

**CITY OF SAN ANTONIO
ECONOMIC DEVELOPMENT DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

TO: Mayor and City Council
FROM: Ramiro A. Cavazos, Director
SUBJECT: Brooks Development Authority Operating Agreement
DATE: March 31, 2005

SUMMARY AND RECOMMENDATIONS:

This ordinance authorizes the execution of an operating agreement in the amount of \$2,157,654 between the City and Brooks Development Authority. The agreement will terminate on September 30, 2005.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION:

Brooks Development Authority (BDA) was established in September 2001 to manage the transfer and assume ownership of the Air Force property at Brooks Air Force Base. The Air Force conveyed all Brooks' land and buildings to the BDA in July 2002 and became a tenant leasing back facilities from the BDA. This Department of Defense demonstration project is now known as Brooks City-Base, a business and technology park. The BDA is responsible for managing and developing the Brooks property with a goal to reduce costs to the Air Force, improve military mission effectiveness, and promote economic development on Brooks and in the surrounding community.

The City's FY 2005 allocation is \$845,000 for operating expenses at BDA. BDA will also utilize FY 2004 carry forward funds in the amount of \$450,000 for operating expenses. BDA currently has 16 full-time positions. The City will contribute \$430,000 of the \$1.5 million total cost for staff support. The Air Force will continue to fund 10% of BDA's staffing cost with the remaining balance to be funded directly by BDA. Legal fees will be partially funded at \$179,230 by the City with a portion of the cost offset by Air Force revenues. Funds in the amount of \$183,745 will be used for marketing, public relations, and professional services to include human resources, auditing, and financial management. Annual brokerage fees for BDA's insurance needs are anticipated to be \$55,000 which is based on the FY 2004 amount. Security will be partially funded in the amount of \$131,874 by the City with the Air Force funding the remainder. BDA will utilize \$70,230 for the acquisition and maintenance of computers, software and telephones. Financial accounting software, database development including maintenance and necessary licenses will be funded at \$244,921.

BDA currently has \$262,654 in certificates of obligation for architecture and engineering expenses, renovation of buildings, and planning expenses for marketing and communications. In addition, BDA has 2004 bond funds in the amount of \$600,000 for drainage improvements.

POLICY ANALYSIS:

The City has provided financial assistance to BDA since FY 2002. This assistance supports implementation of the City's strategic initiatives for economic development by promoting Brooks redevelopment.

FISCAL IMPACT:

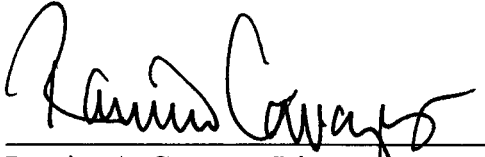
Funds for this agreement are allocated in the FY 2005 budget.

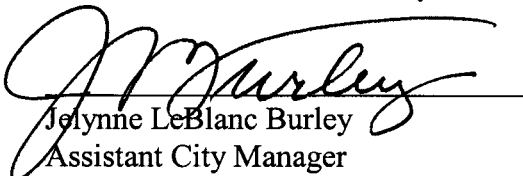
COORDINATION:


This item has been coordinated with the Brooks Development Authority, Office of Management and Budget, Finance, and the City Attorney's Office.

SUPPLEMENTARY COMMENTS:

Attached is a copy of the agreement.



Ramiro A. Cavazos, Director
Economic Development Department

Jelynn LeBlanc Burley
Assistant City Manager

J. Rolando Bono
Interim City Manager

STATE OF TEXAS

COUNTY OF BEXAR

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**OPERATING AGENCY CONTRACT
GENERAL OPERATING BUDGET**

This Agreement 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 Manager pursuant to Ordinance No. _____, dated February 3, 2005 and the **BROOKS DEVELOPMENT AUTHORITY** (hereinafter referred to as "CONTRACTOR"), a defense base development authority and political subdivision of the State of Texas, established by the City of San Antonio pursuant to Chapter 378 of the Texas Local Government Code acting by and through its Board of Directors, and duly authorized Chairman.

WHEREAS, CITY has provided certain funds from its General Fund and Capital Budget; and

WHEREAS, CITY has adopted a budget for expenditure of such funds, and included therein is an allocation of funds for use by CONTRACTOR as a one-time allocation from the CITY's adopted budget; and

WHEREAS, CITY designates its Economic Development Department as the CITY Department, acting for its Interim City Manager, responsible for the evaluation and monitoring of this Contract (hereinafter referred to as "RESPONSIBLE DEPARTMENT"). The Department of Finance and other City departments will function in a supporting role; and

WHEREAS, CITY wishes to engage CONTRACTOR to carry out such PROJECTS as described in Section II of this Contract; **NOW THEREFORE**:

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

I. GENERAL PROVISIONS

1. CONTRACTOR is a defense base development authority and political subdivision of the State of Texas, established by the City of San Antonio pursuant to Chapter 378 of the Texas Local Government Code, governed by an autonomous governing body acting in accordance with the governing instruments submitted in the application for funding and meeting officially at least four times per year.
2. CONTRACTOR represents, warrants, assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required.
3. The signer of this Agreement for CONTRACTOR represents, warrants, assures and guarantees that he or she has full legal authority to execute this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to all terms, performances and provisions herein contained.
4. In the event that a dispute arises as to the legal authority of either the CONTRACTOR, or the person signing on behalf of CONTRACTOR, to enter

into this Agreement, CITY shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement. Should CITY suspend or permanently terminate this Agreement pursuant to this paragraph, however, CONTRACTOR shall be liable to CITY for any money it has received from CITY for performance of any of the provisions hereof.

5. The CONTRACTOR understands that the funds provided it pursuant to this Agreement are funds which have been made available by CITY's General Fund and Capital Budget and CONTRACTOR will, therefore, comply with all rules, regulations, policies and procedures applicable to these funds as directed by CITY. This section shall also incorporate and CONTRACTOR agrees to abide by any and all future revisions, amendments and additions to such rules, regulations, policies, and procedures as may be promulgated by the CITY.
6. CONTRACTOR and CITY agree that CONTRACTOR is an independent contractor, that CONTRACTOR shall be responsible to all parties for its respective acts and omissions, and that CITY shall in no way be responsible therefore, and that neither has authority to bind the other, or hold out to third parties that it has the authority to bind the other.
7. CONTRACTOR understands and agrees that this Standard Operating Agency - General Fund and Capital Budget Contract is subject to mutual termination. Therefore, either party shall have the option of terminating this Agreement by giving the second party no less than thirty- (30) days written notice. Such notice shall specify the effective date of termination, which date shall not be sooner than the end of thirty- (30) days following the day on which such notice is sent.
8. CONTRACTOR understands and agrees that this Operating Agency - General Fund and Capital Budget Contract may be revised and updated by and at the discretion of the City Council of the City of San Antonio. Therefore, CONTRACTOR agrees that, at such time as any revisions are so made during the term hereof, this Agreement will be amended to include such revisions. In the event CONTRACTOR does not agree to any changes, CONTRACTOR shall have the option of terminating this Agreement by giving thirty- (30) day's written notice to CITY. CONTRACTOR shall have the right to exercise such option within thirty- (30) days of receipt of notice of any such revisions.
9. CONTRACTOR understands and agrees that this Agreement is subject to a general reduction in funding. If and when CITY implements a reduction in General Fund and Capital Budget expenditures, agency contracts funded by CITY's General Fund and Capital Budget, including this Agreement, may, at CITY's option, be reduced in a like manner. However, for the purposes of this Contract, funding will not be reduced to exclude the payment of projects that have already been committed to in a binding written contract by Contractor.
10. CONTRACTOR expressly agrees and understands that this is a cost reimbursement contract and that CITY's liability hereunder is limited to making reimbursements to CONTRACTOR for allowable expenditures made by CONTRACTOR.
11. In no event shall CITY be liable for any expense of CONTRACTOR not eligible or allowable for reimbursement hereunder, and in no event shall employees of CONTRACTOR be deemed to be employees of CITY.
12. Should CONTRACTOR fail to fulfill in timely and proper manner obligations under this Agreement, or if CONTRACTOR should violate any of the

covenants, conditions, or stipulations of this Agreement, CITY shall have the right to terminate this Agreement by sending written notice to CONTRACTOR of such termination and specifying the effective date thereof, which date shall not be sooner than the end of thirty- (30) days following the day on which such notice is sent.

a. Previous breach of any of the terms or conditions herein shall not be construed as a waiver of same by CITY nor preclude CITY's termination right for successive breach of the same condition.

b. Notwithstanding the above, CONTRACTOR shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this Agreement and CITY may withhold funds otherwise due as damages.

c. In addition to the above provisions, the City Council shall have the right to terminate this Agreement at any time upon a finding by Ordinance that CONTRACTOR's activities, programs or operations no longer are in the best interest of the City of San Antonio or its citizens. Adequate provisions shall be made for CONTRACTOR to be heard by the City Council prior to voting on such an Ordinance. The effective date of the termination shall be set by the same Ordinance.

13. Should this Agreement be terminated by either party for any reason and the PROJECTS not fully completed as stated in Section II of this Contract as determined solely by CITY after consultation with CONTRACTOR, CONTRACTOR shall refund any and all sums of money paid by CITY to CONTRACTOR that are not obligated in a legally binding written contract entered into by CONTRACTOR prior to the City's notice to terminate, in accordance with the terms of this Agreement, within ten- (10) working days of CITY's written request thereof.
14. Except as otherwise provided for pursuant to the provisions hereof, this Agreement shall begin on October 1, 2004 and shall terminate on September 30, 2005.
15. CONTRACTOR shall establish and use internal accounting and administrative controls to preclude theft, embezzlement, improper inducement, and obstruction of investigation or other criminal action and to prevent fraud and program abuse. City shall review Contractor's system of internal administrative and accounting controls as it deems necessary to ensure financial responsibility.
16. CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, and further that no such understanding or agreement exists or has existed, with any employee of CONTRACTOR or CITY.
17. CONTRACTOR may use funds provided hereunder either directly or indirectly as a contribution in order to obtain any federal funds under any federal program that is consistent with the program objectives herein, upon prior written approval by CITY's RESPONSIBLE DEPARTMENT.
18. CONTRACTOR is required to publicly acknowledge that the City of San Antonio as directed by City's RESPONSIBLE DEPARTMENT supports these projects.

19. CONTRACTOR acknowledges that this contract cannot be assigned without the express written consent of CITY.
20. CONTRACTOR shall not use funds from this contract for purposes other than those listed in Section II of this Contract without prior written consent of the City's Responsible Department. Specifically, funds from this contract shall not be used for costs associated with environmental clean up, disposing of environmentally hazardous material or soil, or litigation costs from such causes of action.

II. SCOPE OF SERVICES

1. CONTRACTOR shall utilize up to four hundred thirty thousand dollars (\$430,000.00) for the partial funding of CONTRACTOR staff salaries and benefits. These funds shall be advanced and distributed to CONTRACTOR quarterly in equal amounts of one hundred seven thousand five hundred dollars (\$107,500.00). The first distribution shall be made on or about October 1, 2004 or upon execution of this AGREEMENT. The next three distributions shall be made on or about January 1, 2005; April 1, 2005; and July 1, 2005. These funds are specifically exempted from the cost-reimbursement method of payment required by the remaining funds under this AGREEMENT.
2. CONTRACTOR shall utilize up to ~~one~~ hundred eighty three thousand seven hundred forty five dollars and eighteen cents (\$183,745.18) for professional services consisting of marketing and promotion materials and services, public relations consulting services, auditing, financial, human resources consulting, temporary services and other professional services as required.
3. CONTRACTOR shall utilize up to seventy thousand two hundred thirty dollars (\$70,230.00) for the acquisition and maintenance of computers and associated hardware and software, and telephones.
4. CONTRACTOR shall utilize up to two hundred forty four thousand nine hundred twenty one dollars and ten cents (\$244,921.10) for software integration of asset management, financial accounting software, database development, and GIS/CAD including necessary maintenance and licenses.
6. CONTRACTOR shall utilize up to one hundred thirty two thousand six hundred fifty four dollars and seventeen cents (\$132,654.17) in Certificates of Obligations for architectural and engineering services, renovations and transaction costs to facilitate the occupancy of new office buildings at Brooks City-Base.
7. CONTRACTOR shall utilize up to one hundred thirty thousand dollars (\$130,000.00) in Certificates of Obligations for space planning, master planning, and creation of a marketing center for Brooks City-Base.
8. CONTRACTOR shall utilize up to one hundred seventy nine thousand two hundred twenty nine dollars and eighty seven cents (\$179,229.87) for legal services.
9. CONTRACTOR shall utilize up to one hundred thirty one thousand eight hundred seventy three dollars and eighty five cents (\$131,873.85) for security services at Brooks City-Base.
11. CONTRACTOR shall utilize up to fifty-five thousand dollars (\$55,000.00) for necessary insurance policies.
12. Contractor shall utilize up to six hundred thousand dollars (\$600,000) of funds approved in the 2004 bond program for necessary enhancements to the drainage ditch project being worked in conjunction with the City's department of Public Works.

13. The City's Economic Development Department is assigned monitoring responsibility to evaluate the accountability of all projects, including the PROJECTS referred to herein, and to insure project objectives are met. CONTRACTOR will provide CITY's staff, including internal auditors, EEO officers and other persons as designated by CITY, such as independent public accountants and representatives of the federal government, access during regular business hours, as deemed necessary by CITY for the purposes of auditing, monitoring, evaluating, coordinating, investigating and making excerpts and/or copies of any and all of CONTRACTOR's books, records and files on the PROJECTS covered by this Agreement and such other projects administered by CONTRACTOR with funds from any other sources, and to any and all books, records and files pertaining to CONTRACTOR's proprietary, agency and/or trust funds as CITY may need and request to ensure Contractors compliance and use of generally accepted governmental accounting principles.
- a. All such records shall continue to be available for inspection and audit for a period of three (3) years after the termination date hereof. However, if during the course of this three-year period, an audit or investigation of the CONTRACTOR begins, CONTRACTOR is required to maintain said records until such time as the audit or investigation is completely finished as determined by CITY.
 - b. CONTRACTOR agrees that during the term of this Agreement, any duly authorized representative of CITY's RESPONSIBLE DEPARTMENT shall have the right to conduct on-site inspections at reasonable times and to interview personnel and clients for the purposes of evaluating and monitoring the PROJECTS for compliance with this Agreement.
 - c. The submission of falsified information or the failure to timely submit all information by CONTRACTOR as requested by CITY is grounds for termination of this Agreement.
 - d. CONTRACTOR agrees to provide CITY with the names and license registration of any and all contracting agency employees regulated by State law whose activities contribute towards, facilitate or coordinate the performance of this Agreement.
14. CONTRACTOR agrees to provide CITY with a Balanced Scorecard indicating CONTRACTOR's performance of requirements under this Contract on or before April 1, 2005. A copy of the Balanced Scorecard form may be obtained through the CITY's RESPONSIBLE DEPARTMENT.
15. No project, program or activity receiving funds from or through CITY, nor the personnel involved in the administration of such project, program or activity, nor any of the funds received hereunder shall be involved, directly or indirectly, in the construction, operation or maintenance of such part of any facility as is used or will be used for sectarian instruction or activity or as a place of religious worship.
16. CONTRACTOR agrees to abide by the CITY's current Ethics Code and any amendment or revisions thereto. CONTRACTOR will establish safeguards to prohibit its officers or employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or those with whom they have family, business or other ties. CITY may, at its option, cancel this Agreement for any violation of this section by CONTRACTOR, its officers, directors or employees.

17. Members of the Board of Directors or governing body of CONTRACTOR may not be employees of CONTRACTOR or paid in any way for services with CITY contract funds.
18. CONTRACTOR agrees to establish internal procedures that assure employees of an established complaint and grievance policy.
 - a. Such grievance policy will include procedures to receive, investigate and resolve complaints and grievances in an expeditious manner.
 - b. In the event no complaint and grievance policy has been established, CONTRACTOR will follow the procedures outlined in the San Antonio Municipal Civil Service rules.

III. FISCAL MANAGEMENT

1. In consideration of services provided, CITY will reimburse CONTRACTOR for expenses incurred pursuant hereto. It is specifically agreed that the reimbursement hereunder shall not exceed the amount of two million one hundred and fifty-seven thousand six hundred and fifty-four dollars and seventeen cents (\$2,157,654.17).
2. This Agreement is not considered complete or in compliance until such time as the approved, signed and dated Budget Package is attached.
3. An accounting system using generally accepted accounting principles for governmental entities which accurately reflects all costs chargeable (paid and unpaid) to the PROJECTS should the PROJECTS terminate the next day, is mandatory. Details of the required accounting system may be obtained through CITY's RESPONSIBLE DEPARTMENT.
4. CONTRACTOR will establish an account in a commercial bank as a depository for receipt and expenditure of all funds provided hereunder. A separate account shall be maintained for the combined projects to assure separation of funds, unless otherwise approved by the CITY's RESPONSIBLE DEPARTMENT.
5. No fees may be charged to or donations requested from participants in any CITY-funded project, including these PROJECTS without the prior written approval of the CITY's RESPONSIBLE DEPARTMENT. This paragraph does not preclude CONTRACTOR from charging rental and leasing related fees to its commercial tenants in connection with the PROJECTS.
6. Income generated by CITY funds through the use of salaried personnel paid wholly or in part through CITY funds, or through the use of equipment or supplies purchased wholly or in part through CITY funds is considered program income and at the option of the CITY's RESPONSIBLE DEPARTMENT may be: (1) added to the PROJECT and used to further eligible PROJECT objectives, in which case proposed expenditures must first be approved by CITY; or (2) deducted from the total PROJECT cost for the purpose of determining the net cost reimbursed by CITY.
 - a. CONTRACTOR must provide CITY with an advance written notice detailing the type, time and place of all activities that generate program income. Further, CONTRACTOR is responsible for full disclosure and accountability of program income generated through the labor or efforts of persons whose salaries or wages are paid wholly or in part through CITY

funds, or through the use of equipment or supplies purchased wholly or in part through CITY funds.

- b. A statement of expenditures and revenues must be submitted by CONTRACTOR within thirty- (30) days of said activity; such statement is subject to audit verification. Failure of CONTRACTOR to report program income as required is grounds for suspension, cancellation or termination of this Agreement.
7. CONTRACTOR shall indemnify CITY, its members, agents, representatives, officers and employees against any and all suits, actions, legal proceedings, claims, demands, damages, penalties, costs, expenses, fees, fines, liability and attorney's fees arising out of infringement of copyright on any work used in any way in connection with this Agreement or PROJECTS.
8. **TO THE EXTENT PERMITTED BY LAW, CONTRACTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon the CITY, directly or indirectly arising out of, resulting from or related to CONTRACTOR's activities under this AGREEMENT, including any negligent acts or omissions of CONTRACTOR, any agent, officer, director, representative or employee of CONTRACTOR while in the exercise or performance of the rights or duties under this AGREEMENT, all without, however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall promptly advise the CITY in writing of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at CONTRACTOR's expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph 8. Furthermore, CONTRACTOR will, by separate contract or lease restrictions, require any of its subcontractors, consultants and/or future commercial tenants to indemnify the CITY against the consequences of any of said subcontractor's, consultant's and/or future commercial tenant's negligent actions or omissions.**
9. Upon completion or termination of this PROJECT any unused funds, rebates or credits must immediately be returned by CONTRACTOR to CITY.
10. CONTRACTOR shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this Agreement and CITY may withhold funds otherwise due as damages.
11. Reimbursement of eligible expenses, as determined by CITY's RESPONSIBLE DEPARTMENT, shall be made monthly or bi-weekly, as determined by CITY's Department of Finance and the CITY's RESPONSIBLE DEPARTMENT

according to standard procedures followed by said Finance Department, as requested upon receipt of billing from CONTRACTOR.

12. Should any expense or charge that has been reimbursed be subsequently disapproved or disallowed as a result of any site review or audit, CONTRACTOR will immediately refund such amount to CITY. CONTRACTOR further authorizes CITY, if CITY so elects, to deduct such amount or charge as a claim against future payments. The CITY's RESPONSIBLE DEPARTMENT has the express authority to deduct such claims from subsequent reimbursements.
13. Audit Conditions and Requirements:
 - a. CITY, a political entity, unlike a business for profit, is more interested in knowing if agencies have accomplished or achieved the objectives as stipulated in their agreements, as opposed to certifications that the Balance Sheet fairly represents the financial position at a given date. Therefore, it is essential that City is made aware of progress made upon this Agreement. Following 30 days after a written request by City, Contractor shall submit a written report stating what has been accomplished to date and the most current percentage of completion of the total contract that has been performed.
 - b. It is imperative any auditor performing an audit of CONTRACTOR read the entire Agreement, including all attachments, between the CITY and CONTRACTOR, since the budget and financial compliance of the Agreement is only a portion of the total contractual obligation.
 - c. All CITY-funded projects and programs, including this PROJECT, are subject to periodic audits at any reasonable hour of the day by CITY Internal Auditors. This includes the auditing of both the Contractor and subcontractors related to this Project.
 - d. If CONTRACTOR expends \$50,000.00 or more in general fund dollars during the term of this Agreement, the CONTRACTOR shall furnish the CITY'S RESPONSIBLE DEPARTMENT and other City Departments designated by the RESPONSIBLE DEPARTMENT with audited financial statements, prepared by an independent auditor (CPA), within one hundred and twenty (120) days of the close of the CONTRACTOR's fiscal year or within thirty- (30) days of the completion of any audit performed. In addition to the audited financial statements, a copy of any internal controls review, audit exceptions, and management letter should be submitted. The audited financial statements must include a schedule of receipts and disbursements by budgeting cost category and a certification from the Contractor stating whether or not the terms and conditions of the contract were met. If the CITY determines, in its sole discretion, that CONTRACTOR is in violation of the above requirements, the CITY shall have the right to dispatch auditors of its choosing to conduct the required audit and to have the CONTRACTOR pay for such audit. In addition, when the CONTRACTOR has expended federal or state funds that exceed the single audit threshold amount in effect during the period of this contract, the audit shall be conducted in accordance with the Single Audit Act Amendments of 1996 and the U.S. Office of Management and Budget Circular A-133 (June 1997 revision), and/or the State of Texas Single Audit Circular.
14. CONTRACTOR understands and agrees to abide by and adhere to applicable federal, state and CITY provisions, as amended.

IV. INSURANCE REQUIREMENTS

1. CITY and CONTRACTOR acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practices and Remedies Code, §101.001 *et seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury, or death.
2. This Agreement will be interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas. This Agreement is made and is to be performed in Bexar County, Texas and is governed by the laws of the State of Texas.

V. COMPLIANCE WITH NON-DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAMS

1. CONTRACTOR and any subcontractors performing services under this Agreement shall comply with the following:
 - a. CONTRACTOR agrees that CONTRACTOR and any subcontractors performing services under this Agreement will not discriminate against any individual or group on the basis of race, color, sex, age, religion, national origin or disability 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. CONTRACTOR further agrees that CONTRACTOR will abide by all applicable terms and provisions of CITY's Non-Discrimination Policy and CITY's Equal Opportunity Affirmative Action policy. These policies are available in CITY's Department of Economic Development and the City Clerk's Office.
 - b. CONTRACTOR agrees to post in a conspicuous place available to all employees and applicants for employment, notices setting forth the provisions of Article V(1)(a) above.
 - c. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive fair consideration for employment without regard to race, color, national origin, religion, sex, age, disability, or political belief or affiliation. CONTRACTOR will notify each labor union or representative of workers with which it may have a collective bargaining agreement or other contract understanding, that CONTRACTOR is bound by the terms of this Agreement, including Article V(1)(a).
 - d. CONTRACTOR agrees to affirmatively abide by and cooperate in the implementation of the policies and practices set forth in this Article and any additional policies as may be required as a result of local, state or federal initiatives. CONTRACTOR will furnish all information and reports requested by CITY and will permit access to books, records and accounts for purpose of review and investigation to ascertain compliance with such rules and regulations.
 - e. In the event of CONTRACTOR's failure or refusal to comply with this Article, this Agreement may be canceled, terminated or suspended in

whole or in part, and CONTRACTOR may be debarred from further contracts with CITY.

2. Contractor is hereby advised that it is the policy of the City of San Antonio, as documented in Ordinance 100182, that Small, Minority and Woman-Owned Business Enterprises have the maximum practical opportunity to participate in the performance of public contracts. CONTRACTOR agrees to abide by Ordinance 100182 in its contracting for services under this Agreement.

VI. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

1. CONTRACTOR further represents and warrants that:
 - a. All information, data or reports heretofore or hereafter provided to CITY is, shall be and shall remain complete and accurate as of the date shown on the information, data or report, and that since said date shown, shall not have undergone any significant change without written notice to CITY;
 - b. Any supporting financial statements heretofore or hereafter provided to CITY are, shall be and shall remain complete, accurate and fairly reflective of the financial condition of CONTRACTOR on the date shown on said statements and during the period covered thereby, and that since said date shown, except as provided by written notice to CITY, there has been no material change, adverse or otherwise, in the financial condition of CONTRACTOR;
 - c. No litigation or proceedings are presently pending or threatened against CONTRACTOR or if pending has been disclosed by CONTRACTOR in writing to CITY;
 - d. None of the provisions contained herein contravene or in any way conflict with the authority under which CONTRACTOR is doing business or with the provisions of any existing indenture or agreement of CONTRACTOR;
 - e. CONTRACTOR has the legal authority to enter into this Agreement and accept payments hereunder, and has taken all necessary measures to authorize such execution of contract and acceptance of payments pursuant to the terms and conditions hereof; and
 - f. None of the assets of CONTRACTOR are subject to any lien or encumbrance of any character, except as shown in the financial statements provided by CONTRACTOR to CITY.
2. During the period of time that payment may be made hereunder and so long as any payments remain unliquidated, CONTRACTOR covenants that it shall not, without the prior written consent of CITY:
 - a. Mortgage, pledge, or otherwise encumber or cause to be encumbered any of the assets of CONTRACTOR now owned or hereafter acquired by it, in whole or in part with funds provided by CITY pursuant to this Agreement, or permit any pre-existing mortgages, liens, or other encumbrances to remain on or attached to any of such assets of CONTRACTOR which are allocated to the performance of this Agreement and with respect to which CITY has an ownership interest hereunder;

- b. Sell, assign, pledge, transfer or otherwise dispose of accounts receivable, notes or claims for money due or to become due; or
- c. Make any advance or loan to, or incur any liability as guarantor, surety or accommodation endorser for any other firm, person, entity or corporation;
- 3. CONTRACTOR shall notify CITY any time it sells, conveys or leases all or any substantial part of CONTRACTOR's assets that are acquired in whole or in part with funds provided by CITY pursuant to this Agreement.
- 4. CONTRACTOR agrees to comply with the terms and provisions of all City, Federal and State Grant or Loan Agreements for Brooks Development Authority entered into by the CONTRACTOR and further agrees that if CONTRACTOR violates the provisions of such Grant or Loan Agreements, CITY shall have the right to terminate this Agreement and CONTRACTOR shall refund any and all sums of money paid by CITY to CONTRACTOR within ten (10) working days of CITY's written request therefore.

VII. LEGAL/LITIGATION EXPENSES

- 1. Under no circumstances will the funds received under this CONTRACT or any other funds received from CITY be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the CITY. CONTRACTOR must obtain the written approval of the City Attorney's Office before any funds received under this Agreement may be used in any adversarial proceeding against any other governmental entity or any other public entity.
- 2. During the term of this Contract, if CONTRACTOR files and/or pursues an adversarial proceeding against the CITY then, at the CITY's option, this Contract and all access to the funding provided for hereunder may terminate if it is found that CONTRACTOR has violated this Article.
- 3. CONTRACTOR, at the CITY's option, could be ineligible for consideration to receive any future funding while any adversarial proceedings against the CITY remains unresolved.
- 4. For purposes of this Article, "adversarial proceedings" include any cause of action filed by the CONTRACTOR in any state or federal court, as well as any state or federal administrative hearing, but does not include Alternative Dispute Resolution proceedings.

VIII. CHANGES AND AMENDMENTS

- 1. Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and CONTRACTOR.
- 2. 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 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.
- 3. CONTRACTOR agrees to notify CITY in writing of any proposed change in physical location for work to be performed pursuant to the terms of Agreement.

Such notice shall be provided by CONTRACTOR to CITY at least thirty- (30) calendar days in advance of the proposed change.

4. CONTRACTOR further agrees to notify CITY of any changes in personnel or governing board composition, such notice to be provided within five (5) working days of the change.

IX. SEVERABILITY OF PROVISIONS

If any clause or provision of this 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 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 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.

X. NON-WAIVER OF PERFORMANCE

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.
2. No act or omission of CITY shall in any manner impair or prejudice any right, power, privilege, or remedy available to CITY hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.
3. No representative or agent of CITY may waive the effect of the provisions of this Article.

XI. SPECIAL CONDITIONS

All CONTRACTOR invoices for eligible expenditures pursuant to this Agreement must be submitted to CITY's RESPONSIBLE DEPARTMENT by CONTRACTOR no later than ninety- (90) days after CONTRACTOR's incurring the expense. All invoices submitted by CONTRACTOR after said ninety- (90) days are ineligible for reimbursement.

XII. ENTIRE AGREEMENT

This Agreement 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 Agreement 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.

XIII. NOTICE

1. For purposes of this Agreement, 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 below:

CITY:

Director
Economic Development Department
P.O. Box 839966
San Antonio, Texas 78283-3966

CONTRACTOR:

Director
Brooks Development Authority
8030 Challenger Drive, Bldg. 1156
San Antonio, Texas 78235

and

City Attorney's Office
Commerce & Visitor's Services
City Hall
P.O. Box 839966
San Antonio, Texas 78283-3966

2. Notice of changes of address by either party must be made in writing and delivered (or mailed, registered or certified mail, postage prepaid) to the other party's last known address within five- (5) business days of such change.

XIV. PARTIES BOUND

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.

XV. GENDER

Words of gender used in this Agreement 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.

XVI. RELATIONSHIP OF PARTIES

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 the parties hereto.

XVII. TEXAS LAW TO APPLY

THIS AGREEMENT 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.

XVIII. CAPTIONS

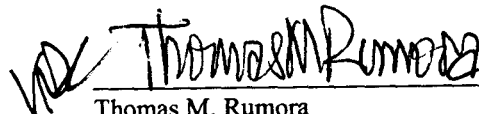
The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

EXECUTED IN DUPLICATE ORIGINALS this _____ day of _____
2005.

CITY OF SAN ANTONIO

BROOKS DEVELOPMENT
AUTHORITY

J. Rolando Bono
Interim City Manager

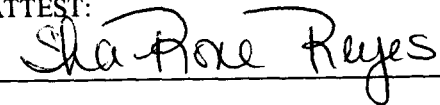


Thomas M. Rumora
Executive Director

ATTEST:

ATTEST:

City Clerk



Sha-Rose Reyes

APPROVED AS TO FORM:

Andrew Martin
City Attorney