

AN ORDINANCE **86953**

RATIFYING THE SERVICES OF KPMG PEAT MARWICK L.L.P. IN PERFORMING AN INDEPENDENT AUDIT OF THE CITY'S FEDERAL AND STATE FINANCIAL ASSISTANCE PROGRAMS FOR THE FISCAL YEAR WHICH ENDED SEPTEMBER 30, 1996; AUTHORIZING THE EXECUTION OF A CONTRACT; AND AUTHORIZING PAYMENT IN THE AMOUNT OF \$20,000.00 FOR SAID SERVICES.

* * * * *

WHEREAS, an independent audit of the City's Federal and State Financial Assistance Programs (Grants) are required by the Federal Single Audit Act of 1984 and related OMB Circular A-128; and

WHEREAS, since 1993, KPMG Peat Marwick L.L.P. (KPMG) and Martinez, Mendoza & Colmenero, P.C. (MMC) were engaged to perform the City's independent audits; and

WHEREAS, the audit work for the City's Federal and State Financial Assistance Programs (Grants) was in progress when circumstances regarding MMC's independence interrupted finalization and the issuance of this Single Audit Report; and

WHEREAS, in an effort to complete the required Single Audit Report by the deadline of October 31, 1997, to minimize cost, and to ensure grant funding in future years, the City requested KPMG to complete the Audit; and

WHEREAS, it is now necessary to ratify the services provided by KPMG in completing the Single Audit Report, authorize the execution of a Contract for said services, and authorize payment; **NOW THEREFORE:**

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

SECTION 1. The services provided by KPMG Peat Marwick L.L.P. in performing and completing the Single Audit Report of the City's Federal and State Financial Assistance Programs for the fiscal year which ended September 30, 1996 is hereby ratified. The City Manager, or the Director of Finance is hereby authorized to execute a Contract for said services for the amount of \$20,000.00. The Audit Services Contract is attached and incorporated herein as Attachment 1.

SECTION 2. Funds are authorized for payment in Fund 11-000 (General Fund-Non Departmental) Index Code 419226 (Fees To Professional Contractors) made payable to KPMG Peat Marwick L.L.P. in the amount of \$20,000.00.

PASSED AND APPROVED this 13th day of November, 1997.



M A Y O R

Howard W. Peak

ATTEST:



City Clerk

APPROVED AS TO FORM:



City Attorney

97-46

MEETING OF THE CITY COUNCIL

ALAMODOME
ARTS & CULTURAL AFFAIRS
ASSET MANAGEMENT
AVIATION
1 BUDGET & MANAGEMENT ANALYSIS
BUILDING INSPECTIONS
HOUSE NUMBERING
CITY ATTORNEY
MUNICIPAL COURT
REAL ESTATE (FASSNIDGE)
REAL ESTATE (WOOD)
RISK MANAGEMENT
CITY MANAGER
SPECIAL PROJECTS - FRANCES GONZALES
CITY PUBLIC SERVICE - GENERAL MANAGER
CITY PUBLIC SERVICE - MAPS AND RECORDS
CODE COMPLIANCE
COMMERCIAL RECORDER
COMMUNITY INITIATIVES
COMMUNITY RELATIONS
PUBLIC INFORMATION
CONVENTION AND VISITORS BUREAU
CONVENTION CENTER EXPANSION OFFICE
CONVENTION FACILITIES
ECONOMIC DEVELOPMENT
1 FINANCE - DIRECTOR
FINANCE - ASSESSOR
1 FINANCE - CONTROLLER
FINANCE - GRANTS
FINANCE - TREASURY
FIRE DEPARTMENT
HOUSING AND COMMUNITY DEVELOPMENT
HUMAN RESOURCES (PERSONNEL)
INFORMATION SERVICES
INTERGOVERNMENTAL RELATIONS
INTERNAL REVIEW
INTERNATIONAL AFFAIRS
LIBRARY
METROPOLITAN HEALTH DISTRICT
MUNICIPAL CODE CORPORATION
MUNICIPAL COURT
PARKS AND RECREATION
MARKET SQUARE
PLANNING DEPARTMENT
DISABILITY ACCESS OFFICE
LAND DEVELOPMENT SERVICES
POLICE DEPARTMENT
GROUND TRANSPORTATION
PUBLIC WORKS DIRECTOR
CAPITAL PROJECTS
CENTRAL MAPPING
ENGINEERING
PARKING DIVISION
REAL ESTATE DIVISION
SOLID WASTE
TRAFFIC ENGINEERING
PURCHASING AND GENERAL SERVICES
SAN ANTONIO WATER SYSTEMS (SAWS)
VIA
YOUTH INITIATIVES

AGENDA ITEM NUMBER: 26

DATE: NOV 13 1997

MOTION: Roller

ORDINANCE NUMBER: 86953

RESOLUTION NUMBER: _____

ZONING CASE NUMBER: _____

TRAVEL AUTHORIZATION: _____

NAME	ROLL	AYE	NAY
ROGER FLORES, II District 1		✓	
MARIO SALAS District 2		✓	
DEBRA GUERRERO District 3		<i>[Signature]</i>	
RAUL PRADO District 4		✓	
RICK VASQUEZ District 5		✓	
JOSE MENEDEZ District 6		✓	
ED GARZA District 7		✓	
ROBERT MARBUT District 8		ABSENT	
TIM HANNWOLF District 9		ABSENT	
JEFF S. WEBSTER District 10		✓	
HOWARD W. PEAK Mayor		<i>[Signature]</i>	

CONSISTENT AGENDA 97-46

CITY OF SAN ANTONIO
FINANCE DEPARTMENT

OFFICE OF THE DIRECTOR

TO: Mayor and City Council
FROM: Nora W. Chávez-Barrera, Director of Finance
COPIES TO: J. Rolando Bono, Assistant City Manager; File
SUBJECT: Contract to Audit the City's Federal and State Financial Assistance Programs.

DATE: November 3, 1997

SUMMARY AND RECOMMENDATION

This Ordinance ratifies the services of KPMG Peat Marwick LLP to perform an independent audit of the City's Federal and State Financial Assistance Programs for the fiscal year ended September 30, 1996, and authorizes payment in an amount not to exceed \$20,000 for said services.

Staff recommends approval of this Ordinance.

BACKGROUND

Independent Audits of the City's Federal and State Financial Assistance (Grants) Programs are required by the Federal Single Audit Act of 1984 and related OMB Circular A-128. For the fiscal years 1993 through 1995, the "Single Audits" were performed for the City jointly by the firms KPMG Peat Marwick LLP (KPMG) and Martinez, Mendoza & Colmenero, P.C. (MM&C). These firms were also engaged to perform the City's Single Audit for fiscal year 1996, and in fact, the audit work for 1996 had essentially been completed when circumstances regarding MM&C's questioned independence interrupted finalization and issuance of the 1996 Single Audit Report.

The aforementioned Grant regulations and guidelines require that Single Audit Reports be issued and distributed within thirteen months after the end of a given fiscal year. Therefore, the deadline for the City's fiscal Year 1996 Single Audit Report was October 31, 1997. Due to the aforementioned circumstances and related issues with MM&C, including legal, contractual, disclosure, and reporting aspects, the City was presented with a difficult situation regarding timing for completing the Audit by the mandated deadline. In light of these facts, and in an effort to achieve time and cost efficiency, and minimize fiscal risk exposure, the City requested KPMG to complete the Single Audit for 1996, based on KPMG's knowledge of the City's operations. In addition, as a result of KPMG's familiarity with the Single Audit work already performed, and the fact that significant assistance from the Office of Internal Review had been provided, a fee not to exceed \$20,000 was negotiated, as well as a completion date prior to the October 31st mandated deadline.

Pursuant to the above, staff recommends ratification of an engagement with KPMG to perform the City's Single Audit for 1996, and authorization to pay fees not to exceed \$20,000 for such services.

FINANCIAL IMPACT

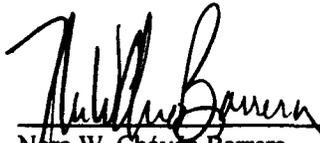
Fees to perform the Single Audit of the City of San Antonio will not exceed \$20,000. These fees will be paid from the Fiscal Year 1997-98 General Fund, Non-Departmental/Non-Operating Budget.

COORDINATION

This action has been coordinated between the Finance Department, the Office of Internal Review, and the City Attorney's Office.

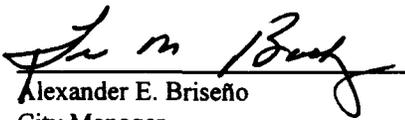
SUPPLEMENTAL COMMENTS

The ethics disclosure forms required by Ordinance are attached.



Nora W. Chávez-Barrera
Director of Finance

APPROVED:



Alexander E. Briseño
City Manager

CITY OF SAN ANTONIO
ETHICS ORDINANCE
REQUIRED DISCLOSURES

On October 19, 1994, the City Council of the City of San Antonio revised the Ethics Ordinance. Among other things, it requires that before certain contracts can be considered by the City Council, certain information must be obtained about the proposed contractor. This form is for the purpose of obtaining that information.

1. Name of Proposed Contractor & Address: KPMG Peat Marwick LLP; 112 E. Pecan, Suite 2400; San Antonio, Texas 78205
2. If a for-profit entity, list all individuals who own at least a 10% interest in the proposed contractor. The following represents the partners in the San Antonio office:

Park E. Pearson
Walter E. Belt, III
S. Fred Bartz
Dan M. Slattery
Santos Fraga

Paul J. Zucconi
Mark M. Bielstein
Jorge A. Del Alamo, Jr.
Alfred B. Fichera, Jr.

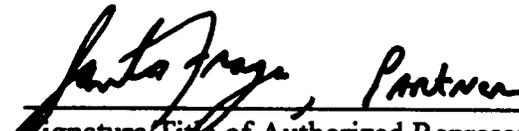
3. List all political contributions of more than \$100 made during the previous twenty-four months to any City Council member or members or to any political action committee by the entity or any of the individuals listed above.

Mayor Howard Peak	\$ 900
Tim Bannwolf	1,000
Debra Guerrero	200
Robert Marbut	1,100

4. Lobbying Statement: To lobby is to represent third parties for pay in attempting to influence members of the City Council with regard to policy decisions or proposals awaiting decision, by verbal, written, or other arguments or means of persuasion.

Does entity engage in lobbying or plan to engage in lobbying during the term of this agreement? No

If the entity should be awarded the contract, and the answer to the above should change during the term of the contract, a revised Lobbying Statement must be filed with the City Clerk.



Signature/Title of Authorized Representative

10-24-97

Date

CITY OF SAN ANTONIO
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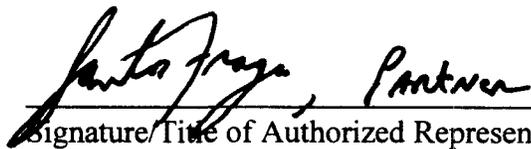
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Signature/Title of Authorized Representative

10-24-97

Date

I. TERM AND COMMENCEMENT OF WORK

- 1.1 The term of this CONTRACT for the services described herein shall be for a period commencing October 1, 1997 and ending October 31, 1997, and shall include a Single Audit of the City of San Antonio's Federal and State Financial Assistance for the fiscal year ending September 30, 1996.

II. SCOPE AND PERFORMANCE

- 2.1 CONTRACTOR will perform auditing procedures on the CITY'S federal and state financial assistance/awards programs in accordance with the provisions of OMB Circular A-128, *Audits of State and Local Governments*. OMB Circular A-128 includes specific audit requirements, mainly in the areas of the internal control structure and compliance with laws and regulations, that exceed those required by *Government Auditing Standards*. As part of CONTRACTOR'S auditing procedures performed in accordance with the provisions of OMB Circular A-128, CONTRACTOR will perform tests of controls to evaluate the effectiveness of the design and operation of internal control policies and procedures that are considered relevant to preventing or detecting material noncompliance with laws and regulations applicable to each of the organization's major programs and report the results to the CITY. The tests of internal controls performed in accordance with OMB Circular A-128 are less in scope than would be necessary to render an opinion on the internal control structure and accordingly, CONTRACTOR will not render any assurance on that structure.
- 2.2 CONTRACTOR will perform the tests of the CITY'S compliance with certain specific provisions of laws, regulations, contracts and grants determined to be necessary based on OMB's *Compliance Supplement for Audits of State and Local Governments* (Compliance Supplement) and report whether in the CONTRACTOR'S opinion the CITY complied, in all material respects, with the laws and regulations applicable to its major federal and state financial assistance/awards programs. The procedures outlined in the Compliance Supplement are those suggested by each agency and do not cover all areas of regulations governing each program. With regard to general requirements, CONTRACTOR'S report on compliance will contain a statement of positive assurance on those items that were tested and negative assurance on those items not tested.

2.3 In accordance with OMB Circular A-128, CONTRACTOR will issue the following reports addressed to Mayor Howard Peak and members of the City Council for fiscal year 1996 which ended September 30, 1996:

- A report on the supplementary schedule of the CITY'S federal financial assistance/awards programs;
- A report on the internal control structure based on an audit of the general purpose financial statements performed in accordance with *Government Auditing Standards*;
- A report on compliance based on an audit of general purpose financial statements performed in accordance with *Government Auditing Standards*;
- A report on the internal control structure used in administering federal financial assistance/awards programs;
- A report on compliance with general requirements applicable to federal financial assistance programs;
- A report on compliance with specific requirements applicable to major federal financial assistance/awards programs; and
- A report on compliance with specific requirements applicable to nonmajor federal financial assistance/awards program transactions, if necessary.

2.4 CITY agrees that all records, documentation, and information requested by CONTRACTOR in connection with the audit will be made available to the CONTRACTOR, that all material information will be disclosed to the CONTRACTOR, and that CONTRACTOR will have the full cooperation of the CITY'S personnel. As required by generally accepted auditing standards, CONTRACTOR will make specific inquiries of management about the representations embodied in the financial statements, the effectiveness of the internal control structure and the CITY'S compliance with certain laws and regulations, and obtain a representation letter from management about these matters. The responses to the CONTRACTOR'S inquiries, the written representations, and the results of audit tests comprise the evidential matter the CONTRACTOR will rely upon.

- 2.5 The Single Audit must be completed by October 31, 1997. To ensure that the Single Audit is completed timely, CONTRACTOR will require maximum assistance and cooperation of CITY personnel. This assistance will include approximately 160 - 200 hours of audit assistance from the CITY'S Office of Internal Review.

III. INCORPORATION OF EXHIBIT

- 3.1 Prior to providing the services described in Article II above, CITY and CONTRACTOR executed an Engagement Letter establishing the work to be performed. A copy of the Engagement Letter is attached hereto and incorporated for all purposes as Exhibit I.
- 3.2 In the event of a conflict or inconsistency between Exhibit I and the terms of the Contract, the terms of this contract shall govern and prevail.

IV. QUALITY CONTROL REVIEWS

- 4.1 Pursuant to *Government Auditing Standards*, CONTRACTOR is required to make certain work papers available to federal regulatory agencies upon request for their reviews of audit quality and use by their auditors. Access to the requested work papers will be provided to the regulators under supervision of CONTRACTOR'S personnel. CITY shall be notified immediately by CONTRACTOR in the event of any such request. Costs incurred by the CONTRACTOR related to such review of audit quality will not be reimbursed by the CITY. To the extent such workpapers are used by the regulators for purposes other than reviews of audit quality and/or to the extent that regulators or grantors request additional procedures beyond the requirements of the Single Audit Act, CONTRACTOR will notify and discuss such requests with the CITY prior to any costs being incurred by the CONTRACTOR. Any such costs agreed to be reimbursed by CITY will be based on hourly rates negotiated on an individual engagement basis.

V. CONTRACT PRICING AND BILLING

- 5.1 The total of all payments and other obligations made and incurred by the CITY hereunder, in performance of the services provided for in Article II and IV, if necessary, shall not exceed the sum of twenty thousand dollars and no cents (\$20,000.00). Such fee being predicated on the expectation that the Finance Department of the CITY will provide the preparation of the financial reports and statements, and supporting workpapers and schedules at a comparable level with prior years, and that the Office of Internal Review will provide approximately 160 - 200 hours of assistance to the audit process.

- 5.2 Subject to subsection 5.1, CONTRACTOR agrees that all CONTRACTOR labor, supervision of work, report reproduction, typing, travel, insurance, communication, computer access, materials, supplies, subcontractor costs, and all other CONTRACTOR expenses necessary to complete the services stated herein shall be borne at CONTRACTOR's sole cost and expense.
- 5.3 Billings for the fee established herein, in subsection 5.1, will be rendered by the CONTRACTOR to the CITY and detailed as to the amount due. Upon receipt of such billing statements, the amount due will be paid by the CITY as specified on such statements. The final billing will not be paid by the CITY until the CITY'S Single Audit Report has been completed. Accordingly, funds for the payment of such fees shall be derived from the "Professional Fees - Outside Audit" line item, in the General Fund, Non-Departmental, Non-Operating budget of the CITY.
- 5.4 In the event that the CITY does not provide assistance as provided for in subsection 5.1, or other similar extenuating circumstances are encountered, as to materially alter the performance and scope of work hereunder, it may be necessary for CONTRACTOR to consider the issuance of a settlement statement which details and compares the actual work performed against the original audit plan. However, in no instance will the CITY make any payment for the services provided for in Article II in excess of the amount of twenty thousand dollars and no cents (\$20,000.00) established in subsection 5.1 without formal written revision of this contract and related City Council approval.

VI. RECORDS

- 6.1 CONTRACTOR and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder, save and except for preliminary scratch, and sketch documentation, and shall make such materials available to the CITY at their respective offices, with reasonable notice by the City, at all reasonable times and as often as CITY may deem necessary during the contract period for purposes of inspection, examination, and making excerpts and or copies of same by CITY and any of its authorized representatives.
- 6.2 CONTRACTOR shall retain any and all documents produced as a result of services provided hereunder for a period of three (3) years from the date of termination of the CONTRACT. If at the end of three (3) years there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, CONTRACTOR shall retain the records until the resolution of such litigation or such questions.

- 6.3 CITY will be notified immediately by CONTRACTOR in the event of any requests for information by a third party received by CONTRACTOR, which pertain to the documentation and records referenced in subsections 6.1 and 6.2. CONTRACTOR understands, therefore, that CITY will process all such requests.

VII. TERMINATION

- 7.1 For purposes of this CONTRACT, "termination" of this CONTRACT shall mean termination by completion of the provision of services stated herein or earlier termination pursuant to any of the provisions hereof.
- 7.2 CITY may terminate this CONTRACT in accordance with this clause, in whole or in part, for any of the following:
- (A) Neglect or failure by CONTRACTOR to perform or observe any of the terms, conditions, covenants or guarantees of this CONTRACT or of any amendment between CITY and CONTRACTOR; or
 - (B) Violation by CONTRACTOR of any rule, regulation or law to which CONTRACTOR is bound or shall be bound by terms of this CONTRACT.
- 7.3 Subsection 7.2 notwithstanding, in the event that any such neglect or failure to perform or observe terms, conditions, covenants, or guarantees occurs, CITY shall give written notice to CONTRACTOR, and allow CONTRACTOR ten (10) days from the date of such notice to cure the neglect or failure. If the noted deficiencies are not remedied within the allotted time and to the satisfaction of the CITY, the CITY may proceed with the termination of the CONTRACT.
- 7.4 Upon a decision to terminate by CITY, written notice of such shall be immediately provided to CONTRACTOR specifying the effective date of termination and the extent to which performance of work under this CONTRACT will be terminated. And upon receipt of any such notice to terminate, all finished or unfinished documents, data, charts, schedules, or other appended documentation to, prepared by or on behalf of CONTRACTOR under this CONTRACT, save and except for preliminary scratch, and sketch documentation, shall at the option of CITY, and in accordance hereof, be accessible to the City as provided in subsection 6.1.

- 7.5 Within thirty (30) days of the effective date of termination (unless an extension is authorized in writing by CITY), CONTRACTOR shall submit to CITY his claim in detail for the monies owed by CITY for services performed under this CONTRACT, including for all work performed to date of notice and for any necessary and proper work performed in the ensuing thirty day period in order to close out the audit project, provided however, that such payment does not exceed the maximum amount set out in subsection 5.1.

VIII. SUBCONTRACTING

- 8.1 Any other clause of this CONTRACT to the contrary notwithstanding, none of the work or services covered by this CONTRACT, shall be subcontracted without the prior approval of CITY, and, unless specific waiver is granted in writing by CITY, such subcontracted work shall be subject by its terms to all provisions of this CONTRACT. Compliance by subcontractors with this CONTRACT shall be the responsibility of CONTRACTOR.

IX. CONFLICT OF INTEREST

- 9.1 CONTRACTOR acknowledges that it is informed that the City of San Antonio City Charter prohibits contracts between the CITY and any local public official, such as a City officer or employee, and that the prohibition extends to an officer and employee of CITY agencies such as CITY-owned utilities and CITY boards and commissions, and to contracts involving a business entity in which the official has a substantial interest, as defined by Texas law, if it is reasonably foreseeable that an action on the matter would confer an economic benefit on the business entity. CONTRACTOR certifies, and this CONTRACT is made in reliance thereon, that neither it, its individual officers, employees or agents, nor any person having a substantial interest in this CONTRACT or the financial affairs of the CITY government is an officer or employee of the CITY or any of its agencies. CONTRACTOR warrants that it has tendered to CITY a Disclosure Statement in compliance with the CITY's Ethics Ordinance.

X. COMPLIANCE

- 10.1 CONTRACTOR shall comply with the independence standards promulgated by the American Institute of Certified Public Accountants and any other standard related to independence promulgated by any other authoritative body, as applicable to the services provided hereunder.
- 10.2 CONTRACTOR shall comply with any and all other applicable standards promulgated by the American Institute of Certified Public Accountants and by any other authoritative body, as applicable to the services provided herein, while in the performance of the services hereunder.

10.3 CONTRACTOR shall comply with all federal, state and local laws, rules and regulations applicable to the services provided hereunder, including but not limited to the Single Audit Act of 1984, OMB Circular A-128, Chapter 103 of the Texas Local Government Code, and Section 107 of the San Antonio City Charter.

XI. INSURANCE

11.1 Prior to execution of this CONTRACT, CONTRACTOR shall furnish a completed Certificate of Insurance to the CITY'S Finance Department, Attention: Nora W. Chávez, Director of Finance, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limit and termination provision shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. CITY shall have no duty to pay or perform under this CONTRACT until such certificate has been delivered, and no officer or employee other than the CITY'S Risk Manager shall have authority to waive this requirement.

11.2 CONTRACTOR shall procure, pay for and maintain insurance for the term of this CONTRACT with companies authorized or admitted to do business in the State of Texas, and rated A or better by A.M. Best Co. and/or otherwise acceptable to CITY in the following type/amount:

TYPE	AMOUNT
Workers' Compensation & Employer's Liability, with waiver of subrogation in favor of the City	Statutory \$500,000/\$500,000/\$500,000
Professional Liability	\$1,000,000 per occurrence

11.3 The insurance policy required by this CONTRACT shall contain the following clauses:

“This insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) days prior written notice has been given to the Director of Finance, City of San Antonio.”

“It is agreed that any insurance or self-insurance maintained by the City of San Antonio shall apply in excess of and not contribute with insurance provided by this policy.”

XII. INDEMNITY

- 12.1 **CONTRACTOR agrees to INDEMNIFY and HOLD CITY, ITS OFFICERS AND EMPLOYEES, HARMLESS against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable 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 CONTRACTOR'S NEGLIGENT ACTIVITIES UNDER THIS CONTRACT, OR BY ANY OTHER NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT, OR SUBCONSULTANT OF CONTRACTOR, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS, AND REPRESENTATIVES while in the exercise of performance of the rights or duties under this contract. 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 or bodily injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. The provisions of this paragraph 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.**
- 12.2 **CONTRACTOR shall promptly advise the CITY in writing of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR'S activities under this contract. In turn, CITY shall promptly advise CONTRACTOR in writing of any such claim or demand against the CONTRACTOR or CITY known to CITY.**
- 12.3 **CITY and CONTRACTOR acknowledge and agree that it is the parties' intention, by this provision, that each party shall pay for its respective attorney's fees and costs of defense in the event of any such claim and/or lawsuit.**

XIII. INDEPENDENT CONTRACTOR

- 13.1 It is expressly understood and agreed that the CONTRACTOR provides services as an independent contractor responsible for its respective acts or omissions and that CITY shall in no way be responsible therefor. Neither party hereto has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

XIV. CHANGES AND AMENDMENTS

- 14.1 Except where the terms of this CONTRACT expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both CITY and CONTRACTOR, and subject to approval by the City of San Antonio City Council, evidenced by passage of an ordinance.
- 14.2 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this CONTRACT and that any such changes shall be automatically incorporated into this CONTRACT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XV. LICENSES/CERTIFICATIONS

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

XVI. ENTIRE AGREEMENT

- 16.1 This CONTRACT together with its authorizing ordinance and exhibit constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this CONTRACT shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and executed by both parties in accordance with Article XIV.

XVII. SEVERABILITY

- 17.1 If any clause or provision of this CONTRACT is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this CONTRACT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this CONTRACT that is invalid, illegal, or unenforceable, there be added as a part of the CONTRACT a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. NOTICES

- 18.1 For purposes of this CONTRACT, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, certified mail, postage prepaid, to the addresses set forth below:

CITY

City of San Antonio
Attn: Nora W. Chávez, Director of Finance
P.O. Box 839966
San Antonio, Texas 78283-3966

CONTRACTOR

KPMG Peat Marwick LLP
Attn: Santos Fraga
112 E. Pecan, Suite 2400
San Antonio, Texas 78205

XIX. LAW APPLICABLE

- 19.1 **THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**
- 19.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this CONTRACT shall be heard and determined in the City of San Antonio, County of Bexar, Texas.

XX. LEGAL AUTHORITY

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

XXI. PARTIES BOUND

21.1 This CONTRACT shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided for herein.

XXII. GENDER

22.1 Words of any gender used in this CONTRACT shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXIII. CAPTIONS

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

EXECUTED and AGREED to this the _____ day of _____, 1997.

CITY OF SAN ANTONIO

CONTRACTOR

Nora W. Chávez-Barrera
Director of Finance



Santos Fraga, Partner
KPMG Peat Marwick LLP

Approved as to Form:

Frank J. Garza
Acting City Attorney

EXHIBIT I

Engagement Letter



October 2, 1997

Ms. Nora W. Chávez
Director of Finance
City of San Antonio
506 Dolorosa
San Antonio, Texas 78283-3966

Dear Ms. Chávez:

This letter will confirm our understanding of our engagement to conduct and report upon a Single Audit of the City of San Antonio's Federal Financial Assistance as of and for the year ended September 30, 1996 in accordance with OMB Circular A-128.

We will perform auditing procedures on the City's federal financial assistance/awards programs in accordance with the provisions of OMB Circular A-128, *Audits of State and Local Governments*. OMB Circular A-128 includes specific audit requirements, mainly in the areas of the internal control structure and compliance with laws and regulations, that exceed those required by *Government Auditing Standards*.

As part of our auditing procedures performed in accordance with the provisions of OMB Circular A-128, we will perform tests of controls to evaluate the effectiveness of the design and operation of internal control policies and procedures that we consider relevant to preventing or detecting material noncompliance with laws and regulations applicable to each of the organization's major programs and report the results to you. The tests of internal controls performed in accordance with OMB Circular A-128 are less in scope than would be necessary to render an opinion on the internal control structure and accordingly, we will not render any assurance on that structure. The limited purpose of these tests may not meet the needs of some users of audit reports who require additional information on the internal control structure.

Compliance with laws, regulations, contracts and grants that govern financial assistance/awards programs is the responsibility of the City's management. We will perform the tests of the City's compliance with certain specific provisions of laws, regulations, contracts and grants we determine to be necessary based on OMB's *Compliance Supplement for Audits of State and Local Governments* (Compliance Supplement) and report whether in our opinion the organization complied, in all material respects, with the laws and regulations applicable to its major federal financial assistance/awards programs. The procedures outlined in the Compliance Supplement are those suggested by each federal agency and do not cover all areas of regulations governing each program. Program reviews by federal agencies could also identify instances of noncompliance.

Ms. Nora W. Chávez
Director of Finance
City of San Antonio
October 2, 1997
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With regard to general requirements, our report on compliance will contain a statement of positive assurance on those items that were tested and negative assurance on those items not tested.

In summary, in accordance with OMB Circular A-128, we will issue reports addressed to Mayor Howard Peak and members of the City Council for the year ended September 30, 1996 as follows:

- A report on the supplementary schedule of the City's federal financial assistance/awards programs;
- A report on the internal control structure based on an audit of the general purpose financial statements performed in accordance with *Government Auditing Standards*;
- A report on compliance based on an audit of general purpose financial statements performed in accordance with *Government Auditing Standards*;
- A report on the internal control structure used in administering federal financial assistance/awards programs;
- A report on compliance with general requirements applicable to federal financial assistance programs;
- A report on compliance with specific requirements applicable to major federal financial assistance/awards programs; and
- A report on compliance with specific requirements applicable to nonmajor federal financial assistance/awards program transactions, if necessary.

The City agrees that all records, documentation, and information we request in connection with our audit will be made available to us, that all material information will be disclosed to us, and that we will have the full cooperation of the City's personnel. As required by generally accepted auditing standards, we will make specific inquiries of management about the representations embodied in the financial statements, the effectiveness of the internal control structure and the City's compliance with certain laws and regulations, and obtain a representation letter from management about these matters. The responses to our inquiries, the written representations, and the results of audit tests comprise the evidential matter we will rely upon in forming an opinion on the financial statements. Because of the importance of City management's representations to the effective performance of our services, the City will release KPMG Peat Marwick LLP

Ms. Nora W. Chávez
Director of Finance
City of San Antonio
October 2, 1997
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and its personnel from any claims it may have against KPMG relating to our services under this engagement, which are directly attributable to any misrepresentations made by the City in the letter referred to above.

It is our responsibility to ensure that the City Council is informed of any significant illegal acts that we become aware of during our audit. If the illegal act involves funds from governmental entities, it is the City's responsibility to inform the governmental entities of these acts. If the City's management is involved in the illegal act or does not report it to the appropriate governmental entities on a timely basis, we, as auditors, will be obligated to report the illegal acts to these governmental entities.

We understand that our reports on internal control structure as part of the financial audit and on compliance with laws and regulations are intended for the information of the City Council, management, and federal and state grantor agencies.

KPMG will maintain all documents, papers, and records, save and except for preliminary scratch, and sketch documentation and shall make such materials available to the City at all reasonable times and as often as the City may deem necessary, for purposes of inspection, examination, duplication, etc.

It should be understood the work papers for the engagement are the property of KPMG Peat Marwick LLP and constitute confidential information. However, pursuant to *Government Auditing Standards*, we are required to make certain work papers available to federal regulatory agencies upon request for their reviews of audit quality and use by their auditors. Access to the requested work papers will be provided to the regulators under supervision of KPMG Peat Marwick personnel. To the extent such workpapers are used by the regulators for purposes other than reviews of audit quality and/or to the extent that regulators or grantors require additional procedures beyond the requirements of the Single Audit Act, costs incurred to comply with any such requests will be discussed with the City, prior to being incurred and billed to you.

To ensure that the 1996 Single Audit is completed timely, we will require maximum assistance and cooperation of City personnel. This assistance includes approximately 160 to 200 hours of Internal Review Audit personnel. As you are aware, the Single Audit reporting deadline is October 31, 1997 and, if the City and we are to meet that deadline extraordinary efforts from both City and KPMG personnel will be required. Unusual circumstances have delayed our commencement of this engagement and precluded us from relying on the single audit work already performed by Martinez, Mendoza & Colmenero as part of the prior engagement; however, we undertake to use our best efforts to complete the audit and issue our reports on or before the deadline.

Ms. Nora W. Chávez
Director of Finance
City of San Antonio
October 2, 1997
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Our fees for the audit will not exceed \$20,000. It is our practice to submit bills to you as the work progresses. If circumstances encountered during the performance of the audit that warrant additional time or expense could cause us to be unable to complete the audit within the above estimates, we will notify the City as they are assessed.

We would be pleased to discuss this letter with you at any time. For your convenience in confirming these arrangements, we enclose a copy of this letter. Please sign and return it to us.

We are looking forward to working with you on this engagement.

Very truly yours,

KPMG Peat Marwick LLP



Santos Fraga
Partner

cc: Mr. Alexander E. Briseño, City Manager

ACCEPTED

City of San Antonio



Ms. Nora W. Chávez, Director of Finance

10/14/97
Date