF PARTIES

- 11.01 Nothing contained herein shall be deemed or construed by the PARTIES hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between them.

**XII. TEXAS LAW TO APPLY**

12.01 This CONTRACT shall be construed under and in accordance with the laws of the State of Texas and all obligations of the PARTIES created hereunder are performable in Bexar County, Texas.

**XIII. CAPTIONS**

13.01 The captions contained in this CONTRACT are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this CONTRACT.

**EXECUTED in duplicate originals** on this the \_\_\_\_ day of \_\_\_\_\_, 2005.

**CITY OF SAN ANTONIO**

**BEXAR COUNTY**

\_\_\_\_\_  
J. ROLANDO BONO  
Interim City Manager

\_\_\_\_\_  
Name:  
Title:

ATTEST:

ATTEST:

\_\_\_\_\_  
Leticia Vacek  
City Clerk

\_\_\_\_\_  
Name:  
Title

ATTACHMENTS:

EXHIBIT A ADDRESSES OF PARTIES

EXHIBIT "A"

ADDRESSES OF PARTIES

**AGREEMENT**  
**BETWEEN**  
**CITY OF SAN ANTONIO**  
**AND**  
**BILL FITZGIBBONS**

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FOR

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**Fabrication and Delivery of metal sculpture and architectural lighting, including all technological and programming components, for the Houston Street & Commerce Street Underpasses at IH37 project.**

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**AGREEMENT**

This Agreement is made and entered into by and between the City of San Antonio, a Texas municipal corporation in the State of Texas, (hereinafter termed "City"), and Bill FitzGibbons (hereinafter referred to as "Consultant"), for Fabrication and Delivery of metal sculpture and architectural lighting, including all technological and programming components (hereinafter referred to as "the Work"), for the Houston Street & Commerce Street Underpasses at IH37 (hereinafter referred to as "the Location") project. Said agreement being executed by the City pursuant to the City Charter, Ordinances, and Resolutions of the City Council.

**I        CONSULTANT'S BASIC SERVICES**

- 1.1 Consultant shall coordinate the Work with City, the project contractor, Texas Department of Transportation (hereinafter referred to as "TxDOT"), Bexar County, and St Paul Square Association, Inc. according to directions and standards of City.
- 1.2 Consultant shall commence the work upon receipt of approval in writing by the Director of the Department of Public Works or an authorized representative.
- 1.3 It is understood and agreed by the parties to this agreement that the City's authorized contracting officer shall be the Director of the Department of Public Works, or an authorized representative, and that said officer shall be the sole contact for administering this Agreement. Consultant may discuss the Work or its requirements with various Departments of City, but all specific direction to or requests of the Consultant must be authorized by the Director of the Department Public Works or an authorized representative(s).
- 1.4 Consultant shall finish the Work in accordance with the schedule attached hereto and incorporated herein for all purposes as Exhibit A. Consultant shall make monthly progress reports to Public Works Department (hereinafter PWD), and during the term of this Agreement, and Consultant shall provide PWD with access to the Work during reasonable business hours to review the Work and progress in completing the Work.
- 1.5 Consultant is responsible for all services and expenses (including all necessary supplies, materials, equipment, and lighting requirements) associated with the Work.

- 1.6 Consultant shall conform to the requirements of all City of San Antonio and State of Texas laws, ordinances, codes, regulations, and requirements which affect the Work.
- 1.7 If requested, Consultant shall assist in filing any documents required to secure approval of all governmental authorities having jurisdiction.

## **II CONSULTANT PROPOSAL**

### **2.1 Proposal**

- A. Consultant shall consult with the staff of Public Works, and if requested by the Public Works Director, with designated citizen groups to ascertain the requirements of the Work and shall confirm such requirements by drawings and/or writing to the Director of Public Works or designee.
- B. Consultant shall avoid specification of materials or finishes known to be hazardous or potentially hazardous, including asbestos or any derivative thereof. Consultant will report any material or finish hazards and any action to minimize or eliminate the hazard.
- C. Consultant shall prepare and furnish proforma costs estimates of the Work to City for review, comments and approval or disapproval before starting fabrication phase. If requested by City, Consultant shall present the design and cost estimates to the Public Art Committee of the Historic Design Review Commission, and/or the Historic Design and Review Commission (hereinafter referred to as the HDRC), and/or the City Council.
- D. If City shall determine that Consultant's proforma cost estimates are disapproved, City shall provide Consultant with a statement in writing detailing the reasons for such disapproval. In such event, Consultant shall be afforded an opportunity either to submit a second design and cost estimates for the Work within a period of time specified by the Director of Public Works, or to terminate this Agreement. Within thirty (30) days following such submission by Consultant, Director of Public Works or designee shall notify Consultant in writing whether the proforma estimates are approved or disapproved. If the second proforma cost estimates for the Work are disapproved, City shall provide Consultant with a statement in writing detailing the reasons for disapproval, whereupon this Agreement shall terminate and all copy rights shall return to Consultant.
- E. In the event of termination of this Agreement pursuant to subsection D, City shall retain Consultant's design and costs estimates and neither party shall be under any further obligation to the other with respect to the subject matter thereof.
- F. The goal of the parties to this agreement is a Work which represents the creative talents of Consultant and satisfies the specifications of City. The parties to this agreement recognize that they must consult closely in order to accomplish these goals and that changes in the design may become desirable as the Work is fabricated, under Consultant's personal supervision, in conformity with the approved design and the requirements listed in Exhibit A hereto. Consultant understands and agrees that Work shall not deviate from the approved design and the requirements listed in Exhibit A unless the change is approved in writing by the Director of Public Works prior to the Work being deviated.

### **2.2 Deliveries and Installation Phase**

- A. The Work shall not be delivered to the Location or installed until Consultant has received written approval from the Director of Public Works or designee that the Work has been completed according to the approved design and that specific installation plans submitted by Consultant have been approved by City.
- B. City and Consultant shall mutually agree on the manner in which the Work shall be delivered to the Location.
- C. Following delivery of the Work, Consultant shall supervise TxDOT installation the Work at the Location in such a manner as City and TxDOT shall approve and submit all required documentation and information. TxDOT shall be responsible for any expenses, labor and equipment associated with the Location and installation of the Work.

- D. All risk of destruction, or damage to, the Work or any part thereof from any cause whatsoever shall be borne by Consultant until delivery and written acceptance of the Work by City. Consultant, at his expense, shall rebuild, repair, restore and make good all such damage to any portion of the Work.
- E. Arrangements for access to the location during installation must be made through Director of Public Works or designee and access shall not be scheduled until City has received from Consultant a certificate of insurance as required in Section XV. **Access to Location may be scheduled for night or early morning hours to avoid interference with passenger flow, construction activities, etc.** Consultant shall provide Director of Public Works or designee with a written list of workers, vehicles and equipment which will be involved in the supervising the installation of the Work at least 15 days in advance of installation so that permits can be issued and security and unloading arrangements made. Cost for vehicle parking, if required, shall be the responsibility of Consultant.
- F. Consultant shall submit a report to Director of Public Works or designee accompanied by photographs or slides substantiating that the Work is finished and all services have been completed to secure final approval and acceptance by City. City's response to Consultant written request to secure final approval from City shall be made within two (2) weeks following the City receipt of Consultant request.
- G. If Consultant receives final approval and acceptance from City for the Work and subsequently desires to change the images of the Work, Consultant must first obtain the written approval from the City of any and all changes made to the Work prior to commencing any changes and such changes shall be in accordance with that which is specified by City in its written approval to Consultant. Consultant's obligation in this paragraph extends indefinitely including beyond the term of the agreement.

### III CITY RESPONSIBILITY

#### 3.1 City shall provide the following:

- A. Information, including requirements and specifications for the Work.
- B. Examination of materials and information submitted by Consultant and decisions that avoid unreasonable delay in the progress of Consultant's Work. City shall keep Consultant advised concerning the progress of City's review of the Work. City's response to Consultant's written request for decisions shall be made within two weeks from the date that City receives Consultant written request.

### IV COMPENSATION AND PAYMENTS

- 4.1 If Consultant's fabrication and delivery proforma cost estimates of the Work is approved, City shall make payments to Consultant in full consideration of the Work after each of the below phases have been accomplished upon City's receipt and approval of detailed invoices and requests for payment.

#### Compensation Phases:

|   |                     |
|---|---------------------|
| A. <u>Cost of acquired materials and mobilization</u><br>(75% of total compensation and payments)             | <u>\$239,625.00</u> |
| B. <u>Upon 50% off-site studio fabrication</u><br>(15% of total compensation and payments)                    | <u>\$ 47,925.00</u> |
| C. <u>Upon 75% on-site studio fabrication</u><br>(5% of total compensation and payments)                      | <u>\$ 15,975.00</u> |
| D. <u>Upon 100 % off-site fabrication, delivery and acceptance</u><br>(5% of total compensation and payments) | <u>\$ 15,975.00</u> |
| Total:  | \$319,500.00        |

Project Budget:

|   |                     |
|---|---------------------|
| a. <u>LEDs system (materials and equipment only)</u>              | <u>\$208,000.00</u> |
| b. <u>Lighting Program (artist coordination fee)</u>              | <u>\$ 5,000.00</u>  |
| c. <u>(6) Large Illuminated Column Finials @ \$15,900 each</u>    | <u>\$ 95,400.00</u> |
| d. <u>(3) Small Non-illuminated Column Finials @ \$3,700 each</u> | <u>\$ 11,100.00</u> |
| Total:  | \$319,500.00        |

- 4.3 Consultant shall submit all requests for payment, in writing to the Director of Department of Public Works for City's review and approval and said requests for payments must be accompanied by a detailed invoice.
- 4.4. City's compensation to Consultant shall not exceed \$\_\_\_\_\_.
- 4.5. No compensation to Consultant shall be allowed contrary to Texas Statutes, and/or the Charter of the City of San Antonio.
- 4.6. All payments to Consultant will be made within 30 days of receipt of Consultant's invoices

**V TERMINATION OF AGREEMENT**

- 5.1 City and Consultant hereby agree to the full performance of the covenants contained herein, except that City reserves the right, at its discretion, to terminate or abandon all or any portion of the Work provided for in this Agreement: (a) for cause, upon written notice to Consultant, or (b) if City does not approve Consultant's design and cost estimates of the Work. In the event of termination, all finished or unfinished work relating to the preparation of the Work paid for by City shall become the property of City. However, Consultant will be permitted to duplicate or document all preparatory models or drawings for two weeks from the date of termination of this agreement.

**VI NON-WAIVER OF PERFORMANCE**

- 6.1 No waiver by City of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall 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 City 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.

**VII PUBLIC INFORMATION RELEASE**

- 7.1 Consultant shall not make any public information release in connection with services performed under this Agreement without the prior written permission of the City.

**VIII ASSIGNMENTS**



- 8.1 Consultant shall not transfer, pledge or otherwise assign this Agreement, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of City. Any attempt at transfer, pledge or other assignment shall be void ab initio and shall confer no rights upon any third person.

#### **IX DEATH OR INCAPACITY**

- 9.1 In the event of death or incapacity of Consultant, \_\_\_\_\_ hereinafter "Recommended Consultant", is recommended to complete the Work. Approval for completion of the Work by the Recommended Consultant is withheld by City until such time as City and the Recommended Consultant enter into a written agreement. The City is in no way obligated to employ the services of the Recommended Consultant.
- 9.2 The death or incapacity of the Consultant shall automatically terminate this Agreement. Neither Consultant nor his estate shall have any further right to perform hereunder. City shall pay Consultant's estate or Consultant the compensation payable for any services rendered prior to such termination not heretofore paid reduced by the amount of additional costs which shall be incurred by City by reason of such termination.
- 9.3 Nothing contained in the terms of this Agreement shall create or give to third parties, any claim or right of action against City.

#### **X GENERAL CONSIDERATIONS**

- 10.1 Consultant shall limit operations of the Work to Consultant studio and to the Location unless otherwise approved in writing by City. Consultant shall perform no operations of any nature on, over or across premises except such operations as are specifically authorized in plans or specifications, or as authorized by City.
- 10.2 Consultant shall comply with all applicable laws, statutes, ordinances, regulations, and administrative requirements including but not limited to safety and engineering regulations and requirements of City, with special attention to requirements for scaffolding.
- 10.3 Consultant shall insure that workmen safety shall be in conformance with the latest Texas health and safety regulations and fire regulations.
- 10.4 Consultant shall be responsible for all mailing, shipping, transportation and travel expenses required under this Agreement and all Federal income taxes on the amount of this Agreement, as well as any state and City sales tax which might be required.
- 10.5 Consultant and all his agents and employees shall observe and comply with all prevailing Federal, State and City laws, ordinances, regulations and requirements which in any way affect the conduct or work of this Agreement. Consultant shall at his expense obtain all permits, licenses, and approvals required (including any seal certifying the structural soundness and safety of the Work which may be required) and shall comply with all laws in connection therewith.
- 10.6 Consultant shall, as part of this Agreement is required by City to discuss the Work with the general public and/or press/media representatives. Consultant agrees to meet individually, at times specified by Director of Public Works or designee, with representatives of the press or media to discuss the Work. Consultant is not obligated to give live on-camera interviews.
- 10.7 Prior to beginning the Phase referenced in 4.2 E of this Agreement, Consultant shall furnish City for approval the names of collaborators, makers or fabricators to be used on the Work. Any subsequent changes are subject to the approval of the Directors of Director of Public Works or designee.
- 10.8 Consultant agrees to notify and coordinate all his activities with \_\_\_\_\_, (Construction Manager) and the Contractor, to be selected by City, who will be renovating the Location.
- 10.9 Consultant agrees to attend all meetings scheduled by \_\_\_\_\_ (Construction Manager), related to the work and Location unless otherwise notified by City.

## **XI        EQUAL EMPLOYMENT**

**11.1** During the performance of this Agreement, Consultant agrees as follows:

- A.** Consultant will not discriminate against any employee or applicant for employment because of age, race, creed, color, religion, national origin, ancestry, sex, or handicap. Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their age, race, creed, color, religion, national origin, ancestry, sex, or handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by City setting forth the provisions of the Equal Employment Opportunity Act.
- B.** Consultant will, in all solicitations or advertisements for employees placed by or on its behalf, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, religion, national origin, ancestry, sex, or handicap.
- C.** Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

## **XII        INDEMNIFICATION**

**12.1** CONSULTANT COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AND THE MEMBERS, AGENTS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, INDIVIDUALLY OR COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITIES AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO , PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON CITY DIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO CONSULTANT'S ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF CONSULTANT AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTOR AND REPRESENTATIVES WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT. CONSULTANT SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY OR CONSULTANT KNOWN TO CONSULTANT RELATED TO OR ARISING OUT OF CONSULTANT'S ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION OF AND DEFENSE OF SUCH CLAIM OR DEMAND AT CONSULTANT'S SOLE COST AND EXPENSE. CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING CONSULTANT OF ANY OF HIS OBLIGATIONS UNDER THIS SECTION.

**12.2** IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS AGREEMENT, THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION, IS AN INDEMNITY EXTENDED BY CONSULTANT TO INDEMNIFY AND PROTECT CITY FROM THE CONSEQUENCES OF CITY'S OWN NEGLIGENCE, PROVIDED HOWEVER, THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL APPLY ONLY WHEN THE NEGLIGENT ACT OF CITY IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE AND SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF CITY IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE.

**12.3** CONSULTANT FURTHER AGREES TO DEFEND, AT HIS OWN EXPENSE, AND ON BEHALF OF CITY AND IN THE NAME OF CITY, ANY CLAIM OR LITIGATION BROUGHT IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE.

**12.4** IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT CONSULTANT IS AND SHALL BE DEEMED TO BE AN INDEPENDENT CONTRACTOR, RESPONSIBLE FOR HIS RESPECTIVE ACTS OR OMISSIONS,

AND THAT CITY SHALL IN NO WAY BE RESPONSIBLE THEREFORE, AND THAT NEITHER PARTY HERETO HAS AUTHORITY TO BIND THE OTHER OR TO HOLD OUT TO THIRD PARTIES THAT IT HAS THE AUTHORITY TO BIND THE OTHER. NOTHING CONTAINED HEREIN SHALL BE DEEMED OR CONSTRUED BY THE PARTIES HERETO OR BY ANY THIRD PARTY, AS CREATING THE RELATIONSHIP OF EMPLOYER-EMPLOYEE, PRINCIPAL- AGENT, PARTNER, JOINT VENTURE, OR ANY OTHER SIMILAR SUCH RELATIONSHIP, BETWEEN THE PARTIES HERETO.

### **XIII CONSULTANT'S REPRESENTATIONS AND WARRANTIES**

- 13.1 Defects in Materials or Workmanship and Inherent Vice. Consultant warrants that the Work will be free of defects in workmanship or materials, including inherent vice, and that Consultant will, at Consultant's own expense, remedy any defects due to faulty workmanship or materials, or to inherent vice, which appear within a period of two (2) years from the date the Work is finally accepted by City and will not require maintenance substantially in excess of that described in the recommendations provided by Consultant to City. If the Work should deteriorate because of an inherent vice between one (1) and two (2) years from the date the Work is finally accepted by City, Consultant will promptly repair or replace the Work. City shall only pay for the cost of materials and supplies used to repair or replace the Work. "Inherent vice" refers to a quality within the materials or materials which comprise the Work which, either alone or in combination, results in the tendency of the Work to destroy itself.
- 13.2 Public Safety. Consultant warrants that the Work will not contain sharp points or edges which Director of Public Works or designee deems a danger to the public and agrees to cooperate in making or permitting adjustments to the Work if necessary to eliminate other hazards which become apparent within one year of the date the Work is finally accepted by City.
- 13.3 Title. Consultant warrants that the Work is solely the result of the artistic efforts of Consultant and that it will be installed free and clear of any liens, claims or other encumbrances of any type.
- 13.4 Uniqueness. Consultant warrants that the Work is unique and an edition of one and does not infringe upon any copyright, and that Consultant will not execute or authorize another to execute another Work of the same design, dimensions and materials as the Work commissioned pursuant to this Agreement. For the purposes of this warranty, if the design, dimensions and materials of another work exceed 75% of the design, dimensions and materials of the commissioned Work, the other work shall be deemed to be of the same dimensions as the commissioned Work. This warranty shall continue in effect for a period consisting of the life of Consultant plus 50 years and shall be binding on Consultant's heirs and assigns.

### **XIV FORCE MAJEURE**

- 14.1 The parties to this Agreement shall be excused from performing an obligation under this Agreement if performance of that obligation is prevented by a condition beyond the control of the parties, such as acts of God, war, public emergency or strike or other labor disturbance. An obligation affected by a condition beyond the control of the parties shall be suspended only for the duration of the condition. Both parties to this Agreement shall take all reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists.

### **XV INSURANCE**

- 15.1 After the design and cost estimates are approved in writing by the Directors of Director of Public Works or designee, and prior to Consultant acquiring materials and commencement of fabrication of the Work, Consultant shall furnish a completed Certificate of Insurance to Director of Public Works or designee which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverages, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. City shall have no duty to pay or perform under the Agreement until such certificate shall have been delivered to Director of Public Works or designee, and no officer or employee shall have the authority to waive this requirement.

**15.2** City reserves the right to review the insurance requirements of this section during the effective period of the Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding the Agreement, but in no instance will City allow modification whereupon City may incur increased risk.

**15.3** 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 in writing by City, Consultant shall obtain and maintain in full force and effect for the duration of the Agreement and any extension hereof, at Consultant's sole expense, insurance coverage written by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company and/or otherwise acceptable to City, in the following types and amounts:

| <u>TYPE</u>  | <u>AMOUNT</u>                                |
|--|--|
| A. Worker's Compensation and Employer's Liability  | Statutory<br>\$500,000/\$500,000/\$500,000   |
| B. Commercial General (public) Liability Insurance to include coverage for the following:  |  |
| 1. Premises/Operations   | Combined Single Limit for Bodily             |
| 2. Independent Contractors   | Injury and Property Damage                   |
| 3. Products/completed operation  | of \$1,000,000 per occurrence                |
| 4. Personal injury   | or its equivalent with an aggregate of       |
| 5. Contractual liability   | not less than \$2,000,000                    |
| 6. Endorsement of broadform property damage liability including fire legal liability   |  |
| C. Comprehensive Automobile liability  |  |
| 1. Owned/leased vehicles   | Combined Single Limit for Bodily             |
| 2. Non-owned vehicles  | Injury and Property Damage of                |
| 3. Hired vehicles  | \$1,000,000 per occurrence or its equivalent |
| D. 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 require by City, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties thereto or the underwriter of any such policies). Upon such request by City, Consultant shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof. |  |
| E. Consultant agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:  |  |
| 1. Name City and its officers, employees, agents and elected representatives as <u>Additional insured</u> (as the interests of each insured may appear), as to all applicable coverage, with the exception of the worker's compensation and employer's liability policy;   |  |
| 2. 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; and  |  |
| 3. Worker's compensation and employer's liability policy will provide a waiver of subrogation in favor of City.  |  |
| F. Consultant shall notify City in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, which must be   |  |

accompanied by a replacement Certificate of Insurance. All notices shall be given to City at the following addresses:

City of San Antonio  
Public Works Department /City Architect's Office  
114 West Commerce, 8<sup>th</sup> Floor  
Municipal Plaza Building  
San Antonio, Texas 78205

## **XV        DISPLAY**

- 15.1 General.** Consultant hereby retains all copyrights of the Work. However, for the term of this Agreement and any time thereafter, Consultant hereby authorizes City to make any and all reproductions or derivatives in whatever form of the Work for educational, public relations, arts promotional, commercial or any other purpose, provided Consultant receives notice of such reproductions. If City uses the Work for commercial purpose, all revenues received by the City from such commercial ventures shall be directed to mechanism for long-term maintenance of the Work.
- 15.2 Display.** Without limiting the foregoing, for the term of this agreement and any time thereafter Consultant hereby grants to City the exclusive right to display the Work, including drawings, models, or any reproduction of the Work and to loan the Work including the said items to other persons or institutions with authority to display it publicly.
- 15.3 City's Credit.** Consultant agrees that all formal references to the Work shall include the following credit line:  
"From the Collection of the City of San Antonio, Texas, Commissioned through the Department of Public Works Design Enhancement Program."

## **XVI        REPUTATION**

- 16.1 City's Commitment.** City agrees that it will not use the Work or Consultant's name in a way which reflects discredit on the Work or on the name of Consultant or on the reputation of Consultant as a Consultant.
- 16.2 Consultant's Commitment.** Consultant agrees Consultant will not make reference to the Work or reproduce the Work, or any portion thereof, in a way that discredits City or the Work.

## **XVII       TITLE AND RISK OF LOSS**

- 17.1** Consultant shall pass title to the Work to City upon final acceptance of the installed Work by City. Consultant bears the risk of damage to or loss of the Work until title passes to City and Consultant shall take all necessary measures to protect the Work from loss or damage until City's final acceptance of the Work. Consultant is entitled to full payment for the Work that is finally accepted by City upon Consultant's submittal of the final invoice to City.

## **XVIII      SUBCONTRACTING**

- 18.1** Any other clause of this Agreement to the contrary notwithstanding, none of the work or services covered by this Agreement shall be subcontracted without City's prior written approval. Any work or services approved for subcontracting hereunder, however, shall be subcontracted only by a written agreement 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 subcontractors with this Agreement shall be Consultant responsibility.
- 18.2** Despite City approval of a subcontract, City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of work or services, nor shall City funds ever be used for payment

of work or services performed prior to the date of the execution of this Agreement or extending beyond the expiration date of this Agreement.

#### **XIX COMPLIANCE WITH ALL LAWS AND REGULATIONS**

- 19.1 All of the work performed under this Agreement by Consultant shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of the City of San Antonio and County of Bexar, including all building codes of the City of San Antonio and County of Bexar.

#### **XX TAXES AND LICENSES**

- 20.1 Consultant shall promptly pay, when they are due, all taxes, excise taxes, license fees and permit fees of whatever nature applicable to the Work which it performs under this Agreement, and shall take out and keep current all required municipal, county, state or federal licenses required to perform this Work. Consultant shall furnish the City, upon request, duplicate receipts or other satisfactory evidence showing or certifying to the proper payment of all required licenses and taxes. Consultant shall promptly pay, when due, all bills, debts and obligations it incurs performing work under this Agreement and Consultant agrees to allow no lien, mortgage, judgment or execution to be filed against land, facilities or improvements owned by City.

#### **XXII COORDINATION OF SERVICES**

- 22.1 Consultant agrees to perform its work under this Agreement in accordance with the operational requirements and processes of the Department of Public Works and Consultant agrees that all work and movement of personnel or equipment on areas included within the Location shall be subject to the regulations and restrictions established by City.

#### **XXIII SMALL MINORITY OR WOMEN-OWNED BUSINESS ADVOCACY PROGRAM**

- 23.1 Consultant is hereby advised that it is the policy of City that Small, Minority or Woman-owned Business Enterprises (Ordinance #77758 & 83846) shall have the maximum practical opportunity to participate in the performance of public contracts. Consultant agrees that Consultant will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability in connection with this Agreement and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. Consultant further agrees that Consultant will abide by all applicable terms and provisions of City's Non-Discrimination Policy, City's Small, Minority or Woman-owned Business Policy, and City's Equal Opportunity Affirmative Action policy, these policies being available in City's Department of Economic Development, Office of Internal Review and the City Clerk's Office.
- 23.2 Consultant agrees that if deficiencies in any aspect of its Small, Minority and Woman-owned Business Enterprises utilization plan as set out in its proposal are found as result of review or investigation conducted by City's Department of Economic Development, Consultant may be required to submit a written report to City's Department of Economic Development. Failure to satisfactorily resolve any deficiencies found by the City's Department of Economic Development within ninety (90) days of official notification by City shall constitute a default and result in penalty on the Consultant of \$ 500.00 per day as liquidated damages for the default until all deficiencies are resolved. Failure to cure all deficiencies within ninety (90) day of the date the penalty is initially assessed shall constitute a further (additional) condition of default by the Consultant and which can, at the option of City, result in the forfeiture of the entirety of this Agreement.

#### **XXIV PARTIES BOUND**

- 24.1 This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided for herein.

## **XXV ETHICS ORDINANCE (80329) COMPLIANCE**

**25.1** Consultant warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or employee or official of the City of San Antonio has any interest, financially or otherwise, in the Consultant's business.

## **XXVI CONFLICT OF INTEREST**

**26.1** Consultant agrees that it and its subsidiaries, affiliates, sub-consultants, principals, or employees will not engage in any transaction, activity or conduct which would result in a conflict of interest. Consultant represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of Consultant by placing Consultant's own interests, or the interest of any party with whom Consultant has a contractual arrangement, in conflict with those of City. City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after it has given Consultant written notice which describes the conflict. Consultant shall have thirty calendar days after the notice is received to eliminate or cure the conflict of interest in a manner which is acceptable to City.

## **XXVII PROFESSIONAL RESPONSIBILITY**

**27.1** Consultant shall faithfully perform the work required under this Agreement in accordance with standards of care, skill, training, diligence and judgment provided by highly competent professionals who perform work of a similar nature to the work described in this Agreement.

## **XXVIII OTHER PROJECT WORK**

**28.1** Consultant and its subsidiaries and affiliates shall not bid upon or otherwise attempt to perform any other work associated with the Project. Consultant shall require in its contracts with its sub-consultants that they and their subsidiaries or affiliates shall not bid upon or otherwise attempt to perform any work associated with the Project other than the work described in their contracts.

## **XXIX TIME IS OF THE ESSENCE**

**29.1** The parties to this agreement agree that in the performance of the terms and requirements of this Agreement by Consultant that time is of the essence.

## **XXX CAPTIONS**

**30.1** The captions contained in this Agreement are for convenience of reference only and shall not in any way limit or enlarge the terms and/or conditions of this Agreement.

## **XXXI SEVERABILITY OF PROVISIONS**

**31.1** If any clause or provision of the Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in the event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal, or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

## **XXXII NOTICES**

32.1 All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

A. If to City, to: Public Works Department  
Attn: City Architect's Office  
Design Enhancement Program  
P. O. Box 839966  
San Antonio, Texas 78283-3966

B. If to Consultant, to: Bill FitzGibbons  
205 Sheffield Place2007  
San Antonio, Texas 78213

#### XXXIII TEXAS LAW TO APPLY

33.1 It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Texas, both as to interpretation and performance. Any action at law, suit in equity or judicial proceeding of the enforcement of this Agreement or any provision thereof shall be instituted only in the courts of the State of Texas. All obligations of the parties created hereunder are performable in Bexar County, Texas.

#### XXXIV ENTIRE AGREEMENT

34.1 The terms of this Agreement constitute the entire understanding between the parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Agreement may only be amended or modified by mutual consent of the parties hereto in writing signed by both parties.

EXECUTED IN DUPLICATE ORIGINALS this the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2004.

CONSULTANT

CITY OF SAN ANTONIO

\_\_\_\_\_  
Bill FitzGibbons  
Artist

\_\_\_\_\_  
J. Rolando Bono  
Interim City Manager

ATTEST:

ATTEST:

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

\_\_\_\_\_  
Leticia M. Vacek, TRMC, CMC  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Andrew Martin  
City Attorney



## EXHIBIT A

All contractual obligations regarding the Work shall be completed no later than \_\_\_\_\_, unless otherwise specifically provided by City. Timely completion of each phase is essential to this Agreement.

### SCHEDULE FOR COMPLETION

1. Start of project and acquiring materials:  
Execution date of this Agreement ??/??/2005
2. 50% on-site completion of the Work  
To be completed no later than ??/??/2005
3. 75% on-site completion of the Work  
To be completed no later than ??/??/2005
4. 100% on-site completion and final acceptance of Work by City  
To be completed no later than ??/??/2005

**City of San Antonio**  
**Discretionary Contracts Disclosure**

For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)  
Attach additional sheets if space provided is not sufficient.  
State "Not Applicable" for questions that do not apply.

**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:

*Bill FitzGibbons*

and /or

(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;

*Color Kinetics (supplier)*  
*Willywerks Fabricating*

and the name of:

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

(3) the identity of any **lobbyist** or **public relations firm** employed for purposes relating to the

<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.

# City of San Antonio

## Discretionary Contracts Disclosure

For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)

Attach additional sheets if space provided is not sufficient.

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

discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

### 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 individual or an entity include, but are not limited to, contributions made by the officers, owners, attorneys, or registered lobbyists of the individual or the entity.

| By Whom Made:          | To Whom Made: | Amount: | Date of Contribution: |
|------------------------|---------------|---------|-----------------------|
| Bill & Ann FitzGibbons | Julian Castro | \$100   | Jan 2005              |
| Bill & Ann FitzGibbons | Phil Handberg | \$150   | Feb 2005              |

### 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 2-43 of the City Code (Ethics Code), by participating in official action relating to the discretionary contract.

<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.

**City of San Antonio**  
**Discretionary Contracts Disclosure**

*For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)*

*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, whichever occurs first.

**Signature:**



**Title:** *Artist*

**Company:** *Bill Fitzgibbon*

**Date:**

*March 29, 2005*