

AN ORDINANCE 2006-04-06-0437

AUTHORIZING THE EXTENSION OF TWO PREVIOUSLY AUTHORIZED INDEFINITE DELIVERY PROFESSIONAL SERVICES AGREEMENTS FOR CITY-WIDE TRAFFIC ENGINEERING CONSULTING SERVICES ON AN AS-NEEDED BASIS WITH PAPE-DAWSON ENGINEERS, INC. AND POST, BUCKLEY, SCHUH & JERNIGAN, INC., AND INCREASING THE CURRENT CONTRACT AMOUNTS OF \$500,000.00 PER CONTRACT TO \$1,000,000.00 PER CONTRACT.

* * * * *

WHEREAS, Indefinite Delivery Professional Services Agreements on an as-needed basis, with **Pape-Dawson Engineers, Inc.** and **Post, Buckley, Schuh & Jernigan, Inc. (PBS&J)**, each in the amount of \$500,000.00, for City-wide traffic engineering consulting services, were authorized by Ordinance Number 100234 passed on January 6, 2005, for terms of one year, with an option to extend one or both Agreements for one additional year at the City's discretion; and

WHEREAS, it is necessary to increase each contract amount from \$500,000.00 to \$1,000,000.00 for each Agreement; and

WHEREAS, work activities will be approved by the Director of Public Works on an as-needed basis; and

WHEREAS, approval of this Ordinance will be consistent with City Council policy to ensure public safety and will enable prompt response to issues that may arise in or around City-owned facilities and during the execution of City construction projects; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee is authorized to execute one year extensions to the Professional Services Agreements with **Pape Dawson Engineers, Inc.** and **Post, Buckley, Schuh & Jernigan, Inc. (PBS & J)**, authorized through Ordinance Number 100234 passed on January 6, 2005 to provide City-wide traffic engineering services on an as-needed basis. Copies of the Agreements are attached hereto and incorporated herein for all purposes as **Attachments I and II.**

SECTION 2. The Indefinite Delivery Professional Services Agreements with **Pape Dawson Engineers, Inc.** and **Post, Buckley, Schuh & Jernigan, Inc.** are each increased from \$500,000.00 per contract to \$1,000,000.00 per contract.

SECTION 3. All funds associated with each professional services agreement are subject to the availability of funds and will be identified when work orders are issued.

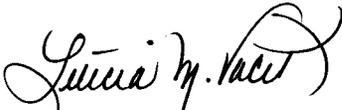
SECTION 4. This Ordinance shall be effective on April 16, 2006.

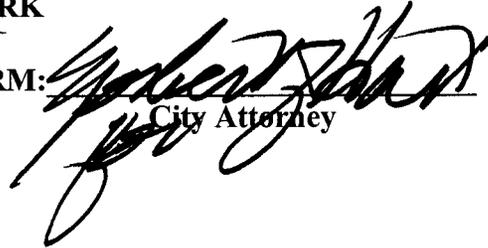
PASSED AND APPROVED this the 6th day of April, 2006.



M A Y O R

PHIL HARDBERGER

ATTEST: 
CITY CLERK

APPROVED AS TO FORM: 
City Attorney

**PROFESSIONAL SERVICES AGREEMENT
FOR
STAND-BY TRAFFIC ENGINEERING SERVICES**

STATE OF TEXAS

COUNTY OF BEXAR

This AGREEMENT is made and entered into by and between the City of San Antonio (hereinafter referred to as "CITY"), a Texas Municipal Corporation acting by and through its City Manager, pursuant to Ordinance No. 100234, passed and approved on the 6th day of January, 2005 and as renewed on the 15 day of February, 2006, and **PAPE-DAWSON ENGINEERS, INC.**, by and through its Senior Vice President, **K. Stephen Bonnette, P.E.**, (hereinafter referred to as "CONSULTANT"), both of which may be referred to herein collectively as the "PARTIES".

IN CONSIDERATION of the mutual covenants, terms, conditions, privileges and obligations herein contained, **CITY** and **CONSULTANT** do hereby agree as follows:

I. DEFINITIONS

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

1.1 "Director" means the director of CITY's Public Works Department, or the designated project manager identified by the Notice to Proceed.

1.2 "Project" means the capital improvement/construction development undertaking of CITY for which CONSULTANT's professional services, as stated in the Scope of Services, are to be provided pursuant to this AGREEMENT.

1.3 "Ab Initio" means from the beginning; from the first act; from the inception. *See Black's Law Dictionary, 5th Ed., © 1983.*

1.4 "Respondeat Superior" means let the master answer. This maxim means that a master is liable in certain cases for the wrongful acts of his servant, and a principal for those of his agent. *See Black's Law Dictionary, 5th Ed., © 1983.*

II. PERIOD OF SERVICE

2.1 CONSULTANT shall complete the work described in the Contract Documents, being Exhibits "A" and "B" incorporated herein. The CITY guarantees neither a particular volume of work nor a minimum number of units of work. This is a stand-by agreement and specific requirements as to types, numbers, conditions, procedures and locations pertaining to the work or services proved hereunder will be established by the municipal project manager of the requesting City Department on a case by case basis for each job, request, of Work Task provided by the CITY.

Attachment I

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To Ordinance No. _____
Approved on April 6, 2006

2.2 The term of this **AGREEMENT** shall commence on the eleventh (11th) calendar day after it is approved by the San Antonio City Council or upon execution by both parties, whichever date is later, and shall remain in force for the period of one year. As the enabling Ordinance provides the **CITY** shall retain an option to renew this contract for two (2) additional one (1) year periods. The Director of Public Works shall have the authority to exercise such options at his discretion. In the event such options are exercised and any material provision of the **AGREEMENT** is modified, such amendment must be approved by the City Council.

The **CITY** may authorize additional calendar days or make adjustments to the Project Schedule and related deliverables, within the existing scope of this **AGREEMENT**, upon mutual **AGREEMENT** in writing, between the Director of the Department of Public Works, or his designee and **CONSULTANT**, as to the reasonableness of said additional time or adjustment.

2.4 Both the **CITY** and the **CONSULTANT** agree that additional services may be required for this project based upon the duration of construction activities, extended working hours by the **CONSULTANT**, and additional services required by the Owner and that this Contract may be amended to increase the scope of work to include said additional services upon mutual **AGREEMENT**, and written notification of approval and understanding, from the **CITY** and the **CONSULTANT** as to the reasonableness of the scope of work, period of service, and fees for such additional services. Such increase in scope of work and associated payment shall be subject to the approval of the City Council as evidenced by of a the passage City ordinance.

III. SCOPE OF SERVICES

3.1 The following is a list of all the documents that comprise the Scope of Services for this Project: Each such document is attached hereto and incorporated herein for all purposes. **CONSULTANT** agrees to perform all work required by this Scope of Services set forth herein and in the attached documents.

3.1.1 ATTACHMENT "A" (Scope of Services)

3.1.2 ATTACHMENT "B" – (CONSULTANT's Fee Proposal/Price Schedule)

3.1.3 ATTACHMENT "C" – (Compensation)

3.2 Where applicable, **CONSULTANT** shall be represented by a registered professional licensed to practice in the State of Texas at meetings of any official nature concerning the Project, including but not limited to scope meetings, review meetings.

3.2.1 The **CONSULTANT** under this contract shall provide services that constitute the practice of engineering and additional services within the meaning of Title 6 of the Texas Occupations Code.

3.2.2 Where applicable, all complete documents submitted for final approval or issuance of a permit shall bear the seal with signature and date adjacent thereto of a registered professional.

IV. COORDINATION WITH THE CITY

4.1 **CONSULTANT** shall hold periodic conferences with Director, so that the Project will have full benefit of **CITY's** experience and knowledge of existing needs and be consistent with its current policies and standards. Conferences shall be scheduled as agreed to by parties. **CITY** shall make available, for **CONSULTANT's** use, all existing data in its possession relative to this Project as may be requested by **CONSULTANT** at no cost to **CONSULTANT**.

4.2 Director shall act on behalf of **CITY** with respect to the work performed under this **AGREEMENT**. He shall have complete authority to transmit instructions, receive information, and interpret and define **CITY's** policies and decisions with respect to materials, equipment elements and systems pertinent to **CONSULTANT's** services.

4.3 **CITY** shall provide written notice to the **CONSULTANT** of any errors or omissions discovered in the **CONSULTANT's** services, or performance, or of any development that affects the scope or timing of **CONSULTANT's** services.

4.4 **CONSULTANT** shall complete all applications and furnish all required data, as set forth in the Scope of Services, compiled by **CONSULTANT** for **CITY's** use in obtaining any permits or approvals from governmental authorities having jurisdiction over the Project as may be necessary for completion of the Project. **CONSULTANT** shall not be obligated to develop additional data, prepare extensive reports or appear at hearings in order to obtain said permits or approvals, unless compensated therefore as provided in Article V, entitled "Compensation".

V. COMPENSATION

5.1 In consideration of the professional services performed by **CONSULTANT**, as stated and contained herein, the **CITY** shall pay the **CONSULTANT** fees based on the Exhibits attached hereto and, in no event shall the total dollar amount of all invoices during the term of this **AGREEMENT** exceed **five hundred thousand and no/100 dollars (\$500,000)**.

5.2 A negotiated fixed price, or lump-sum amount for each Work Task may be derived based on the scope of services, and will be based substantially on contractual pre-described and not to exceed pre-priced tasks and or hourly rates included in (Exhibit "B").

5.3 Payment may also be made based solely on the units of work completed and approved by the Director, and the associated unit price for each Work Task as may be described in **CONSULTANT's** proposal/fee schedule (Exhibit "B")

5.4 Monthly payments for work performed in the various Work Tasks will be made to **CONSULTANTS** upon **CONSULTANT'S** furnishing itemized invoices reflecting past due amount invoiced, current billing periods and amounts, and the balance of approved contract funds remaining, in a form acceptable to the Director of indicating the value of services performed to date.

5.5 **CONSULTANT** must obtain the prior written approval of the **CITY** for any additional line items not described in the Contract Documents. Invoices for additional services which are not included in the Documents (not described in the Exhibits hereto), must be supported with letters for the Director approving said services as being appropriately within the scope of the **AGREEMENT**.

5.6 Payments to the **CONSULTANT** shall be in the amount shown by the monthly billings and other documentation submitted and shall be subject to the **CITY'S** approval. All services shall be performed to the **CITY'S** satisfaction, which satisfaction shall be judged by the Director in his or her sole discretion, and the **CITY** shall not be liable for any payment under this **AGREEMENT** for services which are unsatisfactory and which have not been previously approved by the Director. The final payment due hereunder will not be paid until all reports, data, and documents have been submitted, received, accepted and approved by the **CITY**.

VI. TERMINATION AND/OR SUSPENSION OF WORK

6.1 For purposes of this **AGREEMENT**, termination of this **AGREEMENT** shall mean termination by expiration of the **AGREEMENT** term or earlier termination pursuant to any of the provisions hereof.

6.2 Termination Without Cause.

6.2.1 This **AGREEMENT** may be terminated by either party upon written notice in accordance with Article VI. Such notice must specify an effective date of termination, which shall be not less than thirty (30) calendar days after the date of receipt of the notice by the other Party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other Party.

6.2.2 This **AGREEMENT** may be terminated by **CITY** prior to Director giving **CONSULTANT** written notice to proceed should Director, at his sole discretion, determine that it is not in **CITY'S** best interest to proceed with this **AGREEMENT**. Such notice shall be provided in accordance with Article VI, and shall be effective upon delivery by **CITY** in accordance with Article VI.

6.2.3 **CITY** shall equitably compensate **CONSULTANT** in accordance with the terms of this **AGREEMENT** for the Services properly performed prior to the effective date of termination, following inspection and acceptance of same by **CITY**. **CONSULTANT** shall not, however, be entitled to lost or anticipated profits should **CITY** choose to exercise its option to terminate.

6.3 **Termination For Cause.** Upon written notice, **CITY** may terminate this **AGREEMENT** upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this **AGREEMENT**:

6.3.1 **CONSULTANT** makes or allows to be made any material misrepresentation or provides any materially misleading information in connection with this **AGREEMENT**, including, but not limited to, **CONSULTANT'S** Interest Statement, or any covenant, obligation, term or condition contained in this **AGREEMENT**; or

6.3.2 **CONSULTANT** violates or fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this **AGREEMENT**.

6.3.3 **CONSULTANT** attempts to assign this **AGREEMENT** contrary to the terms hereof; or experiences a change in ownership interest greater than thirty percent (30%), or control of its business entity; or

6.3.4 **CONSULTANT** ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this **AGREEMENT** shall continue); or if a receiver, trustee or liquidator is appointed for it or any substantial part of **CONSULTANT's** assets or properties; or

6.3.5 **CONSULTANT** fails to comply in any respect with the insurance requirements set forth in this **AGREEMENT**; or

6.3.6 **CONSULTANT** violates any rule, regulation or law by which **CONSULTANT** is bound or shall be bound while and in performing the services required under this **AGREEMENT**.

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

6.5 **Effect of Termination.** Upon a decision to terminate by **CITY**, written notice of such shall be immediately provided to **CONSULTANT** specifying the effective date of termination, notice of which shall be given in accordance with Article VI.

6.5.1 Regardless of how this **AGREEMENT** is terminated, and subject to 6.5.2, **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 prepared pursuant to the **AGREEMENT** and any other materials or information produced as a result of or pertaining to the services rendered by **CONSULTANT**, or provided to **CONSULTANT**. Any record transfer shall be completed within thirty (30) calendar days of the termination date 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.

6.5.2 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.

6.5.3 Upon the effective date of expiration or termination of this **AGREEMENT**, **CONSULTANT** shall cease all operations of work being performed by **CONSULTANT** or any of its subcontractors pursuant to this **AGREEMENT**.

6.5.4 **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.

6.6 **Right of CITY to Suspend Giving Rise to Right of CONSULTANT to Terminate.**

6.6.1 **CITY** may suspend this **AGREEMENT** by issuing a signed, written notice of suspension (citing this paragraph) as provided in Article VI, which shall outline the reasons for the suspension and the duration of the suspension. However, it is understood and agreed by the Parties that the total number of days of suspension as reflected in said notice is not guaranteed, and in fact, may be shorter or longer. Such suspension shall take effect upon the date set forth in the notice, or if no date is set forth, immediately upon **CONSULTANT's** receipt of said notice.

6.6.2 **CONSULTANT** may terminate this **AGREEMENT** in the event such suspension exceeds one hundred and twenty (120) calendar days. **CONSULTANT** may exercise this right to terminate by issuing a signed, written notice of termination, in accordance with Article VI, Notice, (citing this paragraph) to **CITY** after the expiration of one hundred and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by **CITY**.

6.7 **Procedures for CONSULTANT to follow upon Receipt of Notice of Suspension.**

6.7.1 Upon receipt of written notice of suspension, **CONSULTANT** shall, unless the notice otherwise directs, immediately discontinue all services in connection with the performance of this **AGREEMENT** and cancel all existing orders and contracts.

6.7.2 **CONSULTANT** shall prepare a statement showing in detail the services performed under this **AGREEMENT** prior to the effective date of suspension.

6.7.3 All completed or partially completed plans and specifications prepared under this **AGREEMENT** prior to the effective date of suspension shall be prepared for possible delivery to **CITY** but shall be retained by **CONSULTANT** until such time as **CONSULTANT** may exercise the right to terminate.

6.7.4 In the event that **CONSULTANT** exercises the right to terminate after the suspension date as provided by this Article, within thirty (30) calendar days after receipt by **CITY** of **CONSULTANT's** notice of termination, **CONSULTANT**

shall submit the above referenced statement showing in detail the services performed under this **AGREEMENT** prior to the effective date of suspension. Nothing in this section 6.7.4 shall prevent **CONSULTANT** from submitting invoices for partial payments for work performed prior to the termination date as provided by Article V, Compensation.

6.7.5 Additionally, any documents prepared in association with this **AGREEMENT** shall be delivered to **CITY** by **CONSULTANT**, as a pre-condition to final payment, within thirty (30) calendar days after receipt by **CITY** of **CONSULTANT**'s notice of termination.

6.7.6 Upon the above conditions being met, **CITY** shall pay **CONSULTANT** that proportion of the prescribed fee which the services actually performed under this **AGREEMENT** bear to the total services called for under this agreement, less previous payments of the fee.

6.7.7 **CITY**, as a public entity, has a duty to document the expenditure of public funds. **CONSULTANT** acknowledges this duty on the part of **CITY**. To this end, **CONSULTANT** understands that failure of **CONSULTANT** to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by **CONSULTANT** of any portion of the fee for which **CONSULTANT** did not supply such necessary statements and/or documents.

VII. INSURANCE REQUIREMENTS

7.1 Prior to the commencement of any work under this **AGREEMENT**, **CONSULTANT** shall furnish an original completed Certificate of Insurance to **CITY**'s Public Works Department and **CITY**'s Risk Management Division executed 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 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 **CITY**. **CITY** shall have no duty to pay or perform under this **AGREEMENT** until such certificate shall have been delivered to **CITY**'s Public Works Department and **CITY**'s Risk Management Office, and no officer or employee shall have authority to waive this requirement.

7.2 **CONSULTANT's** financial integrity is of interest to **CITY**, therefore, subject to **CONSULTANT's** right to maintain reasonable deductibles in such amounts as are approved by **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, except for professional liability, by companies authorized, approved or admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and amounts:

<u>TYPE</u>	<u>MINIMUM AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. 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	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per; General Aggregate limit of \$2,000,000 occurrence or its equivalent in umbrella or excess liability coverage
4. Business Automobile Liability a. Owned/Leased Vehicles b. Non-Owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability (Claims made form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any negligent act, malpractice, error or omission in professional services.

7.3 **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 **CITY**. **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 Article VII herein within 10 days of the requested change.

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

- Name **CITY** and its officers, employees, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with **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 **CITY** is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of **CITY**.

7.5 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 **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. In the event of cancellation or non-renewal, such notice must be accompanied by a replacement Certificate of Insurance. All notices under this Article shall be given to **CITY** at the following addresses:

City of San Antonio	City of San Antonio
Public Works Department – Capital Programs	Risk Management
P.O. Box 839966	111 Soledad, Suite 1000
San Antonio, Texas 78283-3966	San Antonio, Texas 78205

7.6 If **CONSULTANT** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the AGREEMENT; however, procuring of said insurance by **CITY** is an alternative to other remedies **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 **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, **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. A stop work order given to **CONSULTANT** by **CITY** in accordance with this Article shall not constitute a Suspension of Work pursuant to Article VI, Section 6.7.

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

7.8 It is agreed that **CONSULTANT's** insurance shall be deemed primary with respect to any insurance or self insurance carried by **CITY** of San Antonio for liability arising out of operations under this **AGREEMENT**.

VIII. INDEMNIFICATION

8.1 **CONSULTANT**, whose work product is the subject of this **AGREEMENT** for engineering services, agrees to **INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS** against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may **ARISE OUT OF OR BE OCCASIONED OR CAUSED BY CONSULTANT'S NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES** while in the exercise of performance of the rights or duties under this **AGREEMENT**. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of **CITY**, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **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 CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

8.2 **CONSULTANT** shall advise **CITY** in writing within 24 hours of any claim or demand against **CITY** or **CONSULTANT** known to **CONSULTANT** related to or arising out of **CONSULTANT's** activities under this **AGREEMENT**.

8.3 The provisions of this section 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.

IX. ASSIGNMENT OF RIGHTS OR DUTIES

9.1 By entering into this **AGREEMENT**, **CITY** has approved the use of any subcontractors identified in **CONSULTANT**'s Interest Statement. No further approval shall be needed for **CONSULTANT** to use such subcontractors as are identified in **CONSULTANT**'s Interest Statement.

9.2 Except as otherwise required herein, **CONSULTANT** may not sell, assign, pledge, transfer or convey any interest in this **AGREEMENT** nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of **CITY**.

9.3 As a condition of consent, if same is given, **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. Any references in this **AGREEMENT** to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by **CITY** in accordance with this Article.

9.4 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this **AGREEMENT**, without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should **CONSULTANT** assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this **AGREEMENT**, **CITY** may, at its option, terminate this **AGREEMENT** in accordance with Article VI, Termination, and all rights, titles and interest of **CONSULTANT** shall thereupon cease and terminate, 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.

9.5 **CONSULTANT** agrees to notify Director of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this **AGREEMENT**, any such change of ownership interest or control of its business entity may be grounds for termination of this **AGREEMENT** in accordance with Article VI, Termination.

X. INDEPENDENT CONTRACTOR

10.1 **CONSULTANT** covenants and agrees that (s)he 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, and subcontractors; that the doctrine of respondeat superior shall not apply as between **CITY** and **CONSULTANT**, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **CITY** and **CONSULTANT**.

10.2 No Third Party Beneficiaries - For purposes of this **AGREEMENT**, including its intended operation and effect, the Parties specifically agree and **CONTRACT** that: (1) this **AGREEMENT** only affects matters/disputes between the Parties to this **AGREEMENT**, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with **CITY** or **CONSULTANT** or both, or that such third parties may benefit incidentally by this **AGREEMENT**; and (2) the terms of this **AGREEMENT** are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either **CITY** or **CONSULTANT**.

XI. EQUAL EMPLOYMENT OPPORTUNITY

CONSULTANT shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, **CONSULTANT** agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's office.

XII. SBEDA REQUIREMENTS

12.1 **CONSULTANT** hereby acknowledges that it is the policy of the **CITY** of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), handicapped and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by **CITY**. This policy and its implementation is known as the Small Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

12.2 **CONSULTANT** agrees to implement the plan submitted in **CONSULTANT**'s response to **CITY**'s Request for Interest Statement under the SBEDA Program for Small, Minority and Women-owned Business Participation in this **AGREEMENT**, thereby meeting the percentages for participation of those groups as submitted therein. **CONSULTANT** agrees to be in full compliance with this article by meeting the percentages listed in **CONSULTANT**'s Interest Statement no later than 60 days from the date of execution of this **AGREEMENT**, and to remain in compliance throughout the term of this **AGREEMENT**. **CONSULTANT** further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this **AGREEMENT**, as may be approved pursuant to this **AGREEMENT**, that will meet the percentages submitted in **CONSULTANT**'s Interest Statement. Changes in contract value by changes in work orders, **AGREEMENT** amendments, or use of contract alternatives, which result in an increase in the value of the **AGREEMENT** by 10% or greater require the **CONSULTANT** to increase its use of business enterprises described in this section, if such is necessary to maintain the same percentages as exist in **CONSULTANT**'s Interest Statement. However, the delegation of any duties hereunder by any means must be approved by **CITY** as stated herein.

12.3 **CONSULTANT** shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/WBE's. **CONSULTANT** shall submit annual reports to **CITY**'s Department of Economic Development, identifying the above activity and other efforts at

increasing SBE/MBE/WBE participation in the **AGREEMENT**. Further, such records shall be open to inspection by **CITY** or its authorized agent at all reasonable times. Should **CITY** find that **CONSULTANT** is not in compliance with this article, **CITY** shall give notice of non-compliance to **CONSULTANT**. **CONSULTANT** shall have 30 calendar days to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a material breach of this **AGREEMENT** and may subject **CONSULTANT** to any of the penalties listed in **CITY** of San Antonio Ordinance No. 96754, at **CITY**'s option. Further, such failure may be considered a default for which **CITY** may terminate this **AGREEMENT** in accordance with Article VIII, Termination.

12.4 **CONSULTANT** shall appoint a representative of its company to administer and coordinate its efforts to carry out these requirements.

12.5 In all events, **CONSULTANT** shall comply with the **CITY**'s Small, Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 77758, and the amendments thereto. Said ordinances are incorporated herein for all purposes, as if fully set forth herein.

12.6 It is **CITY**'s understanding, and this **AGREEMENT** is made in reliance thereon, that **CONSULTANT**, in the performance of services required hereunder, will use the subcontractor(s) listed in its response to **CITY**'s Request for Interest Statement.

12.7 Any work or services subcontracted by **CONSULTANT** shall be by written contract, and unless specific waiver is granted in writing by **CITY**, shall be subject by its terms to each and every provision of this **AGREEMENT**. Compliance by subcontractor with the provisions of said contract shall be the responsibility of **CONSULTANT**.

12.8 **CITY** shall in no event be obligated to any third party, including any subcontractor of **CONSULTANT**, for performance or services or payment of fees.

XIII. NOTICES

Unless otherwise expressly provided elsewhere in this **AGREEMENT**, 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 on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier.

If intended for CITY, to:

City of San Antonio
Public Works Department-Traffic Engineering
Attn: Lilly Banda
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for CONSULTANT, to:

Pape-Dawson Engineering, Inc.
555 E. Ramsey
San Antonio, Texas 78216
Attn: K. Stephen Bonnette, P.E.

XIV. INTEREST IN CITY CONTRACTS PROHIBITED

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 the Ethics Code, from having a financial interest in any contract with **CITY** or any **CITY** agency such as **CITY** owned utilities. An officer or employee has a "prohibited financial interest" in a contract with **CITY** or in the sale to **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.

14.2 **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 **CITY**. **CONSULTANT** further warrants and certifies that it has tendered to **CITY** a Discretionary Contracts Disclosure Statement in compliance with **CITY**'s Ethics Code.

XV. SOLICITATION

CONSULTANT warrants and represents that he has not employed or retained any company or person, other than a bona fide employee working solely for **CONSULTANT**, to solicit or secure this **AGREEMENT**, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for **CONSULTANT**, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this **AGREEMENT**. This representation constitutes a substantial part of the consideration for the making of this **AGREEMENT**.

XVI. CONTRACT CONSTRUCTION

All parties have participated fully in the review and revision of this **AGREEMENT**. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this **AGREEMENT**.

XVII. FAMILIARITY WITH LAW AND CONTRACT TERMS

CONSULTANT represents that, prior to signing this **AGREEMENT**, **CONSULTANT** has become thoroughly acquainted with all matters relating to the performance of this **AGREEMENT**, all applicable laws, and all of the terms and conditions of this **AGREEMENT**.

XVIII. APPLICABLE LAW

This **AGREEMENT** shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

XIX. VENUE

The obligations of the parties to this **AGREEMENT** shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

XX. SEVERABILITY

In the event any one or more paragraphs or portions of this **AGREEMENT** are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of this **AGREEMENT**, but such shall be confined to the specific section, sentences, clauses or portions of this **AGREEMENT** held invalid or unenforceable.

XXI. FORCE MAJEURE

In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

XXII. SUCCESSORS

This **AGREEMENT** shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this **AGREEMENT**, their assigns.

XXIII. NON-WAIVER OF PERFORMANCE

23.1 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 San Antonio City Council.

23.2 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.

XXIV. PARAGRAPH HEADINGS

The headings of this **AGREEMENT** are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXV. LEGAL AUTHORITY

The signer of this **AGREEMENT** for **CITY** and **CONSULTANT** each represents, warrants, assures and guarantees that he has full legal authority to execute this **AGREEMENT** on behalf of **CITY** and **CONSULTANT** respectively, and to bind **CITY** and **CONSULTANT** to all of the terms, conditions, provisions and obligations herein contained.

XXVI. INCORPORATION OF ATTACHMENTS

26.1 **CONSULTANT** understands and agrees that all attachments, including appendices thereto, referred to in this **AGREEMENT** are intended to be and hereby are incorporated herein and specifically made a part of this **AGREEMENT** for all purposes. Said attachments are as follows:

ATTACHMENT "A" (Scope of Services)

ATTACHMENT "B" – (**CONSULTANT**'s Fee Proposal /Price Schedule)

ATTACHMENT "C" – (Compensation)

26.2 In the event of a conflict or inconsistency between any attachment and the terms of this **AGREEMENT**, the terms of this **AGREEMENT** shall govern and prevail.

XXVII. ENTIRE AGREEMENT

27.1 This **AGREEMENT**, together with its authorizing ordinance and Attachments, as listed in Article XXVI, Incorporation of Attachments, embodies the complete **AGREEMENT** of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written consent of the parties and approved by ordinance passed by the San Antonio City Council.

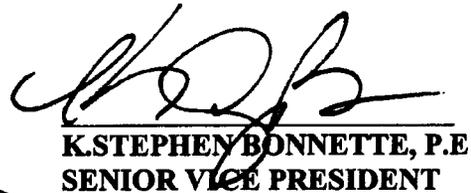
27.2 It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

EXECUTED ON THIS, THE 15 DAY OF February, 2006.

CITY OF SAN ANTONIO

CONSULTANT
PAPE - DAWSON ENGINEERS, INC.

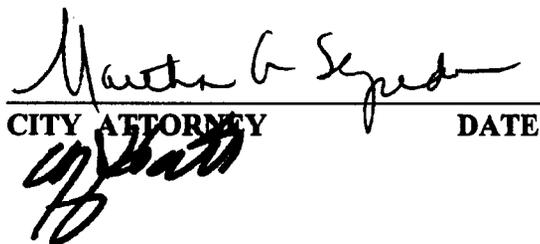

CITY MANAGER
for [unclear] AM


K. STEPHEN BONNETTE, P.E.
SENIOR VICE PRESIDENT


CITY CLERK



APPROVED AS TO FORM:


CITY ATTORNEY
DATE

ATTACHMENT "A"

(SCOPE OF SERVICES)

The scope of services provides in a Work Task may include professional services required to perform investigations, measurements, data collection, report and plan preparation in connection with:

- Transportation System Planning;
- Land Planning/Engineering;
- Roadway Design;
- Traffic Engineering Studies to include Traffic Signal Timing Studies, Traffic Control System Analysis;
- Design and Implementation of Traffic Systems to include Intelligent Transportation Systems (ITS);
- ITS Control System Analysis
- Traffic Operations Design;
- Design and Implementation of Signage, Pavement Marking and Channelization; and
- Bicycle and Pedestrian Facility Development.

Deliverables required as part of the traffic engineering services provided by Consultant will include, but not be limited to field investigations and measurements, data collections, existing condition evaluation, calculations, recommendations and the development of alternatives and proposed designs necessary to complete the assignment. Periodic updates documenting field observations and service status must also be provided. In the instances where locations under study provide access to area schools, businesses, churches and other public gathering places, the consultant will serve as the liaison between the City of San Antonio, stakeholders, and other interested parties as required. It will be necessary for the consultant to document all activities and contacts, as well as to prepare the following documents;

- Preliminary documents, plans, and/or reports, as directed which discuss findings and recommendations;
- Final documents, plans, and/or reports, per City requirements; and any
- Handouts and/or graphical displays for use at public meeting

The scope of work will be specifically identified in Work Tasks provided by the City and in the subsequent individually negotiated and City-accepted Consultant proposals. The negotiated amount for each specific scope of services may be derived as a fixed price, or lump-sum based substantially on contractual pre-described and not to exceed pre-priced tasks and or hourly rates included in Exhibit "B".

Payment may also be made based solely on the units of work completed and approved by the Director, and the associated unit price for each Work Task as may be described in Consultant's proposal/fee schedule (Exhibit "B").

The consultants shall commence work on the project once it has been thoroughly briefed regarding the scope of the specific project and has been notified in writing to proceed with the Work.

The Consultant, in consideration for the compensation herein provided, shall render professional traffic engineering consulting services necessary for the development of the Project to final completion.

ATTACHMENT B

(CONSULTANTS' FEE PROPOSAL/PRICE SCHEDULE)

**CITY OF SAN ANTONIO
TRAFFIC ENGINEERING**

PAPE-DAWSON ENGINEERS, INC.

Labor:

Staff Category	Hourly Billing Rate
Chairman/President/CEO	\$200.00
Project Principals	\$155.00
Project Manager	\$155.00
Deputy Project Manager	\$140.00
Roundabout Designer	\$150.00
Traffic Signal Timing Engineer	\$150.00
Senior Design Engineer	\$120.00
Design Engineer	\$110.00
Asst. Project Manager	\$95.00
Sr. Designer	\$90.00
Designer	\$75.00
Engineer III	\$86.00
Engineer II	\$82.00
Engineer I	\$72.00
Tech III	\$85.00
Tech II	\$65.00
Tech I	\$50.00
RPLS	\$125.00
Survey Crew (3person)	\$115.00
Survey Crew (2 person)	\$95.00
Clerical	\$80.00

Direct Expenses:

ITEM	DESCRIPTION	UNIT
Roll Plots	at cost	LF
Mylar Plots	at cost	SF
8 1/2" X 11" copies	\$0.10	EA
11" X 17" copies	\$0.20	EA
Total Station/Data Collector	\$10.00	HR
GPS	\$25.00	HR
CADD Computer	\$25.00	HR
Mileage	\$0.375	MI
Other Travel	at cost	TRIP
Deliveries	at cost	EA
Lodging	at cost	DAY
Meals	\$30.00	DAY
Miscellaneous Expenses	at cost	EA

Direct Expenses will have a 10% mark-up for billing costs.

**CITY OF SAN ANTONIO
TRAFFIC ENGINEERING**

WHM TRANSPORTATION ENGINEERING CONSULTANTS

Labor:

CLASSIFICATION	Hourly Billing Rate
Senior Advisor/Principal	\$188.34
Project Manager	\$147.35
Project Manager	\$127.36
Engineer	\$111.79
EIT	\$84.20
CADD Technician	\$68.72
Clerical	\$57.58

Direct Expenses:

ITEM	DESCRIPTION	UNIT
Roll Plots	at cost	LF
Mylar Plots	at cost	SF
8 1/2" X 11" copies	\$0.10	EA
11" X 17" copies	\$0.20	EA
Total Station/Data Collector	\$10.00	HR
GPS	\$25.00	HR
CADD Computer	\$25.00	HR
Mileage	\$0.375	Mi
Other Travel(airfare, car rental, etc.)	at cost	Trip
Deliveries	at cost	EA
Lodging	at cost	Day
Meals	at cost	Day
Miscellaneous Expenses	at cost	EA

Direct Expenses will have a 10% mark-up for billing costs.

ATTACHMENT C

(COMPENSATION)

On or after the last day of each month, **CONSULTANT** shall provide **CITY** a written invoice for the work performed by **CONSULTANT**, requested by **CITY** during the month, and for which the services have been reviewed and approved by the **CITY**. The invoice amount shall be based on the unite prices agreed as shown on Attachment "B". In no event shall the total dollar amount of all invoices during the term of this contract exceed five hundred thousand and no/100 dollars **(\$500,000)**

**PROFESSIONAL SERVICES AGREEMENT
FOR
STAND-BY TRAFFIC ENGINEERING SERVICES**

STATE OF TEXAS

COUNTY OF BEXAR

This AGREEMENT is made and entered into by and between the City of San Antonio (hereinafter referred to as "CITY"), a Texas Municipal Corporation acting by and through its City Manager, pursuant to Ordinance No. 100234, passed and approved on the 6th day of January, 2005 and as renewed on the 15 day of February, 2006, and **POST, BUCKLEY, SCHUH & JERNIGAN, INC.**, by and through its Vice President, **John L. German, P.E.**, (hereinafter referred to as "CONSULTANT"), both of which may be referred to herein collectively as the "PARTIES".

IN CONSIDERATION of the mutual covenants, terms, conditions, privileges and obligations herein contained, CITY and CONSULTANT do hereby agree as follows:

I. DEFINITIONS

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

1.1 "Director" means the director of CITY's Public Works Department, or the designated project manager identified by the Notice to Proceed.

1.2 "Project" means the capital improvement/construction development undertaking of CITY for which CONSULTANT's professional services, as stated in the Scope of Services, are to be provided pursuant to this AGREEMENT.

1.3 "Ab Initio" means from the beginning; from the first act; from the inception. *See Black's Law Dictionary, 5th Ed., © 1983.*

1.4 "Respondeat Superior" means let the master answer. This maxim means that a master is liable in certain cases for the wrongful acts of his servant, and a principal for those of his agent. *See Black's Law Dictionary, 5th Ed., © 1983.*

II. PERIOD OF SERVICE

2.1 CONSULTANT shall complete the work described in the Contract Documents, being Exhibits "A" and "B" incorporated herein. The CITY guarantees neither a particular volume of work nor a minimum number of units of work. This is a stand-by agreement and specific requirements as to types, numbers, conditions, procedures and locations pertaining to the work or services provided hereunder will be established by the municipal project manager of the requesting City Department on a case by case basis for each job, request, of Work Task provided by the CITY.

Attachment II

To Ordinance No. _____
Approved on April 6, 2006

2.2 The term of this **AGREEMENT** shall commence on the eleventh (11th) calendar day after it is approved by the San Antonio City Council or upon execution by both parties, whichever date is later, and shall remain in force for the period of one year. As the enabling Ordinance provides the **CITY** shall retain an option to renew this contract for two (2) additional one (1) year periods. The Director of Public Works shall have the authority to exercise such options at his discretion. In the event such options are exercised and any material provision of the **AGREEMENT** is modified, such amendment must be approved by the City Council.

The **CITY** may authorize additional calendar days or make adjustments to the Project Schedule and related deliverables, within the existing scope of this **AGREEMENT**, upon mutual **AGREEMENT** in writing, between the Director of the Department of Public Works, or his designee and **CONSULTANT**, as to the reasonableness of said additional time or adjustment.

2.4 Both the **CITY** and the **CONSULTANT** agree that additional services may be required for this project based upon the duration of construction activities, extended working hours by the **CONSULTANT**, and additional services required by the Owner and that this Contract may be amended to increase the scope of work to include said additional services upon mutual **AGREEMENT**, and written notification of approval and understanding, from the **CITY** and the **CONSULTANT** as to the reasonableness of the scope of work, period of service, and fees for such additional services. Such increase in scope of work and associated payment shall be subject to the approval of the City Council as evidenced by of a the passage City ordinance.

III. SCOPE OF SERVICES

3.1 The following is a list of all the documents that comprise the Scope of Services for this Project: Each such document is attached hereto and incorporated herein for all purposes. **CONSULTANT** agrees to perform all work required by this Scope of Services set forth herein and in the attached documents.

3.1.1 ATTACHMENT "A" (Scope of Services)

3.1.2 ATTACHMENT "B" – (CONSULTANT's Fee Proposal/Price Schedule)

3.1.3 ATTACHMENT "C" – (Compensation)

3.2 Where applicable, **CONSULTANT** shall be represented by a registered professional licensed to practice in the State of Texas at meetings of any official nature concerning the Project, including but not limited to scope meetings, review meetings.

3.2.1 The **CONSULTANT** under this contract shall provide services that constitute the practice of engineering and additional services within the meaning of Title 6 of the Texas Occupations Code.

3.2.2 Where applicable, all complete documents submitted for final approval or issuance of a permit shall bear the seal with signature and date adjacent thereto of a registered professional.

IV. COORDINATION WITH THE CITY

4.1 **CONSULTANT** shall hold periodic conferences with Director, so that the Project will have full benefit of **CITY's** experience and knowledge of existing needs and be consistent with its current policies and standards. Conferences shall be scheduled as agreed to by parties. **CITY** shall make available, for **CONSULTANT's** use, all existing data in its possession relative to this Project as may be requested by **CONSULTANT** at no cost to **CONSULTANT**.

4.2 Director shall act on behalf of **CITY** with respect to the work performed under this **AGREEMENT**. He shall have complete authority to transmit instructions, receive information, and interpret and define **CITY's** policies and decisions with respect to materials, equipment elements and systems pertinent to **CONSULTANT's** services.

4.3 **CITY** shall provide written notice to the **CONSULTANT** of any errors or omissions discovered in the **CONSULTANT's** services, or performance, or of any development that affects the scope or timing of **CONSULTANT's** services.

4.4 **CONSULTANT** shall complete all applications and furnish all required data, as set forth in the Scope of Services, compiled by **CONSULTANT** for **CITY's** use in obtaining any permits or approvals from governmental authorities having jurisdiction over the Project as may be necessary for completion of the Project. **CONSULTANT** shall not be obligated to develop additional data, prepare extensive reports or appear at hearings in order to obtain said permits or approvals, unless compensated therefore as provided in Article V, entitled "Compensation".

V. COMPENSATION

5.1 In consideration of the professional services performed by **CONSULTANT**, as stated and contained herein, the **CITY** shall pay the **CONSULTANT** fees based on the Exhibits attached hereto and, in no event shall the total dollar amount of all invoices during the term of this **AGREEMENT** exceed **five hundred thousand and no/100 dollars (\$500,000)**.

5.2 A negotiated fixed price, or lump-sum amount for each Work Task may be derived based on the scope of services, and will be based substantially on contractual pre-described and not to exceed pre-priced tasks and or hourly rates included in (Exhibit "B").

5.3 Payment may also be made based solely on the units of work completed and approved by the Director, and the associated unit price for each Work Task as may be described in **CONSULTANT's** proposal/fee schedule (Exhibit "B")

5.4 Monthly payments for work performed in the various Work Tasks will be made to **CONSULTANTS** upon **CONSULTANT'S** furnishing itemized invoices reflecting past due amount invoiced, current billing periods and amounts, and the balance of approved contract funds remaining, in a form acceptable to the Director of indicating the value of services performed to date.

5.5 **CONSULTANT** must obtain the prior written approval of the **CITY** for any additional line items not described in the Contract Documents. Invoices for additional services which are not included in the Documents (not described in the Exhibits hereto), must be supported with letters for the Director approving said services as being appropriately within the scope of the **AGREEMENT**.

5.6 Payments to the **CONSULTANT** shall be in the amount shown by the monthly billings and other documentation submitted and shall be subject to the **CITY'S** approval. All services shall be performed to the **CITY'S** satisfaction, which satisfaction shall be judged by the Director in his or her sole discretion, and the **CITY** shall not be liable for any payment under this **AGREEMENT** for services which are unsatisfactory and which have not been previously approved by the Director. The final payment due hereunder will not be paid until all reports, data, and documents have been submitted, received, accepted and approved by the **CITY**.

VI. TERMINATION AND/OR SUSPENSION OF WORK

6.1 For purposes of this **AGREEMENT**, termination of this **AGREEMENT** shall mean termination by expiration of the **AGREEMENT** term or earlier termination pursuant to any of the provisions hereof.

6.2 Termination Without Cause.

6.2.1 This **AGREEMENT** may be terminated by either party upon written notice in accordance with Article VI. Such notice must specify an effective date of termination, which shall be not less than thirty (30) calendar days after the date of receipt of the notice by the other Party. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other Party.

6.2.2 This **AGREEMENT** may be terminated by **CITY** prior to Director giving **CONSULTANT** written notice to proceed should Director, at his sole discretion, determine that it is not in **CITY's** best interest to proceed with this **AGREEMENT**. Such notice shall be provided in accordance with Article VI, and shall be effective upon delivery by **CITY** in accordance with Article VI.

6.2.3 **CITY** shall equitably compensate **CONSULTANT** in accordance with the terms of this **AGREEMENT** for the Services properly performed prior to the effective date of termination, following inspection and acceptance of it by **CITY**. **CONSULTANT** shall not, however, be entitled to lost or anticipated profits should **CITY** choose to exercise its option to terminate.

6.3 **Termination For Cause.** Upon written notice, **CITY** may terminate this **AGREEMENT** upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this **AGREEMENT**:

6.3.1 **CONSULTANT** makes or allows to be made any material misrepresentation or provides any materially misleading information in connection with this **AGREEMENT**, including, but not limited to, **CONSULTANT's** Interest Statement, or any covenant, obligation, term or condition contained in this **AGREEMENT**; or

6.3.2 **CONSULTANT** violates or fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this **AGREEMENT**.

- 6.3.3 **CONSULTANT** attempts to assign this **AGREEMENT** contrary to the terms hereof; or experiences a change in ownership interest greater than thirty percent (30%), or control of its business entity; or
- 6.3.4 **CONSULTANT** ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this **AGREEMENT** shall continue); or if a receiver, trustee or liquidator is appointed for it or any substantial part of **CONSULTANT**'s assets or properties; or
- 6.3.5 **CONSULTANT** fails to comply in any respect with the insurance requirements set forth in this **AGREEMENT**; or
- 6.3.6 **CONSULTANT** violates any rule, regulation or law by which **CONSULTANT** is bound or shall be bound while and in performing the services required under this **AGREEMENT**.
- 6.4 **Termination By Law.** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this **AGREEMENT** shall automatically terminate as of the effective date of such prohibition.
- 6.5 **Effect of Termination.** Upon a decision to terminate by **CITY**, written notice of such shall be immediately provided to **CONSULTANT** specifying the effective date of termination, notice of which shall be given in accordance with Article VI.
- 6.5.1 Regardless of how this **AGREEMENT** is terminated, and subject to 6.5.2, **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 prepared pursuant to the **AGREEMENT** and any other materials or information produced as a result of or pertaining to the services rendered by **CONSULTANT**, or provided to **CONSULTANT**. Any record transfer shall be completed within thirty (30) calendar days of the termination date 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.
- 6.5.2 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.

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

6.5.4 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.

6.6 Right of CITY to Suspend Giving Rise to Right of CONSULTANT to Terminate.

6.6.1 CITY may suspend this AGREEMENT by issuing a signed, written notice of suspension (citing this paragraph) as provided in Article VI, which shall outline the reasons for the suspension and the duration of the suspension. However, it is understood and agreed by the Parties that the total number of days of suspension as reflected in said notice is not guaranteed, and in fact, may be shorter or longer. Such suspension shall take effect upon the date set forth in the notice, or if no date is set forth, immediately upon CONSULTANT's receipt of said notice.

6.6.2 CONSULTANT may terminate this AGREEMENT in the event such suspension exceeds one hundred and twenty (120) calendar days. CONSULTANT may exercise this right to terminate by issuing a signed, written notice of termination, in accordance with Article VI, Notice, (citing this paragraph) to CITY after the expiration of one hundred and twenty (120) calendar days from the effective date of the suspension. Termination pursuant to this paragraph shall become effective immediately upon receipt of said written notice by CITY.

6.7 Procedures for CONSULTANT to follow upon Receipt of Notice of Suspension.

6.7.1 Upon receipt of written notice of suspension, CONSULTANT shall, unless the notice otherwise directs, immediately discontinue all services in connection with the performance of this AGREEMENT and cancel all existing orders and contracts.

6.7.2 CONSULTANT shall prepare a statement showing in detail the services performed under this AGREEMENT prior to the effective date of suspension.

6.7.3 All completed or partially completed plans and specifications prepared under this AGREEMENT prior to the effective date of suspension shall be prepared for possible delivery to CITY but shall be retained by CONSULTANT until such time as CONSULTANT may exercise the right to terminate.

6.7.4 In the event that CONSULTANT exercises the right to terminate after the suspension date as provided by this Article, within thirty (30) calendar days after receipt by CITY of CONSULTANT's notice of termination, CONSULTANT

shall submit the above referenced statement showing in detail the services performed under this **AGREEMENT** prior to the effective date of suspension. Nothing in this section 6.7.4 shall prevent **CONSULTANT** from submitting invoices for partial payments for work performed prior to the termination date as provided by Article V, Compensation.

6.7.5 Additionally, any documents prepared in association with this **AGREEMENT** shall be delivered to **CITY** by **CONSULTANT**, as a pre-condition to final payment, within thirty (30) calendar days after receipt by **CITY** of **CONSULTANT**'s notice of termination.

6.7.6 Upon the above conditions being met, **CITY** shall pay **CONSULTANT** that proportion of the prescribed fee which the services actually performed under this **AGREEMENT** bear to the total services called for under this agreement, less previous payments of the fee.

6.7.7 **CITY**, as a public entity, has a duty to document the expenditure of public funds. **CONSULTANT** acknowledges this duty on the part of **CITY**. To this end, **CONSULTANT** understands that failure of **CONSULTANT** to substantially comply with the submittal of the statements and documents as required herein shall constitute a waiver by **CONSULTANT** of any portion of the fee for which **CONSULTANT** did not supply such necessary statements and/or documents.

VII. INSURANCE REQUIREMENTS

7.1 Prior to the commencement of any work under this **AGREEMENT**, **CONSULTANT** shall furnish an original completed Certificate of Insurance to **CITY**'s Public Works Department and **CITY**'s Risk Management Division executed 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 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 **CITY**. **CITY** shall have no duty to pay or perform under this **AGREEMENT** until such certificate shall have been delivered to **CITY**'s Public Works Department and **CITY**'s Risk Management Office, and no officer or employee shall have authority to waive this requirement.

7.2 **CONSULTANT's** financial integrity is of interest to **CITY**, therefore, subject to **CONSULTANT's** right to maintain reasonable deductibles in such amounts as are approved by **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, except for professional liability, by companies authorized, approved or admitted to do business in the State of Texas and rated A- or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and amounts:

<u>TYPE</u>	<u>MINIMUM AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. 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	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per; General Aggregate limit of \$2,000,000 occurrence or its equivalent in umbrella or excess liability coverage
4. Business Automobile Liability a. Owned/Leased Vehicles b. Non-Owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability (Claims made form)	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any negligent act, malpractice, error or omission in professional services.

7.3 **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 **CITY**. **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 Article VII herein within 10 days of the requested change.

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

- Name **CITY** and its officers, employees, and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with **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 **CITY** is an additional insured shown on the policy;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of **CITY**.

7.5 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 **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. In the event of cancellation or non-renewal, such notice must be accompanied by a replacement Certificate of Insurance. All notices under this Article shall be given to **CITY** at the following addresses:

City of San Antonio	City of San Antonio
Public Works Department – Capital Programs	Risk Management
P.O. Box 839966	111 Soledad, Suite 1000
San Antonio, Texas 78283-3966	San Antonio, Texas 78205

7.6 If **CONSULTANT** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the AGREEMENT; however, procuring of said insurance by **CITY** is an alternative to other remedies **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 **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, **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. A stop work order given to **CONSULTANT** by **CITY** in accordance with this Article shall not constitute a Suspension of Work pursuant to Article VI, Section 6.7.

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

7.8 It is agreed that **CONSULTANT's** insurance shall be deemed primary with respect to any insurance or self insurance carried by **CITY** of San Antonio for liability arising out of operations under this **AGREEMENT**.

VIII. INDEMNIFICATION

8.1 **CONSULTANT**, whose work product is the subject of this **AGREEMENT** for engineering services, agrees to **INDEMNIFY AND HOLD CITY, ITS ELECTED OFFICIALS, OFFICERS AND EMPLOYEES HARMLESS** against any and all claims, lawsuits, judgments, cost, liens, losses, expenses, fees (including attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may **ARISE OUT OF OR BE OCCASIONED OR CAUSED BY CONSULTANT'S NEGLIGENT ACT, ERROR, OR OMISSION OF CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANT OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES** while in the exercise of performance of the rights or duties under this **AGREEMENT**. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of **CITY**, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **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 CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

8.2 **CONSULTANT** shall advise **CITY** in writing within 24 hours of any claim or demand against **CITY** or **CONSULTANT** known to **CONSULTANT** related to or arising out of **CONSULTANT's** activities under this **AGREEMENT**.

8.3 The provisions of this section 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.

IX. ASSIGNMENT OF RIGHTS OR DUTIES

9.1 By entering into this **AGREEMENT**, **CITY** has approved the use of any subcontractors identified in **CONSULTANT's** Interest Statement. No further approval shall be needed for **CONSULTANT** to use such subcontractors as are identified in **CONSULTANT's** Interest Statement.

9.2 Except as otherwise required herein, **CONSULTANT** may not sell, assign, pledge, transfer or convey any interest in this **AGREEMENT** nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of **CITY**.

9.3 As a condition of consent, if same is given, **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. Any references in this **AGREEMENT** to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by **CITY** in accordance with this Article.

9.4 Any attempt to assign, transfer, pledge, convey or otherwise dispose of any part of, or all of its right, title, interest or duties to or under this **AGREEMENT**, without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should **CONSULTANT** assign, transfer, convey or otherwise dispose of any part of, or all of its right, title or interest or duties to or under this **AGREEMENT**, **CITY** may, at its option, terminate this **AGREEMENT** in accordance with Article VI, Termination, and all rights, titles and interest of **CONSULTANT** shall thereupon cease and terminate, 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.

9.5 **CONSULTANT** agrees to notify Director of any changes in ownership interest greater than thirty percent (30%), or control of its business entity not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this **AGREEMENT**, any such change of ownership interest or control of its business entity may be grounds for termination of this **AGREEMENT** in accordance with Article VI, Termination.

X. INDEPENDENT CONTRACTOR

10.1 **CONSULTANT** covenants and agrees that (s)he 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, and subcontractors; that the doctrine of respondeat superior shall not apply as between **CITY** and **CONSULTANT**, its officers, agents, employees, contractors, and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **CITY** and **CONSULTANT**.

10.2 No Third Party Beneficiaries - For purposes of this **AGREEMENT**, including its intended operation and effect, the Parties specifically agree and **CONTRACT** that: (1) this **AGREEMENT** only affects matters/disputes between the Parties to this **AGREEMENT**, and is in no way intended by the Parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entities may be in a contractual relationship with **CITY** or **CONSULTANT** or both, or that such third parties may benefit incidentally by this **AGREEMENT**; and (2) the terms of this **AGREEMENT** are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either **CITY** or **CONSULTANT**.

XI. EQUAL EMPLOYMENT OPPORTUNITY

CONSULTANT shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, **CONSULTANT** agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's office.

XII. SBEDA REQUIREMENTS

12.1 **CONSULTANT** hereby acknowledges that it is the policy of the **CITY** of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), handicapped and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by **CITY**. This policy and its implementation is known as the Small Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

12.2 **CONSULTANT** agrees to implement the plan submitted in **CONSULTANT**'s response to **CITY**'s Request for Interest Statement under the SBEDA Program for Small, Minority and Women-owned Business Participation in this **AGREEMENT**, thereby meeting the percentages for participation of those groups as submitted therein. **CONSULTANT** agrees to be in full compliance with this article by meeting the percentages listed in **CONSULTANT**'s Interest Statement no later than 60 days from the date of execution of this **AGREEMENT**, and to remain in compliance throughout the term of this **AGREEMENT**. **CONSULTANT** further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this **AGREEMENT**, as may be approved pursuant to this **AGREEMENT**, that will meet the percentages submitted in **CONSULTANT**'s Interest Statement. Changes in contract value by changes in work orders, **AGREEMENT** amendments, or use of contract alternatives, which result in an increase in the value of the **AGREEMENT** by 10% or greater require the **CONSULTANT** to increase its use of business enterprises described in this section, if such is necessary to maintain the same percentages as exist in **CONSULTANT**'s Interest Statement. However, the delegation of any duties hereunder by any means must be approved by **CITY** as stated herein.

12.3 **CONSULTANT** shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/WBE's. **CONSULTANT** shall submit annual reports to **CITY**'s Department of Economic Development, identifying the above activity and other efforts at

increasing SBE/MBE/WBE participation in the AGREEMENT. Further, such records shall be open to inspection by CITY or its authorized agent at all reasonable times. Should CITY find that CONSULTANT is not in compliance with this article, CITY shall give notice of non-compliance to CONSULTANT. CONSULTANT shall have 30 calendar days to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a material breach of this AGREEMENT and may subject CONSULTANT to any of the penalties listed in CITY of San Antonio Ordinance No. 96754, at CITY's option. Further, such failure may be considered a default for which CITY may terminate this AGREEMENT in accordance with Article VIII, Termination.

12.4 CONSULTANT shall appoint a representative of its company to administer and coordinate its efforts to carry out these requirements.

12.5 In all events, CONSULTANT shall comply with the CITY's Small, Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 77758, and the amendments thereto. Said ordinances are incorporated herein for all purposes, as if fully set forth herein.

12.6 It is CITY's understanding, and this AGREEMENT is made in reliance thereon, that CONSULTANT, in the performance of services required hereunder, will use the subcontractor(s) listed in its response to CITY's Request for Interest Statement.

12.7 Any work or services subcontracted by CONSULTANT shall be by written contract, and unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of this AGREEMENT. Compliance by subcontractor with the provisions of said contract shall be the responsibility of CONSULTANT.

12.8 CITY shall in no event be obligated to any third party, including any subcontractor of CONSULTANT, for performance or services or payment of fees.

XIII. NOTICES

Unless otherwise expressly provided elsewhere in this AGREEMENT, 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 on receipt after mailing the same by certified mail, return receipt request with proper postage prepaid, or three (3) days after mailing the same by first class U.S. mail, postage prepaid (in accordance with the "Mailbox Rule"), or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier.

If intended for CITY, to:

City of San Antonio
Public Works Department-Traffic Engineering
Attn: Lilly Banda
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for CONSULTANT, to:

Post, Buckley, Schuh & Jernigan, Inc.
8626 Tesoro Drive, Suite 804
San Antonio, Texas 78217
Attn: John L. German, P.E.

XIV. INTEREST IN CITY CONTRACTS PROHIBITED

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 the Ethics Code, from having a financial interest in any contract with **CITY** or any **CITY** agency such as **CITY** owned utilities. An officer or employee has a "prohibited financial interest" in a contract with **CITY** or in the sale to **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.

14.2 **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 **CITY**. **CONSULTANT** further warrants and certifies that it has tendered to **CITY** a Discretionary Contracts Disclosure Statement in compliance with **CITY**'s Ethics Code.

XV. SOLICITATION

CONSULTANT warrants and represents that he has not employed or retained any company or person, other than a bona fide employee working solely for **CONSULTANT**, to solicit or secure this **AGREEMENT**, nor paid or agreed to pay any company or person, other than a bona fide employee working solely for **CONSULTANT**, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this **AGREEMENT**. This representation constitutes a substantial part of the consideration for the making of this **AGREEMENT**.

XVI. CONTRACT CONSTRUCTION

All parties have participated fully in the review and revision of this **AGREEMENT**. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this **AGREEMENT**.

XVII. FAMILIARITY WITH LAW AND CONTRACT TERMS

CONSULTANT represents that, prior to signing this **AGREEMENT**, **CONSULTANT** has become thoroughly acquainted with all matters relating to the performance of this **AGREEMENT**, all applicable laws, and all of the terms and conditions of this **AGREEMENT**.

XVIII. APPLICABLE LAW

This **AGREEMENT** shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

XIX. VENUE

The obligations of the parties to this **AGREEMENT** shall be performable in San Antonio, Bexar County, Texas, and if legal action, such as civil litigation, is necessary in connection therewith, exclusive venue shall lie in Bexar County, Texas.

XX. SEVERABILITY

In the event any one or more paragraphs or portions of this **AGREEMENT** are held invalid or unenforceable, such shall not affect, impair or invalidate the remaining portions of this **AGREEMENT**, but such shall be confined to the specific section, sentences, clauses or portions of this **AGREEMENT** held invalid or unenforceable.

XXI. FORCE MAJEURE

In the event that performance by either party of any of its' obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not party or privy hereto, then such party shall be excused from performance for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence.

XXII. SUCCESSORS

This **AGREEMENT** shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and, except as otherwise provided in this **AGREEMENT**, their assigns.

XXIII. NON-WAIVER OF PERFORMANCE

23.1 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 San Antonio City Council.

23.2 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.

XXIV. PARAGRAPH HEADINGS

The headings of this **AGREEMENT** are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXV. LEGAL AUTHORITY

The signer of this **AGREEMENT** for **CITY** and **CONSULTANT** each represents, warrants, assures and guarantees that he has full legal authority to execute this **AGREEMENT** on behalf of **CITY** and **CONSULTANT** respectively, and to bind **CITY** and **CONSULTANT** to all of the terms, conditions, provisions and obligations herein contained.

XXVI. INCORPORATION OF ATTACHMENTS

26.1 **CONSULTANT** understands and agrees that all attachments, including appendices thereto, referred to in this **AGREEMENT** are intended to be and hereby are incorporated herein and specifically made a part of this **AGREEMENT** for all purposes. Said attachments are as follows:

ATTACHMENT "A" (Scope of Services)

ATTACHMENT "B" – (**CONSULTANT**'s Fee Proposal /Price Schedule)

ATTACHMENT "C" – (Compensation)

26.2 In the event of a conflict or inconsistency between any attachment and the terms of this **AGREEMENT**, the terms of this **AGREEMENT** shall govern and prevail.

XXVII. ENTIRE AGREEMENT

27.1 This **AGREEMENT**, together with its authorizing ordinance and Attachments, as listed in Article XXVI, Incorporation of Attachments, embodies the complete **AGREEMENT** of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties relating to matters herein; and except as otherwise provided herein, cannot be modified without written consent of the parties and approved by ordinance passed by the San Antonio City Council.

27.2 It is understood and agreed by the Parties hereto that changes in local, state or federal rules, regulations or laws applicable hereto may occur during the term of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

EXECUTED ON THIS, THE 15 DAY OF February, 2006.

CITY OF SAN ANTONIO

CONSULTANT
POST, BUCKLEY, SCHUH &
JERNIGAN, INC.


CITY MANAGER
pc


JOHN L. GERMAN, P.E.
VICE PRESIDENT


CITY CLERK



APPROVED AS TO FORM:


CITY ATTORNEY DATE
MS