

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

**TO:** Mayor and City Council

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

**SUBJECT:** Frank Garrett Center HVAC Upgrades

**DATE:** September 1, 2005

**SUMMARY AND RECOMMENDATIONS**

This ordinance accepts the lowest responsive bid, appropriates funds, and awards a construction contract in the amount of \$135,472.00 payable to Magro Air Conditioning and Heating, a SBE/MBE firm, and authorizes \$6,528.00 for Project Contingency, for a total ordinance amount of \$142,000.00 in connection with the Frank Garrett Center HVAC Upgrades project, an authorized Community Development Block Grant (CDBG) project located in Council District 1.

**BACKGROUND INFORMATION**

This project will provide for the replacement of one (1) existing chiller with a new compact 170-ton air cool chiller to include controls interface, all associated piping connections, the isolators, and refrigerant in compliance with local codes. This project will also include Direct Digital Control (DDC) controllers and control loops. This project is scheduled to begin in September 2005 and is anticipated to be completed by January 2006.

This project was advertised for construction bids in the Commercial Recorder, the San Antonio Informer, and La Prensa in May 2005. In addition, the bid announcement was made on TVSA, through the Small Business Economic Development Advocacy (SBEDA) Office and Dodge Report. Plans were also available for review by potential bidders at the office of Slay Engineering Co., Inc. 4335 Piedras Dr. West, Suite 210, San Antonio, Texas 78228. Bids for this project were opened on July 6, 2005 and four (4) firms responded. Of these, Magro Air Conditioning and Heating submitted the lowest responsive bid. A matrix of the bid outcome is included herein as Attachment 2 and the construction contract is included herein as Attachment 3.

The Economic Development Department has reviewed and approved the Good Faith Effort Plan submitted by Magro Air Conditioning and Heating, which is a SBE/MBE firm, that has committed to seek the utilization of SBEDA certified subcontractors. The Memorandum from the Economic Development Department is included herein as Attachment 3.

**POLICY ANALYSIS**

Approval of this ordinance will be a continuation of City Council policy to complete previously approved Community Development Block Grant (CDBG) projects.

### **FISCAL IMPACT**

This is a one-time capital improvement expenditure within budget and included in the FY 05-10 Capital Improvement Program Budget. Funds in the amount of \$142,000 are available from Community Development Block Grant (CDBG) and are authorized payable and appropriated as follows:

\$135,472.00	payable to Magro Air Conditioning and Heating for construction services
\$ 6,528.00	for Project Contingency

### **COORDINATION**


This request for ordinance has been coordinated with the Office of Management and Budget, Housing and Community Development, the Community Initiatives Department, and the Finance Department.

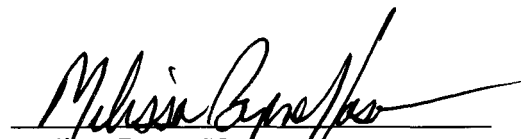
### **SUPPLEMENTARY COMMENTS**

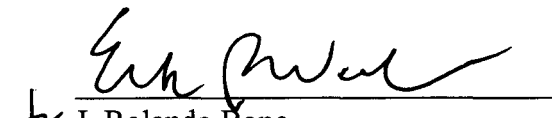
This construction contract was developed utilizing the formal competitive bid process; therefore, a Discretionary Contracts Disclosure Form is not required.

### **ATTACHMENTS**

1. Project Map
2. Bid Tab
3. Memo from the Economic Development Department dated August 5, 2005.
4. Construction Contract

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

  
Melissa Byrne Vossmer  
Assistant City Manager

  
J. Rolando Bono  
City Manager

## FRANK GARRETT CENTER HVAC UPGRADES

**Bids opened and received:**

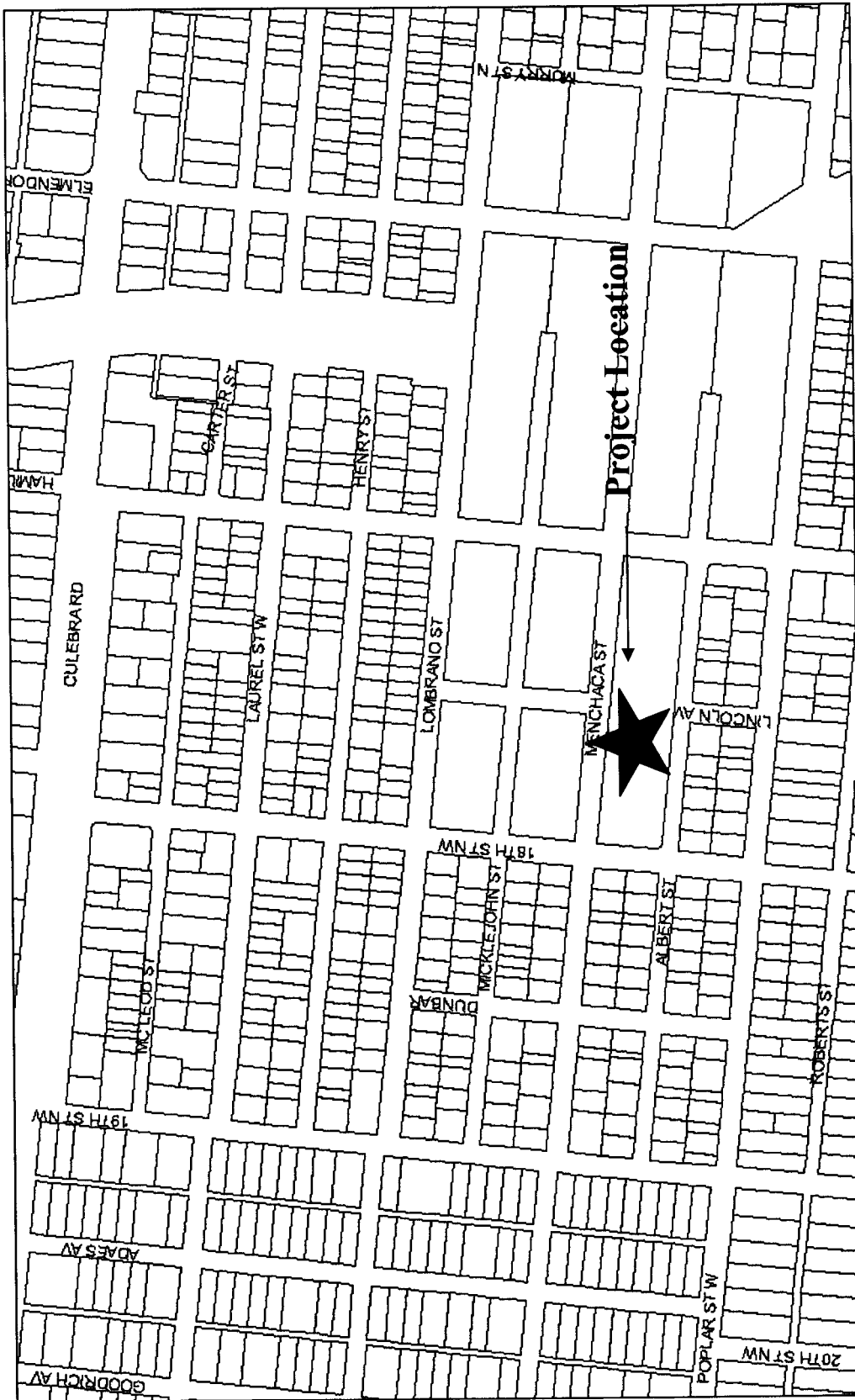
July 6, 2005

### Bid Tabulation

	Contractor	Base Bid	Alternate 1	Total Bid
1.	Magro A/C Units	\$110,615.00	\$24,857.00	\$135,472.00
2.	Central Electric	\$128,940.00	\$23,800.00	\$152,740.00
3.	Comfort Air	\$145,450.00	\$24,360.00	\$169,810.00
4.	3 TI, Inc.	\$174,000.00	\$25,000.00	\$199,000.00

NORTH  
↑

G.I.S. Location Map



Frank Garrett Center HVAC Upgrade  
1226 N.W. 18th Street  
Council District No. 1

City of San Antonio  
Economic Development Department  
Interdepartmental Memorandum

TO: William Krause, Capital Projects Manager, Public Works Department

FROM: Manuel Longoria, Jr., Assistant Director, Economic Development Department

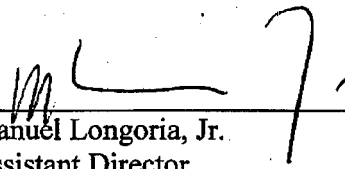
COPIES: Anita Uribe Martin; File

SUBJECT: **Good Faith Effort Plan Submitted for the Frank Garrett Center HCAC Upgrades**

DATE: August 5, 2005

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We have reviewed the Good Faith Effort Plan for the **Frank Garrett Center HCAC Upgrades**. Since the Project is under \$200,000 a Good Faith Effort Plan is not required, but the Prime Contractor is still encouraged to solicit M/W/AABE's for contracting opportunities. If there are any questions, please feel free to contact Anita Uribe Martin at (210) 207-3900.

  
\_\_\_\_\_  
Manuel Longoria, Jr.  
Assistant Director  
Economic Development Department

ML/cm

# CONSTRUCTION CONTRACT

STATE OF TEXAS  
COUNTY OF BEXAR  
CITY OF SAN ANTONIO

## CONTRACT FOR

### FRANK GARRETT CENTER HVAC UPGRADES

**THIS AGREEMENT** made and entered into in San Antonio, Bexar County, Texas between the City of San Antonio, a municipal corporation, in the State of Texas, hereinafter termed "City", and

**MAGRO AIR CONDITIONING AND HEATING  
3002 MEADOW RAIN  
SAN ANTONIO, TEXAS 78251**

hereinafter termed "Contractor", said agreement being executed by the City pursuant to the City Charter and Ordinances and Resolutions of the City Council, and by said Contractor,

**WITNESSETH:** That the parties hereto, each in consideration of the agreements on the part of the other herein made and referred to, have covenanted mutually, and hereby mutually covenant, the City for itself and its successors, and the Contractor for itself or himself or themselves and his or their heirs, executors and administrators or successors, as follows, to-wit:

#### A. DEFINITIONS & SCOPE OF CONTRACT

1. **CITY AND OFFICIALS.** Whenever in this contract is found the term "City", "City Council", "City Manager", "Director of Public Works", "Director of Finance", "City Clerk" or other designation of any City institution, officer, employee or title, or a pronoun in its, his or their place, the same shall, unless indicated otherwise, be understood to mean the City of San Antonio or its successors, or the governing body, or the person or persons now or hereafter holding or exercising the duties of such designated official position, office, employment or title, in said City, or any person or persons acting lawfully in the corresponding official capacity on behalf of said City at such time and within the powers and authority held by him or them;

2. **CONTRACTOR.** Whenever the term "Contractor" or a pronoun in its place is used herein, it shall be taken to include any person, association or persons, firm or corporation, notwithstanding such pronoun may be used in the masculine gender or singular number, and said term or pronoun shall include in their respective capacities, the President, Manager, or other officer or agent for the time being, representing or locally managing the work of any corporation contracting herein.

3. **INCLUDED INSTRUMENTS.** The Request for Competitive Sealed Proposals, specifications including Special and General Conditions, plans, Instructions to Offerors, advertisement for competitive sealed proposals, the proposal, and the construction performance and payment bonds, and other bonds, if any, made by the Contractor, the Charter, Ordinances and Resolutions of the City, all in so far as prepared for or relating to said work herein undertaken are hereby made a part of this agreement and are included in this contract as if rewritten or copied in full herein, and shall be deemed "included instruments" when that term is used.

4. **CONTRACT TO CONTROL.** In case of conflict or inconsistency between this contract and the Project Manual, specifications, plans or other included instruments, this contract shall control, but insofar as such provisions can stand together they shall all be regarded as cumulative.

5. **SCOPE OF CONTRACT AND SPECIAL PROVISIONS FOR SUPERVISION OF WORK.** It is contemplated that this contract shall be used as a general form of construction contract for Public Works projects and for some of said work independent consulting Architects or Engineers may be engaged, their identity and capacity shall be designated herein; however, Contractor understands that City may abrogate the authority of such consultant as provided in the terms of its contract relationship with the latter, and the Director of Public Works shall, in such event, be vested with all powers formerly exercised by such consultant, provided written notice of such substitution shall be immediately served on the Contractor in writing. Nothing herein shall authorize independent agreements between Contractor and such Engineer or

Architect, nor shall the latter be deemed to bear a legal relationship to either Contractor or City other than as evidenced by the City's contract with such consultant.

**6. DEFAULT AND VIOLATIONS OF CONTRACT.** If Contractor shall fail or refuse to take such measures as the Director of Public Works may determine to be necessary to insure the completion of the work within the time allowed therefor, or if the work to be done under this contract shall be abandoned by Contractor, or if this contract, or any right or interest therein shall be assigned or sub-let by Contractor otherwise than is herein specified, or if at any time said Director of Public Works shall certify in writing that Contractor is willfully violating or refusing to observe any of the conditions, provisions or stipulations of this contract or of the Project Manual, specifications, plans or other included instruments or is executing the same in bad faith or not in accordance with the terms thereof, or if the work is not fully completed within the time allowed for its completion, then, in any such event, the City Manager shall be authorized at his election to order Contractor to discontinue all work under this contract by written notice given as herein provided; and Contractor and his employees shall thereupon discontinue all work upon said premises; and the City shall, upon such notice having been given, be authorized fully to enter upon said premises, through any designated officer, agent or contractor, and to take full possession of said work, and to order or contract for the completion of said work in any manner it may deem proper; and said City shall thereupon have a right to take full possession of, and to use for the purposes of said work, all materials, tools, implements or machinery previously provided by the Contractor for the performance of the work and located at the project site. All costs and expenses requisite to the completion of the work by the City whether accomplished by contract or otherwise, and including reasonable costs of supervision, together with damages for delay as herein specified, shall be charged to and paid by the Contractor. If the cost of such completion by the City shall be less than the amount agreed to be paid to the Contractor hereunder, the Contractor shall forfeit by virtue of his default the right to any difference unless otherwise specified by the City Manager; if, however, the cost of such completion shall exceed the amount herein agreed to be paid to the Contractor, then the Contractor or his bondsman shall pay to the City the amount of such additional costs and expenses to be fixed and determined as herein provided.

**7. COMMUNICATIONS BETWEEN CONTRACTOR AND CITY.** The Contractor agrees that the following address in the City of San Antonio, Texas, shall be used for the transmission to him of any notices or correspondence in connection with the performance of this contract:

**3002 MEADOW RAIN  
SAN ANTONIO, TEXAS 78251**

The above address may be changed only by filing written notice to that effect with the Director of Public Works. All communications, notices and other correspondence forwarded to the above address shall be presumed conclusively to have been delivered by regular course of mail to the Contractor.

**8. PREVAILING WAGE RATE AND GENERAL LABOR CONDITIONS.** The Provisions of Chapter 2258, Texas Government Code, are expressly made a part of this contract. In accordance therewith, a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform this contract is included with the Project Manual and made a part hereof. The Contractor shall forfeit as a penalty to the City sixty dollars (\$60.00) for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the contractor or any sub-contractor under him. The establishment of prevailing wage rates pursuant to Chapter 2258, Texas Government Code shall not be construed to relieve the Contractor from his obligation under any Federal or State Law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed hereunder. The Contractor, in the execution of this project, agrees that he shall not discriminate in his employment practices against any person because of race, color, creed, sex or origin. The Contractor agrees that he/she will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation. In addition, Contractor agrees that he/she will abide by all applicable terms and provisions of the Small Business Economic Development Advocacy Program (SEBDA).

**9. ASSIGNMENTS AND SUBLETTING.** Contractor shall not assign, transfer, convey, sub-let or otherwise dispose of this contract, or any portion thereof, or any right, title or interest in, to or under the same, without previous consent in writing of the City, to be endorsed hereon or hereto attached; and Contractor shall not assign by power of attorney or otherwise any of the monies or other considerations to become due and payable by the City under this contract; unless by and with the consent signified in like manner. And in any event whatsoever, whether by such consent, by operation or law or otherwise, any and all such assignments, transfers or sub-letting, and the entire subject matter thereof, shall be and remain subject to all rights of the City herein or otherwise provided, and no waiver of this stipulation can be invoked against the City. In no event shall the City be liable in excess of the consideration of this contract in the case of any such assignment, transfer, conveyance or sub-letting of the work or performance which is the subject hereof. The City reserves the right to withhold any monthly payment hereafter provided for in the event of an assignment or sub-letting of a

portion of the work without the consent and knowledge of the City and by reserving such right, the City shall not be deemed to have waived its right to declare a full breach of this contract for Contractor's failure to comply with provisions hereof, such remedy being alternative only and exercisable at the option of the City.

## **B. SCOPE OF WORK**

1. **DESCRIPTION AND LOCATION.** The site of the work herein contemplated is located and described generally as follows:

### **FRANK GARRETT CENTER HVAC UPGRADES**

and this contract is performable exclusively in Bexar County, Texas.

2. **GENERAL UNDERSTANDING.** Contractor at his own cost and expense shall furnish all supervision, tools, implements, machinery, labor, materials and accessories, such as are necessary and proper for the purpose, and pay all permit and license fees, and shall at his own cost and expense construct, build and complete, in a good, first class, substantial and workmanlike manner, the structures, work and improvements herein described or referred to in and upon a certain parcel or parcels of land hereinafter described or referred to, all according to this contract and the included instruments, prepared by

### **ALDERSON & ASSOCIATES, INC.**

and now on file in Plans and Records Office of the Capital Improvement Program Division of Public Works Department; and according to field interpretations to be furnished Contractor by the City upon request.

3. **WORK UNDERSTOOD BY CONTRACTOR.** Contractor declares that prior to the submission of his bid on this contract he has thoroughly examined the location of the work to be performed, is familiar with local conditions, and has read and thoroughly understands the "included instruments" as they relate to the physical conditions prevalent or likely to be encountered in the performance of the work at such location. Contractor hereby accepts such "included instruments" as satisfactory in all respects to accomplish the proper performance of the work at the project site and accordingly assumes the risk of any delays or additional costs which might arise from errors or miscalculations in such "included instruments" or from erroneous assumptions upon which same may have been predicated as to the physical conditions at the work site including, but not by way of limitation, latent defects or conditions of the subsoil.

4. **IMPLIED WORK.** Any work or materials that may have been omitted in the description of said project, but the use of which is implied or necessary to the project's completion, shall be deemed to be included in this contract and shall be furnished by the Contractor as if the same had been stated specifically, without any additional charge to the City.

5. **INCIDENTAL WORK, CONNECTIONS AND PASSAGEWAYS.** The Contractor shall do and perform all implied or incidental work necessary to completion of this contract including, but not by way of limitation, the following: Shall make and provide all suitable connections with existing improvements as are necessarily implied herein for proper completion of the project; shall provide passageways or leave open such thoroughfares in the work area as may be required by the City and protect and guard same at his own risk as more specifically detailed in Paragraph E-1 hereof; and shall continuously maintain the work area in a clean and workman-like manner and prior to final acceptance of the work, restore the site to its prior condition to the extent permitted by the improvement. All of said incidental work to be done to the satisfaction of the City at Contractor's own cost and expense.

6. **WORK AND MATERIALS.** All materials used by the Contractor shall conform to the Project Manual, specifications, plans or other included documents. However, if the documents are silent, only the best quality materials shall be used, and in the event of dispute as to the relative quality of materials, the selection of the Director of Public Works shall be final. All of said work shall be executed in a good, thorough and workman-like manner, to the satisfaction of the Director of Public Works, who, together with all assistants and inspectors under his direction, or in the employ of the City for the purpose of said work, shall at all times have free access to the project site, stores and materials, and shall be privileged to take such samples of all materials and to cause tests of materials or of any part of the work to be made except as otherwise provided in the documents. Contractor shall render all assistance required of him by the Director of Public Works or his aforementioned assistants or inspectors in connection with any such tests, and if any part of the work or the materials used shall be found unsuitable or improper, either wholly or in part, Contractor shall correct or remove such defective work or materials from the project site. In connection with the visual inspection or materials testing contemplated herein, it is clearly understood that the City exercises no right to control the means of accomplishing the end product of the work and no approval of any phase of the construction project by any of the City's agents or inspectors shall relieve the Contractor from full compliance with the Project Manual, plans and specifications, or other including documents regarding the ultimate work product and any additional cost or delay occasioned by defects in the work or failure to meet project ends at any such phase shall be borne by the Contractor.



7. **CONTRACTOR'S RISK.** Contractor shall be responsible for the complete performance of and compliance with this contract, and for all materials on the ground or elsewhere, and for all the work performed under this contract, and shall protect the same from all loss or damage from any cause whatsoever until final completion and acceptance; and shall deliver said structures, work and improvements to the City in a completed and perfect condition in accordance with this contract.

C. **BEGINNING AND COMPLETION OF WORK, DAMAGES FOR DELAY**

1. **TIME TO BEGIN WORK.** The work embraced in this contract shall be begun by contractor within seven (7) calendar days after City shall notify Contractor in writing to begin, and if such work be actually begun by Contractor before such notice, then the period of time herein allowed for the completion of the work shall begin to run from such date when work is actually commenced.

2. **COMPLETION OF WORK.**

a. Calendar Day Contract -- After beginning work as outlined in Paragraph C-1 above, the Contractor shall prosecute same continuously and diligently for and during the period of Sixty-three (63) **Calendar Days**, during which period of time Contractor binds and obligates himself at all times to employ sufficient force and diligence to complete said structures, work and improvements, and to deliver same over to the City in a completed, undamaged, and clean condition; and the time of beginning, rate of progress and time of completion of said work are hereby declared and understood to be of the essence of this contract; provided, however, said Director of Public Works may suspend said work wholly or in part by his written order whenever in his opinion the interests of the City require the suspension of such work, such orders not to continue in effect longer than one week at any one time. The City may, at its discretion, establish phases of the project or areas of the work to be performed and in such order or sequence as the City shall deem best in the public interest.

Should the work be delayed necessarily by any damage that may happen thereto by any unusual, unavoidable accident, or by the condition of the weather, or by action of the elements beyond the number of days allocated in the General Conditions, or by any general strike of employees, or by shortage of materials, or by suspension of the work, or by any injunction or other court action or by any delay which may exist for the City to procure any title to lands or any right or interest therein needed for the purposes of said work, Contractor shall have no claim for damages on account of such delay, but calendar days will not be charged during the period of any such delays.

3. **DAMAGES FOR DELAY.** If Contractor shall fail to complete the work within the time herein specified or otherwise allowed therefor, he shall be liable for the following sums per day for the period of such delay shall be paid or allowed by Contractor to City or be deducted by the City on final estimate and settlement, not as a penalty, but as liquidated damages due to City for expense, loss and public inconvenience resulting from failure to complete said work within the time allowed, such time of completion being an essential element and consideration, as a result of such delay:

<u>For Amount of Contract</u>	<u>Amount of Liquidated Damages per Day</u>
\$3,000,001 and above	\$900.00
\$2,000,001 to \$3,000,000	\$800.00
\$1,000,001 to \$2,000,000	\$700.00
\$ 750,001 to \$1,000,000	\$600.00
\$ 500,001 to \$ 750,000	\$500.00
\$ 250,001 to \$ 500,000	\$400.00
\$ 100,001 to \$ 250,000	\$300.00
\$ 50,001 to \$ 100,000	\$200.00
\$ 1 to \$ 50,000	\$100.00

The amount of all such damage shall be fixed and determined by the written certificate of Director of Public Works, whose judgment shall be final disposition thereof.

4. **COMPLETION.** Completion of the project will be considered only after all stipulations, requirements and provisions of this contract are faithfully completed and the project is delivered to the City for use. In the event that only minor items remain for completion, the Director of Public Works may issue a conditional approval in accordance with Paragraph D-2, listing the exceptions; however, the completion date will not be effective until all items noted as exceptions in the Conditional Approval have been corrected.

5. **NO WAIVER OF CITY'S RIGHTS.** Neither the inspection nor approval by said Director of Public Works or any inspector, officer or employee of the City, nor any order, measurement or certificate by said Director of Public Works,

nor any estimate or payment by the City for any part of said work, or material or method or equipment, nor any extension of time, nor any possession of the work or place taken by the City, or any officer or employee thereof at any time before final acceptance, shall operate as a waiver of any provision or obligation of this contract or of any right or power herein given or reserved to said City, or of any right to claim any indemnity or damages herein provided for; nor shall any waiver of any breach of this contract be deemed as a waiver of any other or subsequent breach; and every right or remedy under this contract or included instruments shall be cumulative, and in addition to all other rights and remedies.

6. **OCCUPANCY.** The City, at the discretion of the Director of Public Works, shall have the right to take possession of and use any completed portion or partially completed portion of the structure or work, provided, in the opinion of the Director of Public Works, such possession or use does not materially affect the Contractor's ability to proceed with his work on the project. No additional time will be granted the Contractor for occupancy or possession and use of any partially completed or completed work, and such possession or use shall not constitute acceptance of the work taken or used.

#### D. **PAYMENT**

1. **PRICES AND CONSIDERATIONS.** In consideration of the faithful performance of this contract and the construction, completion, and delivery of said structures, work and improvements, the City of San Antonio agrees and shall be and is hereby bound and obligated to pay at the office of the Director of Finance of the City of San Antonio, in Bexar County, Texas, to the Contractor as hereinafter provided out of its allocated fund

the following sum or amount or amounts, or prices, to-wit:

**FOR MATERIALS AND LABOR: ONE HUNDRED THIRTY FIVE THOUSAND FOUR HUNDRED SEVENTY-TWO DOLLARS. AND NO CENTS. (\$135,472.00)**

the same being the amount or amounts or prices for said work named in the bid of Contractor, attached hereto as an included instrument.

2. **MONTHLY ESTIMATES.** During the early part of each month as the work progresses the Consultant shall review and approve the Contractor's pay application estimate of the materials brought into the work and the labor performed during the preceding month. The Consultant shall identify the number of calendar days used during such month, and the City shall thereupon, about the middle of each month make payments to Contractor of monthly installments based upon such estimate in a sum equivalent to ninety percent (90%) of each such monthly estimate. At the time the last monthly estimate is paid, a letter of conditional approval will be furnished the Contractor. The remaining ten percent (10%) of the estimated value shall be held by the City until the final settlement hereinafter provided for. However, where the contract price exceeds four hundred thousand dollars, installments shall be paid to Contractor at the rate of ninety-five (95%) percent of each monthly estimate, and the retainage held until final acceptance shall be five (5%) percent. The payments of such installments shall be held to be payments on account of the contract sum, and the certificates or estimates of the Director of Public Works upon which such monthly payments are based shall be held to have been given only for the purposes of fixing the sums to be so paid in compliance with Paragraph D-5 hereof and shall not in any way be deemed to have been an acceptance of any part of the work, or to prejudice said City in the final settlement of account or in requiring the completion of the work as herein provided.

3. **FINAL ESTIMATE.** Contractor shall not be entitled to receive payment of any sum in excess of the amounts paid upon such monthly estimates as outlined above for at least thirty (30) days after transmittal of the letter of conditional approval and not before all the stipulations, requirements and provisions of this contract are faithfully performed and complied with, and unless and until said structures, work and improvements shall be entirely completed, and delivered to and accepted by the City in accordance with this contract; and such completion, delivery and acceptance is evidenced by the certificate of final acceptance from the Director of Public Works and such certificate is approved by the City Manager. The City shall make payment to Contractor the amount of such final estimate, taking into account all amounts previously retained and deducted from such monthly estimates and remaining payable to the Contractor but deducting from the amount of such final estimate and retaining any and all sums which are to be deducted by the City or paid or allowed by the Contractor to the City, or claimed for labor or materials furnished by any person, firm or corporation, or which are to be retained and held by City for any reason.

4. **CLAIMS FOR LABOR OR MATERIALS.** Contractor hereby agrees to promptly pay all persons supplying labor, services and materials in the prosecution of the work provided for in this contract and any and all duly authorized modifications of said contract that may hereafter be made, and shall and will fully indemnify and hold harmless the City against any and all claims, liens, suits or actions asserted by any person, persons, firm or corporation on account of labor, materials or services furnished such Contractor during the prosecution of the work herein undertaken and Contractor shall execute a bond for this purpose as hereinafter set out. Before the City shall be obliged to pay any amount to Contractor on

final settlement, Contractor shall furnish to the satisfaction of the Director of Finance, evidence that all labor employed and all materials used in the construction of the work have been fully paid for by Contractor.

**5. DIRECTOR OF PUBLIC WORKS TO FINALLY DETERMINE ALL AMOUNTS PAYABLE OR CHARGEABLE.**

It is specially understood and agreed that subject only to the prices, terms and provisions specifically set forth in this contract and included instruments, the written estimates and certificates of the Director of Public Works shall be final in fixing and determining amounts payable or chargeable hereunder to Contractor by City as required by the other terms and conditions hereof, also in case of controversy, in fixing and determining all un-liquidated sums to be deducted and retained by City for any purpose whatever out of any funds estimated as payable to Contractor by City.

**6. ALTERATIONS AND EXTRA WORK.**

Said Director of Public Works may, by his written order, approved by the signature of the City Manager, make deletions, alterations, modifications or additions in the Project Manual, plans and specifications or other included documents for the work for the purpose of perfecting the work herein undertaken or the ramifications thereof, and the Contractor shall execute the work as so changed, provided the entire cost of such extra work as results from such changes, including the cost of extra work resulting from any prior alterations modifications, or additions so ordered, shall not exceed twenty-five percent (25%) of the original amount of the contract, as set out in paragraph D-1 hereof; and provided further that the price is agreed upon in writing before the work is done or materials furnished and that such agreement is signed by the Contractor and by the Director of Public Works and the City Manager, it being further agreed and understood that if no such agreement as to price can be reached after discussions, that payment by the City shall be upon the basis of cost of labor and materials plus ten percent (10%). The cost of such extra work shall be added to the estimates payable to the Contractor by the City, all of which shall be effected under the terms and provisions of this contract. The Director of Public Works may order the Contractor to omit any part or parts of the work remaining to be done and the City shall not be bound to pay for extra work so ordered to be omitted. No additional working time will be granted for alterations and/or extra work unless specified in said written order approving work.

**E. INDEMNIFICATION**

**1. CARE TO AVOID ACCIDENTS OR INJURY TO PERSON OR PROPERTY.**

During the performance of the work within the contemplation of this contract and until final completion and acceptance thereof, Contractor shall exercise the utmost care to avoid accident or injury to persons or property. He shall place and maintain all necessary barriers and safeguards, including watchmen, if necessary, about the work site for the prevention of accidents and at night shall maintain adequate lights and other warning devices, and generally shall take all precautions requisite to the protection of the general public and properties adjacent to the work site. Contractor shall and will indemnify and save harmless the City from and against any and all actions and claims, and against all costs, damages and expenses to which the City may be put by reason of any injury or alleged injury to person or property, resulting or alleged to result from or to be occasioned by the acts or omissions of the Contractor, whether negligent or otherwise, in the performance, conduct or maintenance of the work, or in guarding same, or from any improper methods, tools, implements or materials employed therein, or on account of any such acts or omissions of Contractor's agents, servants, employees, assignees or sub-contractors (including the agents, servants and employees of such sub-contractor); and Contractor or his insurer shall well and truly make payment of any and all sums recovered against the City in any suit or suits on account of such alleged injury or damage, to which the City may be made a party, together with all costs, damages and expenses borne by the City in connection with such suits, all in a manner as to save the City harmless from any expense connected with such actions and claims. The City is further authorized, upon the order of the Director of Public Works, to deduct or retain from any estimate or estimates or amounts retained hereunder, such sum as may be claimed for any injury or damage described above unless and until Contractor shall give a further and special bond or deposit adequate to cover such contingent liability as determined by the Director of Public Works or otherwise present evidence of full indemnification to the City in connection with such claims or actions.

**2. INTELLECTUAL PROPERTY RIGHTS, ETC.**

Contractor agrees that he will at all times pay all fees, royalties or license charges on all patented, registered or copyrighted machines, materials, methods or processes used in the construction of said work and supplied as a part of the finished work, or appurtenant thereof; and that he will ever hold the City free and harmless from any and all claims on account of the use of any intellectual property.

**F. INSURANCE**

1. The following types of insurance shall be furnished for the duration of the project, and two copies of Certificates of Insurance showing compliance with the provisions of this paragraph shall be furnished to the Department of Public Works prior to or at the time this contract is executed by the Contractor and before the notice to proceed (work project authorization) is issued.

- a. Worker's Compensation Insurance Coverage – Statutory, \$500,000.00 each occurrence as required by 110.110 (c) (7) of the Texas Administrative Code

- b. Commercial General (Public) Liability – Combined Single Limit for Bodily injury and Property Damage: \$1,000,000 per occurrence of its equivalent with a \$2,000,000 Aggregate to include coverage for Premises/Operation, Independent Contractors (if applicable) Products/completed Operations, Personal Injury, contractual Liability, Explosion, Collapse and Underground Property Damage (if applicable) Products/completed Operations, Personal Injury, Contractual Liability, Explosion, Collapse and Underground Property Damage (if applicable) and Broad Form Property Damage, to include Fire Legal Liability (if applicable)
- b. Business Automobile Liability – Combined Single Limit for Bodily Injury and Property damage: \$1,000,000 per occurrence or its Equivalent to include coverage for Owned/Leased Vehicles, Non-owned Vehicles and Hired Vehicles.
- c. Builder's Risk Insurance Coverage shall be carried as specified in the Project Manual
- d. And any other insurance requirements as identified in the Project Manual

2. **Definitions: Certificate of coverage ("certificate")-** A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

**Duration of the project** - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity. Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

3. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

4. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

5. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

6. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

- (a) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

- (b) no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

7. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

8. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

9. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

10. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

- (a) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
- (b) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
- (c) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (d) obtain from each other person with whom it contracts, and provide to the Contractor:
  - (i) a certificate of coverage, prior to the other person beginning work on the project; and
  - (ii) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (e) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (f) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- (g) contractually require each person with whom it contracts, to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.

11. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

12. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

13. The City shall be named as an additional insured in all coverage described above in paragraph F.1.a, above.

14. In the submission of the Certificates of Insurance, the insurance company in every case must agree to providing notice of cancellation of any insurance to the City ten (10) days prior to such cancellation of policies covered by the certificates.

## G. BONDS

1. **PERFORMANCE BOND.** Contractor hereby agrees to execute with sureties and deliver to the City, at once, a "Performance Bond" in accordance with Chapter 2253, Texas Local Government Code, in the total amount of the contract price, \$ 135,472.00, approved by the City as to form and sufficiency, conditioned that Contractor shall faithfully perform, observe and comply with all the terms, conditions and stipulations, undertakings and provisions of the contract, said Performance Bond to be attached hereto as an included instrument.

2. **PAYMENT BOND.** Contractor hereby agrees to execute with sureties and to delivery to the City, at once, a "Payment Bond" in accordance with Chapter 2253, Texas Local Government Code, in an amount at least equal to the contract price, such as shall be satisfactory to the City as to form and sufficiency, as security for the payment of all persons supplying labor and material in the prosecution of the work provided for in this contract; said Payment Bond to be attached hereto as an included instrument.

3. **CONTRACTOR AND SURETIES STILL BOUND.** No assignment, transfer or subletting, whether with or without the consent of said City, and no order of said City for or approval or any alterations or modifications in said Project Manual, plans and specifications, or other included documents, or work, and no change in the requirements or order for extra work made by the City as provided in this contract, shall ever in any manner release or diminish the responsibility of Contractor or any surety on any bond of Contractor, but on the contrary, such responsibility shall extend to and comprehend all such changes and other matters.

## H. COMPLIANCE WITH FEDERAL REGULATIONS (applicable for Federally funded projects)

1. The Contractor is responsible for compliance with all Federal regulations included in the City of San Antonio Department of Housing and Community Development Federal Compliance Manual, as may occasionally be amended. The copy of the Federal manual is incorporated and made part of this contract.

## I. INTEREST IN CITY CONTRACT PROHIBITED

1. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or service, except on behalf of the City as an officer or employee. Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the City and/or 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 owns ten (10) percent or more of the voting stock or shares 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.

## J. GENERAL PROVISIONS

1. **MERGER.** This document and included instruments is the entire contract and recites the full consideration between the parties, there being no other written or parol agreement; it being understood that the Charter of the City of San Antonio requires all of its contracts to be written and made by ordinance.
2. **CHOICE OF LAWS, VENUE.** This Contract shall be construed under the laws of the State of Texas.
3. **CONSTRUCTION OF TERMS.** The headings preceding the text of the paragraphs hereof are inserted solely for the convenience of reference and shall not constitute a part of this Contract, nor shall they affect its meaning, construction or effect. The use herein of the singular number shall be deemed to include the plural and vice versa, and the use hereof of the masculine shall be deemed to mean the feminine or neuter and vice versa, wherever the sense of this contract so requires.
4. **SEVERABILITY.** If any term or provisions of this contract, or the application thereof, shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this contract, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, but rather shall be enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, said City of San Antonio has lawfully caused these presents to be executed by the City Manager of said City, and the corporate seal of said City to be hereunto affixed and this instrument to be attested by the City Clerk; and the said Contractor, acting by LOUIS J. MAGRO thereunto duly authorized OWNER/PROJECT MANAGER does now sign, execute and deliver this instrument.

EXECUTED in San Antonio, Texas on \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_.

(CITY SEAL)

CITY OF SAN ANTONIO

BY: \_\_\_\_\_  
City Manager

ATTEST: \_\_\_\_\_  
City Clerk

(CORPORATE SEAL)

MAGRO AIR CONDITIONING AND  
HEATING  
Contractor

BY: Louis J. Magro  
Louis J. Magro, Owner/Project Manager

ATTEST: \_\_\_\_\_  
Secretary