

**CITY OF SAN ANTONIO
FINANCE DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

CONSENT AGENDA

ITEM NO. 32

TO: Mayor and City Council

FROM: Milo Nitschke, Director, Finance Department

SUBJECT: Ordinance to ratify services provided by Britts, Lackie & Associates for Accounts Receivable Research and Consulting Services for the fiscal year ended September 30, 2004

DATE: May 12, 2005

SUMMARY AND RECOMMENDATIONS:

This ordinance authorizes the execution of a professional services contract with Britts, Lackie & Associates in an amount not to exceed \$100,000, and ratifies services provided in connection therewith. The contract will terminate May 31, 2005, unless otherwise extended as provided therein. The ordinance would authorize the Interim City Manager or his designee to execute the agreement, and provide for Britts, Lackie & Associates to provide accounts receivable and consultation services to assist in the preparation of an Ordinance to reclassify receivables deemed uncollectible.

Staff recommends approval.

BACKGROUND INFORMATION:

City Council Governance Committee has been briefed on contemplated actions to be taken by the Finance Department pertaining to the evaluation and reconciliation of the City's accounts receivable. The briefing identified a plan of action to be taken which included the utilization of Certified Public Accountant (CPA) firms to assist the City in this endeavor. After interviewing CPA firms the firms of Garza/Gonzalez & Associates and Britts, Lackie & Associates were selected to provide the service to analyze the City's accounts receivable, develop a methodology to identify and evaluate accounts receivable likely to be collected, accounts deemed to be uncollectible and recommended for write-off, develop demand payment letters for delinquent accounts, research Texas State laws, obtain information on best practices and recommend a course of action for the future. Approximately 94,470 accounts were reviewed.

The City's accounts receivable include monies owed to the City for various reasons, including, but not limited to, uncollected taxes and fees for services rendered by the City. Article III, Section 55 of the Texas Constitution prohibits the City from releasing or extinguishing the indebtedness, liability or obligation of any corporation or individual, except delinquent taxes which have been due for a period of at least twenty years. As mentioned above the City has been reviewing its accounts receivable records to determine which entries are valid receivables and which of these receivables are expected to be paid. The City will continue to pursue collection of valid receivables. Those receivables deemed uncollectible will be reclassified. The City has selected two separate firms to assist the City with the researching and sorting of accounts receivable, with Garza/Gonzalez & Associates taking the lead, and Britts, Lackie & Associates to

work in tandem with Garza/Gonzalez & Associates. This review and the related contracts have been briefed to the Governance Council by the Finance Director on several occasions.

Britts, Lackie & Associates has provided services since December 13, 2004 through May 31, 2005. The contract's term began in December and can be extended by the Finance Department Director for an additional 90 days. Britts, Lackie & Associates is to assist Garza/Gonzalez & Associates, review, and recommend future actions needed to effectively manage the City's accounts receivables. Work began and is nearing completion. Therefore, this ordinance will ratify services provided thus far, and authorize execution of a contract, and payment.

POLICY ANALYSIS:

Hiring Britts, Lackie & Associates to assist the Finance Department in reviewing the City's receivables will assist the City by ensuring a timely, accurate review of the receivables and for effective management of receivables in the future.

FINANCIAL IMPACT

Funding for this contract in the amount not to exceed \$100,000 will be paid from receivables collected or other available revenues.

COORDINATION

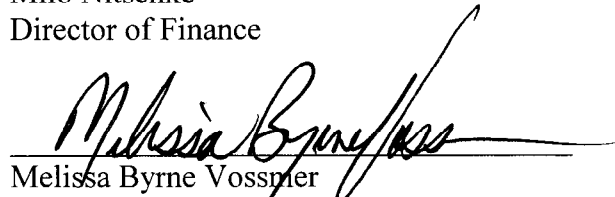
This item was coordinated with the City Manager's Office, City Attorney's Office, Contract Services Department, and the Finance Department.

SUPPLEMENTARY COMMENTS

The discretionary contract disclosure is attached.



Milo Nitschke
Director of Finance



Melissa Byrne Vossler
Assistant City Manager



J. Rolando Bono
Interim City Manager

JK

**PROFESSIONAL SERVICES AGREEMENT FOR
ACCOUNTS RECEIVABLE RESEARCH & CONSULTING**

STATE OF TEXAS

COUNTY OF BEXAR

This Agreement is made and entered into by and between the City of San Antonio ("City"), a Texas home-rule municipal corporation, and Britts, Lackie & Associates, ("Consultant"), both of whom may be referred to collectively as the "Parties".

WHEREAS, the City identifies accounts receivable on its books, which include monies owed to the City for various reasons, including, but not limited to, uncollected taxes and fees for services rendered by the City; and

WHEREAS, Article III, Section 55 of the Texas Constitution prohibits the City from releasing or extinguishing the indebtedness, liability or obligation of any corporation or individual, except delinquent taxes which have been due for a period of at least ten years; and

WHEREAS, it is now necessary for the City to examine its accounts receivable records, to determine which entries are valid receivables, and which of these receivables are expected to be paid, those receivables for which collection efforts should be instituted, and those which should be deemed uncollectible; and

WHEREAS, the City wishes to engage two separate firms to assist the City with the researching and sorting of accounts receivable, with one firm, Garza/Gonzalez and Associates, (hereafter "Garza/Gonzalez") taking the lead; and

WHEREAS, the City wishes to hire as the second Consultant, Britts, Lackie & Associates to work in tandem with Garza/Gonzalez;

NOW THEREFORE, FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the parties hereto 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. DEFINITIONS

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

1.1 "City" is defined in the preamble of this Agreement and includes its successors and assigns.

1.2 "Compliance Enforcement Accounts Receivables" or "CEARS" is a software system used by City's Code Compliance Department, to record data and interface with MARRS.

1.3 "Consultant" is defined in the preamble of this Agreement and includes its successors and permitted assigns.

1.4 "Debtors" are persons or business entities who are identified as owing money to the City in City's accounts receivable databases.

1.5 "Director" means the Director of City's Finance Department.

1.6 "FAMIS" is City's financial accounting management information system; the software accounting system that was in use prior to the introduction of SAP.

1.7 "Enterprise Resource Management" or "ERM" is a City project, utilizing SAP software, directed at integrating various business, financial and administrative functions of City to streamline processes by using available technology.

1.8 "Hansen" is a land management system used by City's Development Services Department to record data and interface with MARRS.

1.9 "Municipal Accounts Receivable and Receipting System" or "MARRS" or "MARR") is the primary software system used to record and manage the majority of City's accounts receivable.

1.10 "SAP" is a licensed, and customized software used in the ERM project, consisting of various modules for different City business, financial and administrative functions. All accounts receivable are currently being migrated from the software systems previously in use to the SAP system, which will be the sole system in use in the future.

II. TERM

2.1 This Agreement shall commence on December 13, 2004 and shall terminate on May 31, 2005, unless extension or earlier termination shall occur pursuant to any of the provisions of this Agreement.

III. SCOPE OF SERVICES

3.1 Consultant shall provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.

3.2 TASK 1 - Consultant shall research accounts receivable in the current databases, determine their accuracy, reconcile MARRs and other sub-accounts receivable systems with FAMIS and ensure that they are correctly migrated to SAP. Completion of this task is dependent on the timely receipt by the Consultants of information from the various departments. Consultant shall research open accounts receivable balances recorded in MARRs as of September 30, 2004, determine their accuracy, and provide recommendations related to appropriate classification, (i.e.; record in the system of record, write-off without collection effort, or write-off and perform collection.)

A. Research Component - Consultant shall:

- Meet with City departments that have entries in the various accounts receivable systems, including but not limited to, MARRS, CEARS, and Hansen.
- Meet with other City departments that maintain their own accounts receivable systems, including, but not limited to, the Fire Department's EMS division, the Aviation Department, Municipal Court Department and Development Services.
- Use these meetings to obtain information on the types of errors that may appear in the accounts receivable entries and how the errors can be identified.
- From the above meetings, obtain information on the types of errors that may appear in the MARRs accounts receivable entries and determine how the errors can be identified.
- Using the information gained above, conduct a full assessment of City's accounts receivable and confirm whether each account receivable entry is accurately identified as such.

B. Disposition Component – Using the information obtained in 3.2(A), Consultant shall review the accounts receivable systems and determine the appropriate disposition of each entry. Disposition codes should include the following:

- Already posted in SAP/Reconciled to FAMIS
- Should be posted in SAP
- Administrative error and should be deleted.
 - Identify the type of error (e.g. duplicate entry, service never provided...)
- Consider collection efforts; do not mitigate to SAP
- Write-off, do not collect.

Additional disposition codes may be added by Director prior to the conclusion of this Agreement, in his sole discretion, in writing, without requiring additional action by the San Antonio City Council.

C. Task 1 Deliverable: Consultant shall provide City a report reflecting the Consultant's recommended disposition of each MARRs account receivable entry no later than **February 18, 2005**.

3.3 TASK 2 –

A.1. Utilizing the information gathered in Task 1 and the results provided through this agreement in the Task 1 deliverable, Consultant shall reconcile MARRs to FAMIS, including FAMIS sub-accounts receivable and ensure that the reconciled balances are properly migrated to SAP.

To determine that the MARRs accounts receivable entries are properly migrated to SAP, the Consultant shall:

- identify whether MARRs account receivable entries were posted in FAMIS and identify the accounts to which entries were posted;
- identify the appropriate SAP financial and customer data for the MARRs/FAMIS receivables to be migrated to SAP;
- reconcile the results of MARRs/FAMIS reconciliation to appropriate SAP financial and customer accounts (including whether the accounts are deferred or reserved receivables).

A.2. Consultant shall analyze all receivables posted in SAP and research the debtors to make a recommendation to City on the economic feasibility of collecting each account. In analyzing whether an account should be referred for collection, Consultant shall use the following criteria, and any additional criteria as may be necessary to make an informed decision:

- dollar value of the individual account receivable;
- total dollar amount owed by the debtor to City, in case of multiple accounts receivable entries for a particular debtor;
- documentation available to support the invoice;
- age of the receivable;
- for accounts owed to City by businesses, the viability (continued existence and location of) of the business;
- for accounts owed to City by individuals, the ability to identify and locate the individual.

B. Task 2 Deliverable: Consultant shall:

- Prepare a report no later than March 4, 2005 showing whether the MARRs accounts receivable entries were posted in FAMIS and note changes in MARRs/FAMIS entries when migrated to SAP;
- Prepare and provide demand letters as requested by COSA management; and
- Prepare and provide a report no later than **March 4, 2005**, (or at a later date as may be mutually agreed by both parties), containing recommendations and support for each account receivable that Consultant deems uncollectible

3.4 **TASK 3** - Consultant shall advise City on the proper reflection of balances in the general ledger, including "Allowance for Doubtful Accounts" for the City's Finance Department.

A. Based on the information gathered in Tasks 1 and 2 above, Consultant shall:

- identify any additional receivable data that should be migrated to SAP;
- prepare and provide support for any journal entries required to adjust receivables in SAP;
- assist City in setting up a subsidiary ledger to account for the receivables deemed to be uncollectible;
- prepare and provide support for the journal entries required to properly account for receivables deemed to be uncollectible;
- define a methodology for calculation of the allowance for doubtful accounts on all accounts receivable.

B. Task 3 Deliverable: Consultant shall provide City recommendations in writing no later than **March 11, 2005** (or at a later date as may be mutually agreed by both parties), containing:

- Journal entries that must be made to properly account for all items listed in the accounts receivable in SAP;
- Journal entries to move entries deemed uncollectible from the accounts receivable ledger to the subsidiary ledger; and
- the method for calculating the allowance for doubtful accounts for all accounts receivable.

3.5 All work performed hereunder shall be performed in coordination with Garza/Gonzalez, who shall share in the distribution of the work and act as lead Consultant under this Agreement.

3.6 All work performed by Consultant hereunder will be monitored weekly by City. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed one hundred thousand dollars (\$100,000.00) as total compensation, to be paid to Consultant as set out in Section 4.2 and 4.3 below.

4.2 City shall pay Consultant the hourly rate for the services of Consultant's staff as shown below:

Theresa Y. Britts	\$120.00
Mark B. Lackie	\$108.00
James Burch	\$70.00
Bookkeeper	\$50.00

4.3 Consultant shall keep time sheets showing the dates worked, hours worked, nature of work performed and name of the individual performing the services. Consultant shall submit invoices to City on a monthly basis. Consultant agrees that the services stated herein may be completed within the maximum payable amount stated in section 4.1 above. Therefore, each of Consultant's invoices, delivered in conjunction with the deliverables stated in Article III, may not exceed 1/3rd of the fee set forth in section 4.1 above.

4.4 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore.

4.5 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Consultant following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

V. OWNERSHIP OF DOCUMENTS

5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.

5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

VI. RECORDS RETENTION

6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant may return said documents to City prior to or at the conclusion of said retention period.

6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

6.4 This Article 6 shall apply only to those documents that are in the care, custody and control of Consultant.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by City upon 10 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting.

7.3.2 Any material breach of the terms of this Agreement.

7.4 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

7.5 Regardless of how this Agreement is terminated, Consultant shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within ten (10) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.

7.6 Within thirty (30) calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said thirty (30) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.7 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.

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

VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio
Attn: Lena Ellis
Finance Department
131 W. Nueva
San Antonio, Texas 78207
P.O. Box 839966
San Antonio, Texas 78238-3966

If intended for Consultant, to:

Britts, Lackie & Associates
Attn: Theresa Y. Britts
4241 Piedras Drive East, Suite 150
San Antonio, TX 78228

IX. [Reserved]

X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish an original completed Certificate(s) of Insurance to the City's Finance Department, attention Lena Ellis, and City Clerk's Office, and which shall be clearly labeled "Accounts Receivable Research & Consulting" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to City's Finance Department and the City Clerk's Office, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this 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 this Agreement, but in no instance will City allow modification whereupon City may incur increased risk.

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

1. Workers' Compensation ** Employers' Liability **	Statutory \$500,000/\$500,000/\$500,000
2. Commercial General (public) Liability Insurance to include coverage for the following: a. Premises operations *b. Independent Contractors *c. Products/completed operations d. Personal Injury e. Contractual Liability *g. Broad form property damage, to include fire legal liability	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage \$50,000
3. Professional Liability (Claims Made Form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
* If Applicable as determined by City's Risk Manager	
** Alternate Plans Must Be Approved by Risk Management	

10.4 The City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Consultant shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided in Section 10.6 herein within 10 days of the requested change. Consultant shall pay any costs incurred resulting from said changes.

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

- Name the City and its officers, employees, volunteers, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the

City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.

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

City of San Antonio
Department of Finance
Attn: Lena Ellis
P.O. Box 839966
San Antonio, Texas 78283-3966

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

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

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

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

XI. INDEMNIFICATION

11.1 CONSULTANT covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to 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, directors and representatives while in the exercise of 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. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT. 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. CONSULTANT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONSULTANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.

11.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by CONSULTANT to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. CONSULTANT further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONSULTANT shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If CONSULTANT fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONSULTANT shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

11.4 Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.

12.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: None. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director, prior to the provision of any services by said subcontractor.

12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by Director.

12.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent

of Director, as evidenced in writing. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.

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

XIII. INDEPENDENT CONTRACTOR

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City. While Garza/Gonzalez may act as lead firm, Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder by Consultant, and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants. The doctrine of respondent superior shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The parties hereto understand and agree that City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by Consultant under this Agreement and that Garza/Gonzalez and Consultant have no authority to bind City.

XIV. RESERVED.

XV. CONFLICT OF INTEREST

15.1 Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or

spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

15.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Consultant further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant, and subject to approval by the City Council, as evidenced by passage of an ordinance. Notwithstanding the foregoing, subject to the mutual agreement of the parties, the Director is may extend the term of this Agreement, and/or modify the scope. Such extension shall be in writing and signed by Director and Consultant, without requiring additional City Council approval.

XVII. SEVERABILITY

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.

XVIII. LICENSES/CERTIFICATIONS

Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XIX. COMPLIANCE

Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XXI. LAW APPLICABLE

21.1 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.

21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXII. LEGAL AUTHORITY

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

XXIII. 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, and successors and assigns, except as otherwise expressly provided for herein.

XXIV. 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.

XXV. RESERVED.

XXVI. ENTIRE AGREEMENT

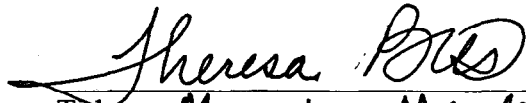
This Agreement, together with its authorizing ordinance, constitutes the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI. Amendments.

EXECUTED and **AGREED** to as of the dates indicated below. This Agreement may be executed in multiple copies, each of which shall constitute an original.

CITY:
CITY OF SAN ANTONIO

CONSULTANT:
BRITTS, LACKIE & ASSOCIATES

Title: _____
Date: _____


Title: Managing Member
Date: March 1, 2005

Approved as to Form:

City Attorney