

**CITY OF SAN ANTONIO
CONVENTION FACILITIES DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

TO: Mayor and City Council

FROM: Michael J. Sawaya, Convention Facilities Director

SUBJECT: Lila Cockrell Theatre Consulting Services

DATE: June 16, 2005

SUMMARY AND RECOMMENDATIONS

An Ordinance authorizing the Interim City Manager to execute a Professional Consulting Services Agreement and appropriating funds in the amount of \$124,900 from the Convention Center Capital Projects Fund, with Ford, Powell, & Carson Architects and Planners, Inc. for a feasibility study and recommendations regarding redevelopment options for the Lila Cockrell Theatre.

Staff recommends approval of this Ordinance.

BACKGROUND INFORMATION

The Lila Cockrell Theatre (Theatre) opened in 1968. Since original construction, the Theatre has been minimally updated to provide ADA accessible seating and dressing areas. Carpets were last replaced in 1994. No major renovations have taken place. Interior finishes are dated. Building systems are inadequate, do not meet code, and/ or are technologically out of date. Additionally, some of the Theatre's floor tile and ceiling texture contain asbestos. Due in part to these conditions and to the opening of new, competing venues, the Theatre's use as a performing arts facility has diminished over the last several years. With the expansion of the Henry B. Gonzalez Convention Center, completed in 2000, primary use has shifted from performances to general assembly meetings for conventions. As the convention center headquarters hotel project moves forward, it is appropriate to review the function of the Theatre to determine the best way to optimize its use so that timing of renovation, if any, can be coordinated to minimize impact of the operations of the Theatre and the Henry B. Gonzalez Convention Center.

The City issued a Request for Proposals (RFP) for Lila Cockrell Theatre Consulting Services on February 27, 2005, seeking a feasibility study regarding the best use of the Theatre and recommendations regarding improvements needed to update the facility for such recommended use. The RFP was advertised in the San Antonio Express-News, and direct e-mails were sent to eleven known theatre consultants to solicit national interest in the project. A Pre-Proposal Conference was held on March 14. Thirteen attendees represented eleven firms. Proposals were due on March 29. Six were received:

1. AMS Planning & Research/Kell Munoz Architects
2. Daniel P. Coffey and Associates, Ltd.
3. Ford, Powell, & Carson Architects and Planners, Inc. (FPC)
4. M. Arthur Gensler, Jr. & Associates, Inc., DBA: Gensler
5. Martinez & Johnson Architecture, PC/Overland Partners Architects
6. SVKA/Interior Design/Architecture

An evaluation committee, including staff from the Convention and Visitors Bureau, Convention Facilities Department, and the Offices of Cultural Affairs and City Architect, met to consider the proposals in accordance with the RFP's evaluation criteria:

1. Project Understanding and Proposed Timeline (25%)
2. Respondent's Experience and Qualifications (25%)
3. Project Team's Qualifications and Experience (25%)
4. Proposed Fee Schedule (5%)
5. Small Business Economic Development Advocacy (SBEDA) (20%)

The committee interviewed each Respondent and evaluated the proposals. The scores are reflected in Attachment I. As a result, the FPC team is being recommended to the City Council for consideration. FPC's team includes: Webb Management Services (feasibility study), Schuler Shook (theatre consultant), Lundy & Franke Engineering (structural engineer), Shah Smith & Associates (MEP engineer), Kitchell Corporation (theatre cost consultant), the Buck Group (ADA consultant), and Protections Development, Inc. (life safety consultant). The following summarizes the strengths of FPC, their team, and their proposal:

1. Focus on market and economic feasibility and audience potential studies as foundation for all recommendations
2. Previous work on other San Antonio theatres and with design/redevelopment of theatres in other cities.
3. Depth, expertise, and appropriateness of the team assembled for the project
4. Recognition of various deficiencies and challenges related to the Theatre
5. Inclusion of a Business Plan as part of the team's unique approach to the requested scope of services
6. Compliance with SBEDA requirements.

POLICY ANALYSIS

This ordinance will continue existing City policy to provide appropriate resources for the cultural arts and for convention center clients. Further, this ordinance will support the effective use and management of city facilities. Also, this ordinance allows the City to properly prepare for future improvements to the Theatre in a timely manner that is consistent with current City policy to support the future convention center headquarters hotel project. Based on the study results and recommendations, policy issues regarding the future of the Theatre will be brought to City Council for direction.

FISCAL IMPACT

Funds for the proposed one-time expenditure of \$124,900 for the study will need to be appropriated from the Convention Center Capital Projects Fund.

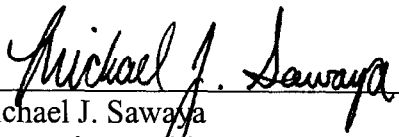
COORDINATION

This action has been coordinated with the City Architect's Office, City Attorney's Office, Contract Services Department, Convention and Visitors Bureau, Economic Development

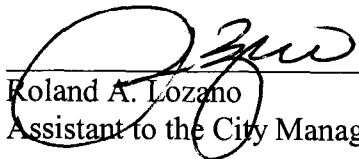
Department, Office of Cultural Affairs, Office of Management and Budget, and Risk Management.

SUPPLEMENTARY COMMENTS

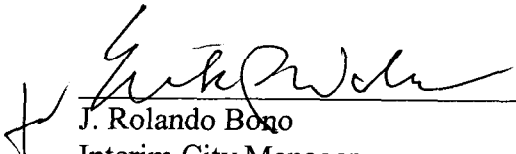
Ford, Powell & Carson Architects and Planners, Inc. has signed the Agreement and it is included as Attachment II. The required Discretionary Contracts Disclosure form is included as Attachment III.



Michael J. Sawaya
Convention Facilities Director



Roland A. Lozano
Assistant to the City Manager



J. Rolando Bono
Interim City Manager

Attachment I
Lila Cockrell Theatre Consulting Services
Proposal Scores

	Maximum Points	AMS/KM	DPC	FPC	Gensler	MJ/Overland	SV/KA
A - Project Understanding/ Proposed Timeline	25	20.40	19.40	21.40	21.00	17.80	17.20
B - Respondent's Experience/Qualifications	25	20.60	20.40	21.00	21.00	20.20	16.60
C - Project Team's Experience/Qualifications	25	20.80	20.40	21.60	21.20	20.20	16.80
Sub-Total	75	61.80	60.20	64.00	63.20	58.20	50.60
D - Proposed Fee Schedule	5	4.60	5.00	4.60	4.60	3.16	4.71
Sub-Total	80	66.40	65.20	68.60	67.80	61.36	55.31
E - Local Business Enterprise	10	3.80	0.44	10.00	1.30	3.28	10.00
E - Historically Underutilized Enterprise	5	0.40	0.22	0.60	0.95	0.33	5.00
E - Compliance w/ Small Business Program	5	2.00	1.00	1.00	2.00	1.00	5.00
Sub-Total	20	6.20	1.66	11.60	4.25	4.61	20.00
TOTAL SCORE	100	72.60	66.86	80.20	72.05	65.97	75.31

STATE OF TEXAS	§	PROFESSIONAL CONSULTING SERVICES
	§	AGREEMENT FOR THE LILA COCKRELL
COUNTY OF BEXAR	§	THEATRE

This Professional Consulting Services Agreement for the Lila Cockrell Theatre (this "Agreement") is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "CITY") acting by and through its Director of Convention Facilities (the "Director") and Ford Powell & Carson Architects and Planners, Inc. (hereinafter referred to as "CONSULTANT") located in San Antonio, Texas, acting by and through its Vice-President, Roy Lowey-Ball, both of which may be referred to herein collectively as the "Parties."

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. DEFINITIONS

Lila Cockrell Theatre (LCT) – shall mean the Lila Cockrell Theatre.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on _____, 2005 and terminate upon the earlier of either 147 calendar days from the commencement date of this Agreement or satisfactory completion of the required scope of services contained herein ("Term").

2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent agreement period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

3.1 Consultant agrees to provide all services described in this Article III and as specifically detailed in the Lila Cockrell Theatre Feasibility Study Schedule attached hereto as Attachment I in exchange for the compensation described in Article IV. The Scope of Services to be provided includes the following:

- (a) **Phase 1 - Operations Review** – to include a review of past and current use and operations of the LCT, paying special attention to any use or operational issues that relate to its physical condition and past financial performance, and preparation of a report on these findings.

- (b) **Phase 2 – Needs Assessment** – to include consideration of a range of future possibilities for the LCT based on the conditions and opportunities around the facility and a recommendation as to the LCT's best future use from the possibilities considered; a market analysis that compares the LCT to other performing arts venues in San Antonio and to similar facilities located in similar metropolitan areas; interviews of past LCT clients to assess their perception of the LCT and its needs; and preparation and presentation of a report on these findings.
- (c) **Phase 3 – Business Plan** - to include recommendations for on-going operations, governance, scheduling, marketing, staffing, and potential partnerships; a pro-forma operating budget for the LCT, a scheduling charrette; a set of defined goals and practices; a description of funding options; and preparation and presentation of a report on these recommendations.
- (d) **Phase 4 – Physical Plan** – to include recommendations on best seating configuration and number of seats for general assembly or performing arts use; the best approach to renewing the LCT's interior finishes and amenities; recommended improvements to optimize LCT to its best use(s) and bring the LCT up to all applicable existing codes; review and recommendations of mechanical systems, fire/life safety, ADA/TAS compliance, theatre systems, architecture and interiors, and structural issues; cost estimates for the proposed improvements; an optimal timeline for proposed improvements; and preparation and presentation of these recommendations.
- (e) In addition to the above phases, CONSULTANT shall be responsible for the mobilization effort and kick-off meeting that is required to initiate the project, for project management through completion of the project, and for attending and/or making, as determined by City, any necessary presentations of the final report to the City Council.

3.2 All work performed by CONSULTANT hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by CONSULTANT, which is not approved and satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII, 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, should City elect not to terminate.

3.3 CONSULTANT understands and agrees that it shall be required to coordinate scheduling of any necessary inspections or investigations of conditions at the LCT with the City and that City will provide CONSULTANT with access to the LCT only on days when no booked events are scheduled to occur.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant an amount not to exceed One Hundred Twenty-four Thousand Nine Hundred dollars (\$124,900.00) as follows:

Phase	Direct Cost	% of Project	Project Management Fee	Total Payment
1- Operations Review	17,100	17%	4,627	21,727
2 - Needs Assessment	23,100	23%	6,251	29,351
3 - Business Plan	16,600	17%	4,492	21,092
4 - Physical Plan	41,500	42%	11,230	52,730
Totals	98,300	100%	26,600	124,900

4.2 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 without prior approval and agreement of all parties, evidenced in writing and approved by Director.

4.3 CONSULTANT understands and agrees that payments will be processed based on documented completion of each phase so long as:

- (a) payment does not exceed the actual cost of the work completed;
- (b) payment would not exceed the total value of this AGREEMENT, as set out in Section 4.1.

4.4 For payment purposes under this Agreement, CONSULTANT shall submit a progress billing to the Convention Facilities Department in conjunction with the submission of the reports due upon completion of each phase of the Scope of Services. Regarding the final billing, however, CONSULTANT shall be permitted thirty (30) days from the date of project completion which to submit said billing.

4.5 Upon City's review and approval of the reports due upon completion of each phase of the Scope of Services, and City's receipt of the progress billing required by Section 4.4 above, CITY agrees to pay CONSULTANT an amount equal to CITY's liabilities not previously billed to and subsequently paid by CITY, subject to deduction for any costs questioned or not allowable. CITY shall use reasonable business efforts to ensure that all undisputed fees are paid within 45 days of receipt.

4.6 Within 21 days of the receipt of CONSULTANT's progress billings, CITY agrees to review and examine said progress billings to determine their consistency with the payment schedule in Section 4.1 above and to notify CONSULTANT should any questions or objections arise.

4.7 Final acceptance of work products and services require written approval by City. The approval official shall be the Director. Payments will be made to CONSULTANT following written approval by the Director of the final work products and services according to the phases described in the Scope of Services and more specifically described in Attachment A. 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.

4.8 Upon 45 days written notice, CONSULTANT may suspend services until all undisputed, outstanding balances are paid in full.

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 to return said documents to City prior to or at the conclusion of said retention.

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.

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 of this Agreement or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by either party upon 30 business day's written notice, which notice shall be provided in accordance with Article VIII.

7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII, 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.

7.4 Defaults With Opportunity for Cure. Should CONSULTANT default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. CONSULTANT shall have ten (10) calendar days after receipt of the written notice, in accordance with Article VIII, to cure such default. If CONSULTANT fails to cure the default within such cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new agreement with a new consultant against CONSULTANT's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Bankruptcy or selling substantially all of company's assets

7.4.2 Failing to perform or failing to comply with any covenant herein required

7.4.3 Performing unsatisfactorily

7.5 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.

7.6 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 of this Agreement. Any record transfer shall be completed within thirty (30) 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.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, CONSULTANT shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by CONSULTANT to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by CONSULTANT of any and all right or claims to collect moneys that CONSULTANT may rightfully be otherwise entitled to for services performed pursuant to this Agreement.

7.8 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, if any, pursuant to this Agreement.

7.9 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: Director
Convention Facilities Department
P.O. Box 839966
San Antonio, TX 78283-3966

If intended for CONSULTANT, to:

Ford Powell & Carson Architects and Planners, Inc.
Attn: Roy Lowey-Ball, AIA
1138 E. Commerce St.
San Antonio, TX 78205

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 Risk Management Department, Convention Facilities Department and City Clerk's Office, and which shall be clearly labeled "Theatre Consulting Services" 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 Risk Management Department, Convention Facilities Department and the 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 X 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 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. 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 *f. Explosion, collapse, underground *g. Broad form property damage, to include fire legal liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
2. Professional Liability (Claims Made Form)	\$500,000 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	

10.4 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 agreements 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 this Agreement 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;

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
Risk Management Department
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 this 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', if any, 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, DEFEND, and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and authorized representatives of CITY, individually or collectively, from and against any and all defense costs, claims, liens, damages, judgments, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind in law or in equity and nature: (1) arising out of or in connection with CONSULTANT's performance of services under this Agreement; and (2) arising out of any act or omission of CONSULTANT or any of CONSULTANT's employees, agents, consultants, contractors, representatives, guests, or invitees and their respective officers, agents, employees, directors and representatives, including any damage to or loss of any property belonging to : (a) CONSULTANT or CONSULTANT's employees exhibitors, contractors, representatives, patrons, guests or invitees and their respective officers, agents, employees, directors and representatives, or (b) CITY and the elected officials, employees, officers, directors, volunteers and representatives of CITY.**

The indemnity provided for in the foregoing paragraph shall not apply to any liability resulting from the sole negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage, except to the extent provided below.

IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS, FEDERAL, OR INTERNATIONAL LAW.

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 or CITY's activities under this Agreement. Further, CONSULTANT shall see to the investigation and defense of any such claim or demand against CONSULTANT or CITY at CONSULTANT'S sole cost until such time as CITY is found to be negligent by a court of competent jurisdiction. 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.

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

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 of CONSULTANT. CONSULTANT shall perform all necessary work.

12.2 It is City's understanding and this Agreement is made in reliance thereon that CONSULTANT does not intend to use any subcontractors in the performance of this Agreement.

12.3 If subcontracting is deemed necessary in Director's sole discretion, any work or services approved for subcontracting hereunder shall be subcontracted only by written agreement 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 the 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 written consent of Director. 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 party. 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, 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; that CONSULTANT shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that 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 the 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 the CONSULTANT under this Agreement and that the CONSULTANT has no authority to bind the City.

XIV. CONFLICT OF INTEREST

14.1 CONSULTANT acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in 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 agreement or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or

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

14.2 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.

XV. 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 Director, as evidenced in writing. No amendment shall be made to increase the amount of consideration CONSULTANT is to receive under this Agreement.

XVI. 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 this 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.

XVII. 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.

XVIII. 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.

XIX. 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 Director, as described in Article XV of this Agreement. 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.

XX. LAW APPLICABLE

20.1 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.

20.2 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.

XXI. 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.

XXII. 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.

XXIII. 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.

XXIV. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

Attachment I – Lila Cockrell Theatre Feasibility Study Schedule

XXV. ENTIRE AGREEMENT

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute 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 XV.

EXECUTED and AGREED to this the 31 day of May, 2005.

CITY:
CITY OF SAN ANTONIO
a municipal corporation

PROVIDER:
Ford Powell & Carson Architects
And Planners, Inc.

J. Rolando Bono
Interim City Manager

Name: Roy Lowey-Ball, AIA
Title: Vice-President

ATTEST:

Leticia Vacek
City Clerk

Approved as to Form:

Martha C. Sepeda
City Attorney

Lila Cockrell Theatre Feasibility Study Schedule

Phase & Cost	Phase Title	Task	Week #																		
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
		Mobilize																			
		Kickoff Meeting																			
PHASE 1	OPERATIONS REVIEW	Activity Review																			
Total - \$17,100	Webb Management Services	Financial Review																			
	Duncan Webb	Regional & Comparable Facilities																			
	Sarah Jaycox & Peter Flamm	Report																			
		Owner Review																			
		Review of Materials																			
PHASE 2	NEEDS ASSESSMENT	Facility Assessment																			
Total - \$23,100	Webb Management Services	Facility Uses and Users																			
	Duncan Webb	Market Analysis																			
	Sarah Jaycox	City Benefits and Impacts																			
	Peter Flamm	Facility Concept																			
		Report																			
		Presentation of Findings																			
		Owner Review																			
PHASE 3	BUSINESS PLAN	Activity Profile																			
Total - \$16,600	Webb Management Services	Comparables																			
	Duncan Webb	Goals & Practices																			
	Sarah Jaycox	Scheduling Charrette																			
	Peter Flamm	Governance and Operations																			
		Operating Pro-forma																			
		Funding Options																			
		Report																			
		Presentation																			
PHASE 4	PHYSICAL PLAN																				
Sub - \$14,000	Shah-Smith & Associates	Mechanical Systems																			
	Jeffery Bolander	Review in place - tour/meeting(s)																			
	Alvaro Beltran	Recommendations (prepare)																			
		Present and revise																			
Sub - \$2,000	Protection Development Inc.	Fire and Life Safety																			
	John Cochrane	Review in place (tour)																			
		Deficiency Report																			
		Present and revise																			
Sub - \$2,000	The Buck Group	ADA/TAS Compliance																			
	Robert Buck, AIA	Review in place (tour)																			
		Deficiency Report																			
Sub - \$5,000	Schuler & Shook	Theatre Systems																			
	Jack Hagler, Sr. Consult.	Review in place - tour/ meeting(s)																			
		Recommendations (prepare)																			
		Present and revise																			
Sub - \$5,000	Ford, Powell & Carson	Architecture/ Interiors																			
	Roy Lowey-Ball	Review in place (tour)																			
	David Achterberg	Recommendations (prepare)																			
	John Gutzler	Present and revise																			
Sub - \$2,500	Lundy & Franke	Structural																			
	Shawn Franke	Review in place (tour)																			
		Recommendations (prepare)																			
		Present and revise																			
Sub - \$11,000	Kitchell Corporation	Preliminary Cost Estimate																			
Total - \$41,500	Rick Pannenstiel	Tour site																			
		Receive Consultant Reports																			
		Analyze reports, prepare spreadsheet																			
		Present and revise																			
		Revise & resubmit																			
\$26,600	PROJECT MANAGEMENT	Final Report																			
	Ford, Powell & Carson																				
	Roy Lowey-Ball	Receive reports from all disciplines																			
		Collate, in-house publish																			
		Submit for Owner review																			
		Final Submission & Presentation																			

Total for Project
\$124,900

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.

(1) Identify any individual or business entity¹ that is a **party** to the discretionary contract:

Ford Powell & Carson
Roy Lowey-Ball, AIA, Principal

(2) Identify any individual or business entity which is a **partner, parent** or **subsidiary** business entity, of any individual or business entity identified above in Box (1):

☐ No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.

☐ No subcontractor(s); or

List subcontractors: Webb Management Services, Inc. Lundy & Franke, Inc.
Schuler Shook, Inc. The Buck Group, inc.
Shah Smith & Associates, Inc. Protection Development
Kitchell Corporation

(4) Identify any **lobbyist** or **public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

☒ No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

¹ 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. A sole proprietor should list the name of the individual and the d/b/a, if any.

(5) Political Contributions

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made 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 Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):

☐ No contributions made; If contributions made, list below:

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
Tommy Adkinson	Boone Powell	100.00	January 2005
Sergio Rodriguez	Boone Powell	100.00	September 04
Richard Perez	Boone Powell	100.00	September 04
Phil Hardberger	Boone Powell	100.00	June 2004
Ken Mireles	Boone Powell	100.00	October 2003
Art Hall Campaign	Boone Powell	100.00	May 2003
Carroll Schubert	John Mize	100.00	January 2005

(6) Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), ("conflicts of interest") by participating in official action relating to the discretionary contract.

X Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information 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: Vice-President

Company or D/B/A:
Ford Powell & Carson

Date:

April 29, 2005

² 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.