

AN ORDINANCE

94740

AUTHORIZING THE EXECUTION OF CONTRACTS AND APPROVING THE FIRMS OF DELOITTE AND TOUCHE, L.L.P., GARZA/GONZALEZ AND ASSOCIATES, AND ROBERT J. WILLIAMS, C.P.A., TO PROVIDE THE CITY GASB STATEMENT NO. 34 IMPLEMENTATION ASSISTANCE AND INDEPENDENT AUDIT SERVICES FOR THE FISCAL YEARS OF 2002, 2003, 2004, 2005 AND 2006, AT A TOTAL FEE FOR AUDIT SERVICES OF \$270,000.00 FOR YEAR ONE, \$278,100.00 FOR YEAR TWO, \$286,443.00 FOR YEAR THREE, WITH YEARS 2005 AND 2006 TO BE NEGOTIATED, WITH CITY COUNCIL APPROVAL, AND AN AMOUNT NOT TO EXCEED \$100,000.00 OVER THE TERM OF THE CONTRACT FOR GASB STATEMENT NO. 34 IMPLEMENTATION ASSISTANCE.

* * * * *

WHEREAS, Section 107 of the City of San Antonio City Charter requires that at the close of each fiscal year, an audit be performed on the City's financial records by an independent certified public accountant; and

WHEREAS, Chapter 103 of the Texas Local Government Code requires the City to have its records and accounts audited annually by an independent certified public accountant; and

WHEREAS, the Single Audit Act Amendments of 1996 and related OMB Circular A-133 and the State of Texas Single Audit Circular contain certain audit and financial reporting requirements; and

WHEREAS, the City staff sent a Request for Proposal to provide GASB Statement 34 implementation assistance and independent audit services for fiscal years ending September 30, 2002, 2003, 2004, 2005, and 2006 to thirty-one certified public accounting firms and made the Request for Proposal available on the internet and the City placed advertisements in the Express-News, San Antonio Business Journal, La Prensa, San Antonio Observer, Daily Commercial Recorder, and San Antonio Informer publications; and

WHEREAS, on September 21, 2001, the City received eight proposals that were evaluated by an "Audit Selection Committee," consisting of representatives from the Audit and Contract Review Committee, and a staff appointed committee which included representatives from Finance, Office of Internal Review, Economic Development, Housing and Community Development, Community Initiatives, Aviation, and Public Works; and

WHEREAS, the selection process utilized included a three-step evaluation of written proposals, oral presentations and final ranking of each firm; and

WHEREAS, the Audit Selection Committee evaluated and scored the written proposals based on criteria which included the background and experience of each firm, qualifications and experience of assigned personnel, fees, sensitivity of SBEDA issues, affirmative action, and quality and responsiveness of the written proposals; and

WHEREAS, the Audit Selection Committee ranked the firms to serve as a Senior Audit firm and Co-Audit firms to establish the City's proposed audit team; and

WHEREAS, the Audit Selection Committee conducted oral presentations and interviews of the eight firms and through consensus, evaluated and scored each firm based on experience, cost, qualifications of assigned staff, overall quality of oral presentations and sensitivity to SBEDA issues; and

WHEREAS, upon consideration of both the written and oral scores, the Audit Selection Committee, by consensus, recommended the three firms selected to serve as the City's auditors; and

WHEREAS, the Audit Selection Committee now recommends an audit team of Deloitte and Touche LLP, Garza/Gonzalez and Associates, and Robert J. Williams, C.P.A., to provide the City GASB Statement No. 34 implementation assistance and independent audit services for the fiscal years of 2002, 2003, 2004, 2005, and 2006 **NOW THEREFORE**,

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

SECTION 1. The audit team of Deloitte and Touche LLP, Garza/Gonzalez and Associates, and Robert J. Williams, C.P.A. are hereby selected to provide the City of San Antonio with GASB Statement 34 implementation assistance and independent audit and related services for the fiscal years of 2002, 2003, 2004, 2005, and 2006. Said firms are to provide services according to the following distribution: Deloitte and Touche LLP, 54%; Garza/Gonzalez and Associates, 39%; and Robert J. Williams, C.P.A., 7%.

SECTION 2. The Director of Finance or his designee is hereby authorized to execute a contract with said firms for a five year period for a total audit fee of \$270,000.00 for year one, \$278,100.00 for year two, \$286,443.00 for year three, with years four and five to be negotiated, with City Council approval, and an amount not to exceed \$100,000 over the term of the Contract for GASB Statement No. 34 implementation assistance. A copy of the Contracts are attached hereto and incorporated herein for all purposes as Attachments I, II, and III. The parties shall have 30 days from the date of approval hereof to negotiate and execute contracts in substantially final form as attached in Attachments I, II, and III. Should the parties fail to agree on all provisions thereof, the additional authority and direction must be provided through subsequent City Council action.

SECTION 3. The provisions of Contingent Additional Services as provided within Article IV of each Contract are hereby authorized. The services shall be requested and initiated, as stated in said Contracts, at the discretion of the City, acting by and through its Director of Finance. Said Contingent Additional Services consists of the following: guidance on tax, compliance, or other non-audit consultation matters; other services which may be required for a City bond offering; assistance with the preparation of aspects of the annual report or the analysis of new accounting standards or pronouncements; and/of advisory or consultant services to assist in the resolution of audit findings and questioned costs reported by federal and state agencies. Funds for the provision of said services shall have been allocated prior to such request or initiation by the City.

SECTION 4. Funds in the amount of \$270,000.00 are authorized to be encumbered in Fund 11-000000 (General Fund), Index Code 419226 entitled Professional Fees – Outside Auditors , and are made payable as indicated below for audit services in Fiscal Year 2002:

| | |
|-------------------------------|---------------------|
| Deloitte and Touche, LLP | \$145,800.00 |
| Garza/Gonzalez and Associates | \$105,300.00 |
| Robert J. Williams, CPA | <u>\$ 18,900.00</u> |
| | \$270,000.00 |

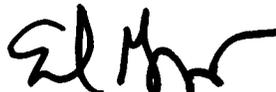
Funding for the fiscal years of 2003 and, 2004 is contingent upon annual budget appropriations with fiscal years 2005 and 2006 to be negotiated, with City Council Approval.

SECTION 5. Funds in the amount of \$100,000.00 are authorized to be encumbered in Fund 11-000000, Index Code 216200 entitled Fees To Professional Contractors, and are made payable to a contingent vendor for GASB 34 implementation assistance.

SECTION 6. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager’s designee, correct allocation to specific Index Codes and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 7. This ordinance shall become effective on the 10th day after passage hereof.

PASSED AND APPROVED this the 18th day of October, 2001.


M A Y O R
EDWARD D. GARZA

ATTEST: 


APPROVED AS TO FORM: 
City Attorney

01-39

MEETING OF THE CITY COUNCIL

Is open

31.

AGENDA ITEM NUMBER: _____

DATE: _____

10-18-2001

MOTION: _____

ORDINANCE NUMBER: _____

Motion
94740

RESOLUTION NUMBER: _____

ZONING CASE NUMBER: _____

TRAVEL AUTHORIZATION: _____

| |
|---|
| ALAMODOME |
| ASSET MANAGEMENT |
| AVIATION |
| 1 CITY ATTORNEY |
| MUNICIPAL COURT |
| REAL ESTATE (FASSNIDGE) |
| REAL ESTATE (WOOD) |
| 1 RISK MANAGEMENT |
| CITY MANAGER |
| SPECIAL PROJECTS |
| CITY PUBLIC SERVICE - GENERAL MANAGER |
| CITY PUBLIC SERVICE - MAPS AND RECORDS |
| CODE COMPLIANCE |
| COMMERCIAL RECORDER |
| COMMUNITY INITIATIVES |
| CONVENTION AND VISITORS BUREAU |
| CONVENTION CENTER EXPANSION OFFICE |
| CONVENTION FACILITIES |
| COUNCIL OFFICES |
| CULTURAL AFFAIRS |
| CUSTOMER SERVICE/311 SYSTEM |
| DEVELOPMENT SERVICES |
| HOUSE NUMBERING |
| LAND DEVELOPMENT SERVICES |
| TRAFFIC & DRAINAGE PLAN REVIEW |
| ECONOMIC DEVELOPMENT |
| ENVIRONMENTAL SERVICES |
| SOLID WASTE |
| EXTERNAL RELATIONS |
| PUBLIC INFORMATION OFFICE |
| 1 FINANCE - DIRECTOR |
| FINANCE - ASSESSOR |
| 1 FINANCE - CONTROLLER |
| FINANCE - GRANTS |
| FINANCE - PUBLIC UTILITIES SUPERVISOR |
| FINANCE- TREASURY |
| FIRE DEPARTMENT |
| HOUSING AND COMMUNITY DEVELOPMENT |
| HUMAN RESOURCES (PERSONNEL) |
| INFORMATION SERVICES |
| INTERGOVERNMENTAL RELATIONS |
| INTERNAL REVIEW |
| INTERNATIONAL AFFAIRS |
| LIBRARY |
| 1 MANAGEMENT & BUDGET (OFFICE OF) OMB |
| METROPOLITAN HEALTH DISTRICT |
| MUNICIPAL CODE CORPORATION |
| MUNICIPAL COURT |
| NEIGHBORHOOD ACTION |
| PARKS AND RECREATION |
| MARKET SQUARE |
| YOUTH INITIATIVES |
| PLANNING DEPARTMENT -NEIGHBORHOOD PLNG; URBAN DESIGN/HISTORIC PRESERVATION |
| DISABILITY ACCESS OFFICE |
| POLICE DEPARTMENT |
| GROUND TRANSPORTATION |
| PUBLIC WORKS DIRECTOR |
| CAPITAL PROJECTS |
| CENTRAL MAPPING |
| ENGINEERING |
| PARKING DIVISION |
| REAL ESTATE DIVISION |
| TRAFFIC ENGINEERING |
| PURCHASING AND GENERAL SERVICES |
| SAN ANTONIO WATER SYSTEMS (SAWS) |
| VIA |

| NAME | ROLL | AYE | NAY |
|-------------------------------------|------|-----|-----|
| BOBBY PEREZ District 1 | | ✓ | |
| JOHN H. SANDERS District 2 | - | | X |
| TONI MOORHOUSE District 3 | | / | |
| ENRIQUE "KIKE" MARTIN District 4 | | / | |
| DAVID A. GARCIA District 5 | | / | |
| ENRIQUE M. BARRERA District 6 | | / | |
| JULIAN CASTRO District 7 | | / | |
| BONNIE CONNER District 8 | | / | |
| CARROLL SCHUBERT District 9 | | / | |
| DAVID CARPENTER District 10 | | | X |
| ED GARZA Mayor | | / | |

file

Deloitte & Touche

01-39

MEETING OF THE CITY COUNCIL

In John

AGENDA ITEM NUMBER: 31
 DATE: OCT 18 2001
 MOTION: Caronte
 ORDINANCE NUMBER: _____
 RESOLUTION NUMBER: _____
 ZONING CASE NUMBER: _____
 TRAVEL AUTHORIZATION: _____

| |
|---|
| ALAMODOME |
| ASSET MANAGEMENT |
| AVIATION |
| CITY ATTORNEY |
| MUNICIPAL COURT |
| REAL ESTATE (FASSNIDGE) |
| REAL ESTATE (WOOD) |
| 1 RISK MANAGEMENT |
| CITY MANAGER |
| SPECIAL PROJECTS |
| CITY PUBLIC SERVICE - GENERAL MANAGER |
| CITY PUBLIC SERVICE - MAPS AND RECORDS |
| CODE COMPLIANCE |
| COMMERCIAL RECORDER |
| COMMUNITY INITIATIVES |
| CONVENTION AND VISITORS BUREAU |
| CONVENTION CENTER EXPANSION OFFICE |
| CONVENTION FACILITIES |
| COUNCIL OFFICES |
| CULTURAL AFFAIRS |
| CUSTOMER SERVICE/311 SYSTEM |
| DEVELOPMENT SERVICES |
| HOUSE NUMBERING |
| LAND DEVELOPMENT SERVICES |
| TRAFFIC & DRAINAGE PLAN REVIEW |
| ECONOMIC DEVELOPMENT |
| ENVIRONMENTAL SERVICES |
| SOLID WASTE |
| EXTERNAL RELATIONS |
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| FINANCE - ASSESSOR |
| 1 FINANCE - CONTROLLER |
| FINANCE - GRANTS |
| FINANCE - PUBLIC UTILITIES SUPERVISOR |
| FINANCE- TREASURY |
| FIRE DEPARTMENT |
| HOUSING AND COMMUNITY DEVELOPMENT |
| HUMAN RESOURCES (PERSONNEL) |
| INFORMATION SERVICES |
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| INTERNATIONAL AFFAIRS |
| LIBRARY |
| 1 MANAGEMENT & BUDGET (OFFICE OF) OMB |
| METROPOLITAN HEALTH DISTRICT |
| MUNICIPAL CODE CORPORATION |
| MUNICIPAL COURT |
| NEIGHBORHOOD ACTION |
| PARKS AND RECREATION |
| MARKET SQUARE |
| YOUTH INITIATIVES |
| PLANNING DEPARTMENT -NEIGHBORHOOD PLNG; URBAN DESIGN/HISTORIC PRESERVATION |
| DISABILITY ACCESS OFFICE |
| POLICE DEPARTMENT |
| GROUND TRANSPORTATION |
| PUBLIC WORKS DIRECTOR |
| CAPITAL PROJECTS |
| CENTRAL MAPPING |
| ENGINEERING |
| PARKING DIVISION |
| REAL ESTATE DIVISION |
| TRAFFIC ENGINEERING |
| PURCHASING AND GENERAL SERVICES |
| SAN ANTONIO WATER SYSTEMS (SAWS) |
| VIA |

| NAME | ROLL | AYE | NAY |
|-------------------------------------|------|-----|-----|
| BOBBY PEREZ District 1 | | | X |
| JOHN H. SANDERS District 2 | | ✓ | |
| TONI MOORHOUSE District 3 | | | X |
| ENRIQUE "KIKE" MARTIN District 4 | | ✓ | |
| DAVID A. GARCIA District 5 | | ✓ | |
| ENRIQUE M. BARRERA District 6 | | | X |
| JULIAN CASTRO District 7 | | | X |
| BONNIE CONNER District 8 | | | X |
| CARROLL SCHUBERT District 9 | | | X |
| DAVID CARPENTER District 10 | | ✓ | |
| ED GARZA Mayor | | | X |

2 Week Payment

01-39

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
FINANCE DEPARTMENT**

TO: Mayor and Council

FROM: Milo Nitschke, Director, Finance Department

THROUGH: Terry M. Brechtel, City Manager

COPIES: Terry M. Brechtel, City Manager; City Attorney's Office; City Clerk; Office of Management and Budget; file

SUBJECT: Approval of GASB Statement No. 34 Implementation Assistance and Independent Audit Services Contracts

DATE: October 18, 2001

SUMMARY AND RECOMMENDATION

An Ordinance approving the firms of Deloitte and Touche LLP, Garza/Gonzalez and Associates, and Robert J. Williams, CPA, to provide the City GASB Statement No. 34 implementation assistance and independent audit services for the fiscal years of 2002, 2003, 2004, 2005, and 2006, at a total fee for audit services of \$270,000 for year one, \$278,100 for year two, \$286,443 for year three, with years 2005 and 2006 to be negotiated, with City Council approval, and an amount not to exceed \$100,000 over the term of the contract for GASB Statement No. 34 implementation assistance.

Staff recommends approval of this Ordinance.

BACKGROUND

The City Charter requires that annual audits of the City's financial records be performed by independent certified public accountants. Additionally, independent audits are required by the Federal Single Audit Act and related OMB Circular A-133 and the State of Texas Single Audit Circular. In addition, as the City will also be required to implement GASB Statement No. 34 *Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments* beginning in fiscal year 2002, we have required implementation assistance be included in each contract. GASB Statement No. 34 establishes new financial reporting standards for state and local governments. This pronouncement will implement the most significant change in the history of state and local government financial reporting.

The firm of KPMG LLP was engaged to perform as the City's lead audit firm for the fiscal years of 1993 through 2001. The firms of KPMG LLP, Garza/Gonzalez and Associates, and Robert J. Williams, CPA, have comprised the City's audit team from 1997 through 2001. During these periods, all of the audits have resulted in unqualified (clean) audit opinions. It is also important to note that the City has received the Certificate of Achievement for Excellence in Financial Reporting, the highest recognition in financial reporting for the past twenty-four consecutive years.

On July 30, 2001, the Audit and Contract Review Committee met with City staff to discuss the process of soliciting proposals from qualified firms, to provide the City GASB Statement No. 34 implementation assistance, annual independent audits and related services. This included a review and discussion of the process to be used in the Request for Proposal, term of contract, evaluation criteria and a brief review of a proposed timeline.

The Request for Proposal to provide GASB Statement No. 34 implementation assistance and independent audit services for fiscal years ending September 30, 2002, 2003, 2004, 2005 and 2006, was released to selected firms and made available on the Internet on August 3, 2001. Additionally, the City placed advertisements in the Express-News, San Antonio Business Journal, La Prensa, San Antonio Observer, Daily Commercial Recorder, and San Antonio Informer publications. Requests for Proposals were sent to thirty-one (31) firms, including the "Big 5" national firms. A total of eight firms responded. Responses were received from the firms of Arthur Andersen LLP, Deloitte and Touche LLP, KPMG LLP, Garza/Gonzalez and Associates, Leal and Carter PC, Padgett, Stratemann and Company LLP, Martinez, Garcia and Company, and Robert J. Williams, CPA.

The selection process utilized included a three-step evaluation of written proposals, oral presentations and final ranking of each firm. On September 21, 2001, the eight proposals received were evaluated by an "Audit Selection Committee," consisting of a staff appointed committee which included representatives from Finance, Office of Internal Review, City Attorney's Office, Economic Development, Housing and Community Development, Community Initiatives, Aviation and Public Works. The Audit Selection Committee evaluated and scored the written proposals based on criteria which included the background and experience of each firm, qualifications and experience of assigned personnel, fees, sensitivity to SBEDA issues, affirmative action, and quality and responsiveness of the written proposals. The Audit Selection Committee ranked the firms to serve as a Senior Audit firm and Co-Audit firms to establish the City's proposed audit team.

On September 25 and 26, the Audit Selection Committee conducted oral presentations and interviews of the eight firms, and through consensus evaluated and scored each firm based on experience, cost, qualifications of assigned staff, overall quality of oral presentations and sensitivity to SBEDA issues. Upon consideration of both the written and oral scores, the Committee, by consensus, recommended the three firms selected to serve as the City's auditors.

A presentation to the Audit and Contract Review Committee was held on October 9, 2001, and staff was directed to proceed with this item.

Based on the process described, the Audit Selection Committee selected the firm of Deloitte and Touche LLP, to serve as the Senior Audit firm, with the firms of Garza/Gonzalez and Associates and Robert J. Williams, CPA, to serve as Co-Audit firms. Recommended percentages for each firm are 54%, 39%, and 7%, respectively. The division of audit work and responsibilities will be determined in coordination with each firm with approval and concurrence by the City. As a national "Big Five" firm, Deloitte and Touche LLP brings a national presence, resources dedicated to the public sector, and diverse technical experience. The Co-Audit firms bring a local presence, prior audit experience with the City and its processes, and extensive Single Audit experience.

Utilizing an arrangement of national and local firms provides the City with the most efficient mix of audit expertise and best facilitates the audits of financial statements, Single Audits, and GASB Statement No. 34 implementation and assistance. The Senior Audit firm will coordinate the audit and work with each Co-Audit firm and staff to provide the most efficient and cost effective services. It is also important to note that Office of Internal Review staff has historically provided assistance to the independent auditors to enhance the efficiency of the audit process, and to minimize audit fees. Therefore, in the process of negotiating fees for these contracts, 1,500 annual hours of assistance from Office of Internal Review staff were included. This contract also includes an optional annual audit rate whereby the annual audit fees will be increased by 25% should the staff of Internal Review, for any reason, not provide any assistance to the audit firms. Deloitte and Touche LLP is also recommended to provide specialized related services, which may include other audits, reviews, or similar procedures as needed to comply with mandated requirements by regulatory and accounting agencies or boards.

POLICY ANALYSIS

As required by the City Charter and Chapter 103 of the Texas Local Government Code, an annual audit of the City's financial records and accounts is to be performed by an independent certified public accountant. As the City receives financial assistance in the form of Federal and State grants, Single Audit reports are also required in compliance with Single Audit Act Amendments of 1996 and the U. S. Office of Management and Budget Circular A-133 and the State of Texas Single Audit Circular. In addition, beginning with fiscal year 2002, the City will be required to implement and be in compliance with GASB Statement No. 34 *Basic Financial Statements and Management Discussion and Analysis for State and Local Governments*.

FINANCIAL IMPACT

Total annual audit fees are \$270,000 for year one, \$278,100 for year two, \$286,443 for year three, with years four and five to be negotiated, with City Council approval, and an amount not to exceed \$100,000 over the term of the contract for GASB Statement No. 34 implementation assistance. GASB implementation assistance and audit fees are budgeted and are to be paid from the General Fund. Audit related services which mandate specialization, as described above, will

require Deloitte and Touche LLP, the Senior Audit firm, to provide the City written estimates and hourly rates on a case by case basis.

COORDINATION

Coordination of this item has included the following committee and departments: Audit and Contract Review Committee, Finance, Office of Internal Review, City Attorney's Office, Economic Development, Housing and Community Development, Community Initiatives, Aviation and Public Works.

SUPPLEMENTAL COMMENTS

The ethics disclosure forms required by Ordinance are attached.



Milo Nitschke
Finance Director

Approved:



Terry M. Brechtel
City Manager

**Request for GASB Statement 34 Implementation Assistance and Independent Audit Services
 FY 2002-2006
 LOCAL FIRMS**

Matrix for Written Responses

| Category | Assigned Points | GARZA/ GONZALEZ | MARTINEZ & GARCIA | LEAL & CARTER | PADGETT & STRATEMANN | ROBERT J. WILLIAMS |
|---|-----------------|-----------------|-------------------|---------------|----------------------|--------------------|
| 1. Experience - Financial-Governmental | 20 | 17 | 12 | 12 | 16 | 13 |
| 2. Experience - GASB 34 | 15 | 10 | 4 | 8 | 11 | 5 |
| 3. Experience - Single Audits | 20 | 17 | 8 | 16 | 13 | 7 |
| 4. Cost | 5 | 5 | 3 | 4 | 2 | 5 |
| 5. Quality & Responsiveness of Written Proposal | 10 | 7 | 5 | 7 | 9 | 6 |
| 6. Qualifications of Assigned Staff | 10 | 8 | 5 | 7 | 8 | 7 |
| 7. Affirmative Action-Local Presence | 10 | 10 | 10 | 10 | 10 | 10 |
| 8. Disadvantaged Business Enterprise | 5 | 0 | 0 | 5 | 0 | 0 |
| 9. SBEDA Policy Compliance | 5 | 2 | 2 | 2 | 0 | 3 |
| Total | 100 | 76 | 49 | 71 | 69 | 56 |

Matrix for Oral Presentations

| Category | Assigned Points | GARZA/ GONZALEZ | MARTINEZ & GARCIA | LEAL & CARTER | PADGETT & STRATEMANN | ROBERT J. WILLIAMS |
|--|-----------------|-----------------|-------------------|---------------|----------------------|--------------------|
| 1. Demonstrated Experience - Financial-Governmental | 20 | 18 | 10 | 14 | 17 | 16 |
| 2. Demonstrated Experience - GASB 34 | 15 | 14 | 3 | 3 | 13 | 9 |
| 3. Demonstrated Experience - Single Audits | 20 | 18 | 10 | 15 | 17 | 12 |
| 4. Cost | 5 | 5 | 3 | 4 | 2 | 5 |
| 5. Qualifications of Assigned Staff | 5 | 4 | 2 | 1 | 5 | 4 |
| 6. Overall Quality of Oral Presentation-responsiveness to questions-clarity of answers | 15 | 13 | 7 | 8 | 13 | 11 |
| Total | 80 | 72 | 35 | 45 | 67 | 57 |

**Request for GASB Statement 34 Implementation Assistance and Independent Audit Services
 FY 2002-2006
 NATIONAL FIRMS**

Matrix for Written Responses

| Category | Assigned Points | KPMG | ARTHUR ANDERSEN | DELOITTE & TOUCHE |
|---|-----------------|------|-----------------|-------------------|
| 1. Experience - Financial-Governmental | 20 | 17 | 10 | 18 |
| 2. Experience - GASB 34 | 15 | 14 | 4 | 14 |
| 3. Experience - Single Audits | 20 | 17 | 8 | 18 |
| 4. Cost | 5 | 4 | 5 | 3 |
| 5. Quality & Responsiveness of Written Proposal | 10 | 8 | 6 | 10 |
| 6. Qualifications of Assigned Staff | 10 | 8 | 6 | 9 |
| 7. Affirmative Action-Local Presence | 10 | 6 | 6 | 6 |
| 8. Disadvantaged Business Enterprise | 5 | 0 | 0 | 0 |
| 9. SBEDA Policy Compliance | 5 | 0 | 0 | 0 |
| Total | 100 | 74 | 45 | 78 |

Matrix for Oral Presentations

| Category | Assigned Points | KPMG | ARTHUR ANDERSEN | DELOITTE & TOUCHE |
|--|-----------------|------|-----------------|-------------------|
| 1. Demonstrated Experience - Financial-Governmental | 20 | 17 | 15 | 20 |
| 2. Demonstrated Experience - GASB 34 | 15 | 13 | 8 | 15 |
| 3. Demonstrated Experience - Single Audits | 20 | 16 | 10 | 18 |
| 4. Cost | 5 | 4 | 5 | 3 |
| 5. Qualifications of Assigned Staff | 5 | 3 | 3 | 4 |
| 6. Overall Quality of Oral Presentation-responsiveness to questions-clarity of answers | 15 | 8 | 10 | 15 |
| Total | 80 | 61 | 51 | 75 |

City of San Antonio
Discretionary Contracts Disclosure*

*For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1& 2
Attach additional sheets if space provided is not sufficient.
State Not Applicable for questions that do not apply.*

** This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.*

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the city in the enforcement of provisions contained in the City Charter and the code of ethics, an individual or business entity seeking a discretionary contract from the city is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

| |
|-----------------|
| Not applicable. |
|-----------------|

(2) the identity of any **business entity** that would be a party to the discretionary contract:

Deloitte & Touche LLP

and the name of:

(A) any individual or business entity that would be a *subcontractor* on the discretionary contract;

| |
|--|
| |
|--|

(B) any individual or business entity that is known to be a *partner*, or a *parent* or *subsidiary business* entity, of any individual or business entity who would be a party to the discretionary contract;

| |
|-----------------|
| Not applicable. |
|-----------------|

(3) the identity of any **lobbyist** or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

| |
|-----------------|
| Not applicable. |
|-----------------|

Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2), or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

| To Whom Made: | Amount: | Date of Contribution: |
|-----------------|---------|-----------------------|
| Not applicable. | | |

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question¹ as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

| | | |
|--|---|-----------------------------------|
| Not applicable. | | |
| Signature:  | Title: Director Company: Deloitte & Touche LLP | Date: September 7, 2001 |

¹ For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

City of San Antonio
Discretionary Contracts Disclosure*

*For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2
Attach additional sheets if space provided is not sufficient.
State Not Applicable for questions that do not apply.*

** This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.*

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the city in the enforcement of provisions contained in the City Charter and the code of ethics, an individual or business entity seeking a discretionary contract from the city is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any individual who would be a party to the discretionary contract;

Gregory R. Garza, CPA, Senior Partner
Rene E. Gonzalez, CPA, Senior Partner
Dora Ann Verde, CPA, Partner
Eleazar Mendoza, CPA, Partner

(2) the identity of any business entity that would be a party to the discretionary contract:
Garza/Gonzalez & Associates

and the name of: **Gregory R. Garza**

(A) any individual or business entity that would be a *subcontractor* on the discretionary contract;

None

(B) any individual or business entity that is known to be a *partner*, or a *parent* or *subsidiary business* entity, of any individual or business entity who would be a party to the discretionary contract;

None

(3) the identity of any lobbyist or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

None

Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

| To Whom Made: | Amount: | Date of Contribution: |
|-----------------|---------|-----------------------|
| Raul Prado | 250. | 9/1999 |
| Jose Menendez | 500. | 3/2000 |
| Enrique Barrera | 250. | 2/2001 |
| Enrique Barrera | 300. | 4/2001 |
| Ed Garza | 300. | 4/2001 |
| Julian Castro | 500. | 4/2001 |

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question¹ as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

| | | |
|---|---|-----------------|
| | | |
| Signature:  | Title: Senior Partner Company: Garza/Gonzalez & Associates | Date: 9/7/01 |

¹ For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

City of San Antonio
Discretionary Contracts Disclosure*

*For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2
Attach additional sheets if space provided is not sufficient.
State Not Applicable for questions that do not apply.*

** This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.*

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the city in the enforcement of provisions contained in the City Charter and the code of ethics, an individual or business entity seeking a discretionary contract from the city is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract;

| |
|------|
| None |
|------|

(2) the identity of any **business entity** that would be a party to the discretionary contract:

None

and the name of:

(A) any individual or business entity that would be a *subcontractor* on the discretionary contract;

| |
|------|
| None |
|------|

(B) any individual or business entity that is known to be a *partner*, or a *parent* or *subsidiary business* entity, of any individual or business entity who would be a party to the discretionary contract;

| |
|------|
| None |
|------|

(3) the identity of any **lobbyist** or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

| |
|------|
| None |
|------|

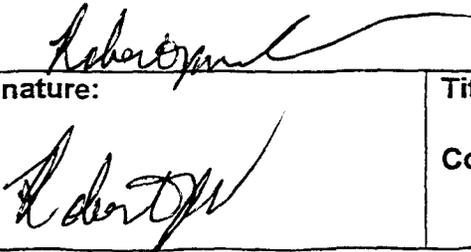
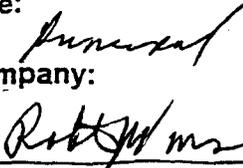
Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

| To Whom Made: | Amount: | Date of Contribution: |
|---------------|---------|-----------------------|
| None | | |

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question¹ as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

| | | |
|---|--|-----------------|
| N/A | | |
| Signature:  | Title: Company:  Robert W. CPA | Date: 9/7/01 |

¹ For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

CITY OF SAN ANTONIO

**Finance Department
Controller's Office**

TO: Norma S. Rodriguez, City Clerk; Keith Martin, City Attorney's Office
FROM: Susan Rios, CPA, Assistant Controller
COPIES: Milo Nitschke, Director, Finance Department; Troy Elliott, CPA, Controller; Susan Rios, CPA, Assistant Controller; file
SUBJECT: Final Executed GASB Statement No. 34 Implementation Assistance and Independent Audit Services Contracts

DATE: December 7, 2001

Attached, please find original signed contracts authorized by Ordinance 94740 on October 18, 2001. The audit firms of Deloitte and Touche LLP, Garza/Gonzalez and Associates and Robert J. Williams, CPA, comprise the City's audit team for fiscal years 2002, 2003, 2004, 2005 and 2006.

Should you have any questions please contact me at extension 78636.



Susan Rios
Assistant Controller

NOV 14 2001
CITY OF SAN ANTONIO
OFFICE OF THE CONTROLLER

**GASB STATEMENT NO. 34 IMPLEMENTATION ASSISTANCE AND AUDIT
SERVICES CONTRACT**

STATE OF TEXAS

COUNTY OF BEXAR

This Contract 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 or her designee, pursuant to Ordinance No. 94740, passed and approved on October 18, 2001, and **DELOITTE AND TOUCHE LLP** a Delaware limited liability partnership acting by and through its Director, Terry Kile, (herein referred to as "**CONTRACTOR**").

WHEREAS, Section 107 of the City of San Antonio City Charter requires that at the close of each fiscal year, an audit be performed on the **CITY'S** financial records by an independent certified public accountant; and

WHEREAS, Chapter 103 of the Texas Local Government Code requires the **CITY** to have its records and accounts audited annually by an independent certified public accountant; and

WHEREAS, the Single Audit Act Amendments of 1996 and related OMB Circular A-133 and the State of Texas Single Audit Circular contain certain audit and financial reporting requirements; and

WHEREAS, the **CITY** has gone through an extensive selection process and chosen three entities (collectively referred to as "**CPA Contractors**") to collectively provide the services described herein for a five year period to include the required audits for the fiscal years ending September 30, 2002, 2003 and 2004, with years 2005 and 2006 to be negotiated conditioned upon mutually agreed consideration and determination of the scope of the audit for each such year;

WHEREAS, the **CITY** will execute Contracts containing the same terms and conditions, with all three entities referred to as "**CPA Contractors**," wherein each party is jointly and severally bound to provide the services contained in this Contract; **NOW THEREFORE:**

FOR VALUABLE CONSIDERATION, the parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

- 1.1 For purposes of this Contract, the word "**CONTRACTOR**" as used herein shall refer to **DELOITTE AND TOUCHE LLP**
- 1.2 For purposes of this Contract, the term "**CPA Contractors**" as used herein shall refer to **DELOITTE AND TOUCHE LLP, GARZA/GONZALEZ AND ASSOCIATES, and ROBERT J. WILLIAMS, CPA.**

II. PROVISION OF SERVICES

- 2.1 It is acknowledged and understood that before the commencement of the provision of services described in Article III, **CPA Contractors** will each execute an annual engagement letter with the **CITY** that will establish the obligations, duties and scope of the **CPA Contractors'** responsibility for each year's audit, the allocation of work to be performed as part of each audit by each **CPA Contractor**, and the portion of the total compensation for such audits that each **CPA Contractor** will be paid, consistent with the provisions contained in Article VII, subsections 7.1 through 7.5.
- 2.2 **CITY** and **CPA Contractors** mutually agree that the engagement letter executed by the **CONTRACTOR** shall become part of this Contract, each time it is executed in accordance with Article VIII and that this Contract and the other two Contracts executed with the other **CPA Contractors** and the engagement letters shall govern the agreement between the parties for the fiscal year noted in the engagement letters.
- 2.3 It is also understood and agreed that **DELOITTE AND TOUCHE LLP**, has been designated as the coordinator entity for the **CPA Contractors**. In this regard, the coordinator will serve as the point of contact for **CITY** in facilitating and administering the Contracts. In designating tasks to **CPA Contractors**, **DELOITTE AND TOUCHE LLP**, agrees to give careful consideration to promoting the professional development of each **CPA Contractor** and will use its best commercially reasonable efforts in accordance with applicable professional standards so that the work is equitably designated. **DELOITTE AND TOUCHE LLP**, agrees to carefully consult with each **CPA Contractor** to determine which tasks will be designated to each **CPA Contractor**.
- 2.4 **CONTRACTOR**, by executing this Contract, acknowledges the existence of two other Contracts containing substantially similar terms and conditions. **CONTRACTOR**, therefore, understands and agrees that no one **CPA Contractor** has the exclusive right to perform the services, either in whole or in part, listed in this Contract. Thereby, **CITY** reserves the right to request the services to be provided by one, two, or all three of **CPA Contractors** at any time, provided that each of the **CPA Contractors** reserve the right to agree or decline to perform such services in accordance with such **CPA Contractor's** applicable professional standards.

III. SCOPE OF SERVICES

CPA Contractors, including but not limited to **CONTRACTOR**, in accordance with each annual engagement letter, shall provide the following services:

INDEPENDENT AUDIT SERVICES

- 3.1 **CPA Contractors** are to collectively audit the financial statements of **CITY** during the Contract period and evaluate the fairness of presentation of the statements in conformity with generally accepted accounting principles. **CONTRACTOR** agrees to meet with the other **CPA Contractors** selected by **CITY**, to agree with such other **CPA Contractors**, on a cooperative audit plan acceptable to **CITY** permitting each **CPA Contractor** to participate in each annual audit performed pursuant to the provisions contained in this Contract; to perform the work allocated to it under such **CPA Contractor's** engagement

letter; and to evaluate and review the work performed by the other **CPA Contractors** to the extent necessary or desirable to permit it to issue its opinion or opinions required hereby. It is understood that this audit will be conducted in accordance with generally accepted auditing standards, which will include a review of the system of internal controls and tests of transactions to the extent necessary. Accordingly, the audit will not include a detailed audit of transactions to the extent, which would be required if intended to disclose defalcations or other irregularities, although the possibility exists that such discovery may result. The San Antonio Water System, the City Public Service Board, San Antonio Fire and Police Pension Fund, San Antonio Retiree Health Care Fund, and certain other component units of **CITY** are audited by other auditors. These component units which currently are or those which may be included in the future with the application of GASB 14 "the Financial Reporting Entity," are included in the scope of work to be performed hereunder but limited only to their respective incorporation into **CITY'S** Comprehensive Annual Financial Report (CAFR).

- 3.2 **CPA Contractors** agree to perform in accordance with generally accepted auditing standards adopted by the American Institute of Certified Public Accountants, Government Auditing Standards, issued by the Comptroller General of the United States, and Office of Management and Budget (OMB) Circular A-133, the State of Texas Single Audit Circular and any other authoritative pronouncements which may be deemed applicable. Those standards require that **CPA Contractors** plan and perform the audit to obtain reasonable assurance about whether the general-purpose financial statements and financial statements as required and in accordance with GASB Statement No. 34 *Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments*, are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the general-purpose financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall general-purpose financial statement presentation. The objective of this audit is the expression of an opinion of **CPA Contractors**, including but not limited to **CONTRACTOR**, or in the event such an opinion is not practicable, consistent with prevailing law, regulation, rule and/or professional standards issued by the American Institute of Certified Public Accountants or the Texas State Board of Public Accountancy ("Professional Standards"), as evidenced by a letter drafted and issued by **CONTRACTOR**, **CONTRACTOR'S** legal counsel, the American Institute of Certified Public Accountants or the Texas State Board of Public Accountancy, that **CONTRACTOR** is unable, because of a certain Professional Standard identified in or referred to in said letter, to issue an opinion jointly with other **CPA Contractors**, the expression of an individual and separate opinion by **CONTRACTOR**, in accordance with the provisions of this Contract. The wording of the audit opinion will, of course, be dependent on the facts and circumstances at the date of the reports. If the opinion will be other than unqualified, the reasons therefore will be fully disclosed. The opinion will be signed by **CPA Contractors** who will assume responsibility both jointly and severally, for the audit of the financial statements of **CITY**.
- 3.3 **CITY** agrees that it will maintain at least its present degree of conformance to the standards of the Governmental Accounting Standards Board pertaining to internal controls, and the recording of financial transactions, and that the Contract price for the audits by **CPA Contractors** as quoted in Article VII, is predicated upon this conformance. **CITY** agrees that the detailed annual financial statements and notes to such statements will be

prepared by its Department of Finance as nearly as practical in accordance with the form outlined in "Governmental Accounting, Auditing, and Financial Reporting" published by the Government Finance Officers Association on such financial statements, and any supplemental schedules which it prepares will be submitted and provided to the **CONTRACTOR** in sufficient time (as completed) for full reconciliation with **CONTRACTOR'S** findings, and to facilitate publication of **CITY'S** Comprehensive Annual Financial Report within approximately 120 days after the close of each fiscal year. Responsibility for the proper recording of transactions into the books of account, and for the accuracy of the financial statements, which are the representations of management, are with **CITY**.

- 3.4 **CITY** shall have completed and balanced all accounts and have prepared financial statements and schedules for all funds, account groups and financial statements as required and in accordance with GASB Statement No. 34 to be audited by the **CPA Contractors** and shall provide **CPA Contractors** with working space deemed adequate by **CPA Contractors** for efficient conduct of the audit. **CITY** shall provide **CPA Contractors** for its use and retention, with copies of these financial statements and schedules and shall provide **CPA Contractors** with trial balances of the various funds and account groups and financial statements as required and in accordance with GASB Statement No. 34 in a form acceptable to **CPA Contractors**.
- 3.5 The Comprehensive Annual Financial Report will be completed and available for distribution within approximately 120 days of **CITY'S** fiscal year end of September 30. The "Management Letter" and "Single Audit Reports" will be completed and available for distribution within a reasonable period of time after completion of the Comprehensive Annual Financial Report.
- 3.6 **CONTRACTOR** understands and agrees that other provisions to the contrary notwithstanding, **CITY** requires the issuance of a joint opinion by **CPA Contractors** and that **CITY** will only accept singular opinion from **CONTRACTOR** in the event it is determined, in accordance with the provisions of subsections 3.2 and 10.7, that **CONTRACTOR** is unable to issue an opinion.
- 3.7 On an annual basis during the term of the Contract, **CPA Contractors** will provide an aggregate of twenty-four (24) hours of continuing professional education training to **CITY'S** professional accounting and internal audit staff. **CPA Contractors** must be registered with the Texas State Board of Public Accountancy as a provider of Continuing Professional Education and the training will be based on mutually agreed topics. This service is considered a part of the fee structure for the independent audit.

GASB STATEMENT NO. 34 IMPLEMENTATION ASSISTANCE

- 3.8 **CITY** will be required to implement GASB Statement No. 34, "*Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments*" and any related statements on October 1, 2001. **CITY** has performed an analysis of the pronouncement and has developed a task statement and timeline for its implementation. The Finance Department staff is analyzing the **CITY'S** current financial reporting model and comparing that to the GASB's new requirements. Each key task to be accomplished will be documented and compiled in written form for **CONTRACTOR'S** review,

concurrence, and acceptance. Review will include, but is not limited to such items as the classification of program revenue versus general revenues; accounting estimates, such as those for compensated absences and asset depreciation lives; and proper classification of current funds (enterprise versus special revenue, etc.). **CONTRACTOR** will be required to review policies and procedures that are currently being developed such as the **CITY'S** fixed assets and accounts receivable policies. **CONTRACTOR** will assist the **CITY** in identifying issues relating to the retroactive infrastructure reporting not including inventory and valuation services. **CONTRACTOR** shall recommend any additional key tasks or policies that should be addressed to achieve proper implementation for GASB Statement No. 34.

- 3.9 **CONTRACTOR** will provide answers to questions arising from **CITY'S** review and analysis of GASB Statement No. 34 requirements, and questions which may arise that require technical interpretation and implementation assistance. These questions will be submitted to **CONTRACTOR** in writing for evaluation. **CITY** will upon acceptance and concurrence by the **CONTRACTOR** of the **CITY'S** task statement and methodology will restate the fiscal year 2000 CAFR to conform to the GASB Statement No. 34 requirements. Restated CAFR (the "mock CAFR") will consist of government-wide statements, fund statements, management discussion and analysis, footnotes to the financial statements, and required supplementary information that is required under GASB Statement No. 34 and related statements. **CONTRACTOR** will review the financial statement presentation, footnotes to the financial statements, required supplementary information, and management discussion and analysis to ensure that financial reports adhere to GASB standards. **CONTRACTOR** will submit to **CITY** in writing all changes suggested in order to ensure compliance. The "mock CAFR" will be used as a model for the implementation of GASB statement number 34 for fiscal year ending September 30, 2002.
- 3.10 **CITY** agrees that **CONTRACTOR** and its personnel shall not be liable to **CITY** for any claims, liabilities, or expenses relating to the services provided, as it relates to negligence, pursuant to this Section 3.8 and Section 3.9 for an aggregate amount in excess of twice the fees paid by **CITY** to **CONTRACTOR** pursuant Section 7.6 of this Agreement, except to the extent finally judicially determined to have resulted primarily from the bad faith or intentional misconduct of **CONTRACTOR**. In no event shall **CONTRACTOR** or its personnel be liable for consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense relating to the performance of services pursuant to Section 3.8 and Section 3.9.

IV. CONTINGENT ADDITIONAL SERVICES

- 4.1 **CONTRACTOR** acknowledges that the services listed below were identified in the Request for Proposal under "Other Services" as those additional services, which the **CITY** may request **CONTRACTOR** to provide. If requested, and **CONTRACTOR** agrees, **CONTRACTOR** shall provide said service(s) under the same terms and conditions of this Contract, save and except those provisions specifically revised by the Director of Finance in the forwarded request (subsection 4.2).
- 4.2 **CITY** will effect such a request for contingent additional services by forwarding a written request, executed by the Director of Finance or his designee, to the **CONTRACTOR** at its

respective address provided herein. Within said request, the Director of Finance shall state the scope of services **CONTRACTOR** has been requested to provide; the period of time within which said services are to be completed; and the consideration to be paid by **CITY** for the services provided, in accordance with subsection 7.10. The coordinator entity shall notify **CITY** as to which of the **CPA Contractors** will provide the contingent additional service; provided however, if **CITY**, at its discretion, designates the **CPA Contractors** to provide said contingent additional services, the request for the provision of contingent additional services shall be forwarded directly to that designated **CPA Contractors**.

4.3 The **CPA Contractors** selected agree to provide the following services at the request of the **CITY**:

4.3.1 Consulting services on tax, compliance, or other non-audit consultation matters.

4.3.2 Assistance with the preparation of aspects of the annual report or the analysis of new accounting standards or pronouncements.

4.3.3 Advisory or consultant services to assist in the resolution of audit findings and questioned costs reported by Federal and State Agencies.

4.3.4 Other services that may be required for a **CITY** bond offering.

V. QUALITY CONTROL REVIEWS

5.1 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 within three working days by **CONTRACTOR** in the event of any such request. **CITY** will not reimburse costs incurred by **CONTRACTOR** related to such review of audit quality. To the extent such work papers 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 State of Texas Single Audit Circular, **CONTRACTOR** will notify and discuss such request with **CITY** prior to any costs being incurred by **CONTRACTOR**. Any such costs agreed to be reimbursed by **CITY** will be based on fees negotiated on an individual engagement basis.

VI. TERM AND COMMENCEMENT OF WORK

6.1 Unless earlier termination shall occur pursuant to any of the provisions of this Contract, the term of this Contract shall be from the effective date of the signatures through September 30, 2006 and shall include the audits of the **CITY'S** records and accounts for the fiscal years ending September 30, 2002, 2003, 2004, 2005, and 2006 with fees for years 2005 and 2006 to be negotiated conditioned upon the successful negotiation of consideration as identified in Section VII below (Pricing and Billing). Continuation of this Contract beyond the first year and each and every year thereafter is subject to and contingent upon an annual appropriation of funds by City Council. The City shall notify **CONTRACTOR** promptly if there has not been made the necessary appropriation of funds.

6.2 In the event **CITY** requests **CPA Contractors** to provide the contingent additional services set out in Section IV, the commencement and termination dates shall be established in the written request from the Director of Finance and as agreed to by the **CPA Contractors**.

VII. CONTRACT PRICING AND BILLING

7.1 The total of all payments and other obligations made and incurred by **CITY** hereunder, in performance of the services provided for in Article III (except Articles 3.8 and 3.9) and IV for fiscal year 2002 shall not exceed the amount of \$270,000; for fiscal year 2003 shall not exceed the amount of \$278,100; and for fiscal year 2004 shall not exceed the amount of \$286,443. Such fees being predicated on the expectation that the Finance Department of the **CITY** will provide the preparation of the annual financial reports and statements, and supporting work papers and schedules at a comparable level with prior years, and that the Office of Internal Review will provide 1,500 hours of assistance to the annual audit process. In the event that the **CITY** is unable to provide the 1,500 hours of assistance provided by the Office of Internal Review, the maximum dollar amounts identified above may at the City's discretion, after consultation with **CPA Contractors**, be adjusted by increasing those amounts by not more than twenty-five percent (25%) for each fiscal year.

7.2 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Article III (except Articles 3.8 and 3.9) and IV under this Contract for the audit of fiscal year 2002 shall not exceed \$270,000.00, it is understood that this sum will be paid individually as follows:

| | |
|-------------------------------|--------------|
| Deloitte and Touche LLP | \$145,800.00 |
| Garza/Gonzalez and Associates | \$105,300.00 |
| Robert J. Williams, CPA | \$ 18,900.00 |

7.3 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Article III (except Articles 3.8 and 3.9) and IV under this Contract for the audit of fiscal year 2003 shall not exceed \$278,100.00, it is understood that this sum will be paid individually as follows:

| | |
|-------------------------------|--------------|
| Deloitte and Touche LLP | \$150,174.00 |
| Garza/Gonzalez and Associates | \$108,459.00 |
| Robert J. Williams, CPA | \$ 19,467.00 |

7.4 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Article III (except Articles 3.8 and 3.9) and IV under this Contract for the audit of fiscal year 2004 shall not exceed \$286,443.00, it is understood that this sum will be paid individually as follows:

| | |
|-------------------------------|--------------|
| Deloitte and Touche LLP | \$154,679.00 |
| Garza/Gonzalez and Associates | \$111,713.00 |
| Robert J. Williams, CPA | \$ 20,051.00 |

7.5 It is further understood and agreed by the parties hereto that the work performed and the

total fee for the services related to Article III (except Articles 3.8 and 3.9) and IV under this Contract for the audit of fiscal year 2005 and 2006 shall be negotiated contingent upon City Council approval.

- 7.6 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Articles 3.8 and 3.9 above (GASB Statement No. 34 work) shall be monitored by **DELOITTE AND TOUCHE LLP**, and divided between the **CPA Contractors**. For GASB Statement No. 34 work, the rate shall be \$150 per hour, not to exceed a total fee of \$100,000 over the term of the Contract. Although the percentages identified in Section 7.2 above do not specifically apply, **DELOITTE AND TOUCHE LLP** shall use its best commercially reasonable efforts to ensure that the GASB Statement No. 34 work is divided equitably in accordance with applicable professional standards..
- 7.7 Subject to subsections 7.1 through 7.5, **CONTRACTOR** agrees that all **CONTRACTOR** labor, supervision of work, report reproduction, typing, travel, insurance, communication, computer access, materials, supplies, subcontractor costs, if any, and all other **CONTRACTOR** expenses necessary to complete the services stated herein shall be borne at **CONTRACTOR'S** sole cost and expense.
- 7.8 Progress billings for the annual fees established herein 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. However, **CITY** will retain ten percent (10%) of the total annual fee, until the **CITY'S** Comprehensive Annual Financial Report, Single Audit Reports, and Management Letter have been completed provided that the total audit fees for any fiscal year shall be paid in full prior to any services being rendered for the subsequent fiscal year.
- 7.9 In the event that the **CITY** does not provide assistance as provided for in subsection 7.1, 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 III in excess of the annual amounts as stated for each fiscal year established in subsections 7.1 through 7.5 without formal written revision of this Contract and related City Council approval.
- 7.10 Payments for contingent additional services provided in accordance with Article IV, payments for any costs to be reimbursed by **CITY** in accordance with Article V, and payments for any additional work required in accordance with subsection 10.5.1 or 10.6.2, will be based on fees negotiated on an individual engagement basis. **DELOITTE AND TOUCHE LLP, GARZA/GONZALEZ AND ASSOCIATES, and/or ROBERT J. WILLIAMS, CPA**, as the entity designated to provide said services shall prepare and submit a billing statement to **CITY** specifying the scope of work performed and amount due. Upon receipt of the billing statement, **CITY** will review and if in compliance with the established fees herein, pay the amount specified due on such statement to the appropriate entity.

VIII. INCORPORATION BY REFERENCE

- 8.1 The engagement letter executed by **CITY** and **CONTRACTOR**, attached hereto as Exhibit A, is hereby incorporated into this Contract and specifically made a part hereof as though it is fully set out herein.
- 8.2 The parties hereto acknowledge and agree that prior to the commencement of the 2002, 2003, 2004, 2005, and 2006 audits herein required, **CITY** and **CONTRACTOR** will execute a new engagement letter for the upcoming fiscal year. That engagement letter, once executed, shall be incorporated herein for that next fiscal year and shall supersede the previously attached engagement letter for audit services.
- 8.3 In the event of a conflict or inconsistency between the terms of this Contract and the provisions of any of the engagement letters ultimately attached hereto as Exhibit A, the terms of this Contract shall govern and prevail.

IX. RECORDS

- 9.1 **CONTRACTOR** shall properly, accurately and completely maintain all non-confidential and non-proprietary 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 business hours of **CONTRACTOR** and as often as **CITY** may deem necessary during the Contract period, including any extension or renewal hereof, for purposes of inspection, examination, and making excerpts or copies of same by **CITY** and any of its authorized representatives.
- 9.2 **CONTRACTOR** shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years from the date of termination of the Contract. If at the end of four (4) 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 other such questions.
- 9.3 **CITY** shall 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 9.1 and 9.2. As such, **CONTRACTOR** understands and agrees that **CITY** will process and handle all such requests.

X. TERMINATION

- 10.1 For purposes of this Contract, "termination" of this Contract shall mean termination by completion of the provision of services required herein or earlier termination pursuant to any of the provisions hereof.
- 10.2 Other provisions of this Contract notwithstanding, **CITY** may terminate this Contract as to **CONTRACTOR** in accordance with this clause, in whole or in part, for any of the following

- 10.2.1 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
- 10.2.2 Violation by **CONTRACTOR** of any applicable rule, regulation or law to which **CONTRACTOR** is bound or shall be bound by terms of this Contract.
- 10.2.3 The **CITY** shall also have the right to terminate this Contract or any portion thereof for convenience upon thirty (30) days notice. If **CITY** elects to terminate for convenience as described, the **CITY** shall pay **CONTRACTOR** for services rendered up to and including date of termination.
- 10.3 Subsection 10.2 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 receipt of 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 **CONTRACTOR**.
- 10.4 Upon a decision to terminate by **CITY** and the expiration of any cure period, written notice of such shall be promptly provided to **CONTRACTOR** specifying the basis for said termination, the effective date of termination, and the extent to which performance of work under this Contract will be terminated. A copy of said notice shall be provided, for informational purposes only, by **CITY** to the remaining **CPA Contractors**, by hand or facsimile, as soon as practicable.
- 10.4.1 Upon receipt of a notice to terminate, all finished reports for which payment has been received, prepared by **CONTRACTOR** under this Contract, shall at the option of **CITY**, and in accordance herewith and with applicable professional standards, be accessible to the **CITY** as provided in Article IX.
- 10.4.2 Within thirty (30) days of the effective date of termination **CONTRACTOR** shall submit to **CITY** its claim in detail for any monies owed by **CITY** for services performed under this Contract, including all work performed by **CONTRACTOR** required by the provisions of this Contract to the date of notice and for any necessary and proper work performed in the ensuing thirty day period, to be determined after discussion with **CITY**, provided however, that such payment does not exceed the maximum amount set out in subsections 7.1 through 7.5.
- 10.5 In the event **CITY** terminates any other **CPA Contractor** under the Contract between them, **CITY** shall deliver a copy of said notice to **CONTRACTOR** for informational purposes only, by hand or facsimile, as soon as practicable.
- 10.5.1 In the event of such termination (subsection 10.5), **CITY** and **CONTRACTOR** shall meet within ten (10) days of the effective date of termination specified in the notice of termination and shall agree to make all reasonable efforts to complete the services required herein with any remaining **CPA Contractors**. **CITY** and the remaining **CPA Contractors** shall execute new engagement letters redefining the roles and tasks of **CPA Contractors**. To the extent termination of others results in

additional work for the remaining **CPA Contractors** in order to complete the services required herein, **CITY** and **CPA Contractors** agree in good faith to renegotiate fees, which agreement shall be reflected in the new engagement letter. Said new engagement letters shall supersede any previously executed engagement letters.

- 10.5.2 In the event **CITY** and **CONTRACTOR** are unable or fail to agree on any issue the subject of the renegotiations cited in 10.5.1 within ten (10) days of said renegotiations meeting, **CITY** may terminate this Contract upon giving written notice in accordance with Article XXII. In the event of any such termination, **CITY** and **CONTRACTOR** shall proceed in accordance with subsections 10.4, 10.4.1 and 10.4.2.
- 10.5.3 If **CITY** chooses, as a result of any such termination (subsection 10.5), to select and hire another Certified Public Accountant or Certified Accounting firm or firms, other than the remaining **CPA Contractors**, **CITY** agrees to coordinate said selection with **CONTRACTOR**. However, the final selection and hiring of said CPA, CPA firm or firms shall be at the **CITY'S** sole discretion.
- 10.6 In the event **CONTRACTOR** is unable to issue a joint opinion with either or both of the other **CPA Contractors** because of a certain prevailing law, regulation, rule and/or professional standards issued by Professional Standards, as evidenced by and in a letter drafted and issued by **CONTRACTOR**, **CONTRACTOR'S** legal counsel, the American Institute of Certified Public Accountants or the Texas State Board of Public Accountancy, **CITY** shall have the right to obtain separate and singular opinions from **CONTRACTOR**; and **CONTRACTOR** shall issue separate and singular opinions.
- 10.6.1 In the event **CITY** decides to obtain separate and singular opinions from **CONTRACTOR**, and **CONTRACTOR** is unable to rely on the work provided by one or both of the other **CPA Constructors** or if **CONTRACTOR'S** issuing its separate opinions results in additional work, **CITY** and **CONTRACTOR** agree, in good faith, to renegotiate fees and services to be performed in order to complete the separate opinions. Said agreements shall be reflected in a new engagement letter, which shall supersede any previously, executed engagement letter.
- 10.6.2 In the event **CITY** and **CONTRACTOR** are unable or fail to agree on any issue the subject of the renegotiations cited in 10.6.1 within ten (10) days of said renegotiations meeting **CITY** may terminate this Contract upon giving written notice in accordance with Article XXII. In the event of any such termination, **CITY** and **CONTRACTOR** shall proceed in accordance with subsections 10.4, 10.4.1 and 10.4.2.
- 10.7 The parties understand and agree that in the event **CITY** terminates any **CPA Contractors** other than **CONTRACTOR**, all references to "**CPA Contractor(s)**" contained herein shall thereafter refer to **CONTRACTOR** and any other remaining **CPA Contractors**.

XI. SUBCONTRACTING

- 11.1 Due to the professional experience required to perform the **CONTRACTOR** services

specified in this Contract, **CONTRACTOR** must obtain prior written approval from the City's Director of Finance before engaging the services of any subcontractor. 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**.

XII. ASSIGNABILITY

- 12.1 **CONTRACTOR** shall not assign any interest in this Contract to any other party without the prior written consent of **CITY** as evidenced by ordinance.

XIII. CONFLICT OF INTEREST

- 13.1 **CONTRACTOR** acknowledges that it is informed that the City of San Antonio **CITY** Charter prohibits Contracts between the **CONTRACTOR** 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.

For purposes of this Article 13.1 "CONTRACTOR" shall mean personnel of **CONTRACTOR** performing services under this Agreement.

- 13.2 **CONTRACTOR** acknowledges that from time to time **CITY** releases Request for Proposals or other solicitations. **CONTRACTOR** agrees that to the best of the **CONTRACTOR** engagement leader's knowledge, including constructive knowledge, in the event it chooses to submit a proposal in response to any of **CITY'S** solicitations, it will notify **CITY** of said submittal, in writing, in accordance with Article XXII.
- 13.3 In the event that **CONTRACTOR** is involved in any other project or engagement with the **CITY**, **CONTRACTOR** shall confirm that such work does not jeopardize **CONTRACTOR'S** independence in performing the work specified in this Contract.

XIV. COMPLIANCE

- 14.1 **CONTRACTOR** shall comply with the applicable independence standards promulgated by the American Institute of Certified Public Accountants and any other applicable standard related to independence promulgated by any other relevant authoritative body, as applicable to the services provided hereunder.
- 14.2 **CONTRACTOR** shall comply with any and all other applicable standards promulgated by

the American Institute of Certified Public Accountants and by any other relevant authoritative body, as applicable to the services provided herein, while in the performance of the services hereunder.

- 14.3 **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 Amendments of 1996, OMB Circular A-133, the State of Texas Single Audit Circular, Chapter 103 of the Texas Local Government Code, and Section 107 of the San Antonio City Charter.

XV. INSURANCE

- 15.1 Prior to execution of this Contract, **CONTRACTOR** shall furnish a completed Certificate of Insurance to the Finance Department, Attention: Milo Nitschke, 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 standard 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.
- 15.2 **CITY** reserves the right to review the insurance requirement of this section during the effective period of the Contract and to amend insurance coverage and its limit when deemed necessary and prudent by the Risk Management Division based upon changes in statutory law, court decisions or the claims history of the industry, as well as the **CONTRACTOR** and in no instance will the **CITY** allow modification whereupon the **CITY** may incur increased risk.
- 15.3 **CONTRACTOR** shall procure, pay for and maintain insurance for the term of this Contract, including any extensions or renewals hereof, 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:

| <u>TYPE</u> | <u>AMOUNT</u> |
|-------------------------------|--|
| Business Automobile Liability | Combined Single Limit \$1,000,000 per occurrence |
| Owned/leased vehicles | |
| Non-owned vehicles | |
| Hired vehicles | |

Commercial General (Public) Liability Insurance to include coverage for the following:

| | |
|-------------------------|--------------------------------------|
| Contractual Liability | Bodily injury and property damage of |
| Premises/Operations | \$1,000,000 per occurrence with a |
| Personal/Advertising | \$2,000,000 general aggregate or its |
| Injury Liability | equivalent in umbrella or excess |
| Products/Completed | liability coverage. |
| Operations | |
| Independent Contractors | |

Workers' Compensation and Employer's Liability

| | |
|--|---|
| Workers' Compensation | Statutory |
| Employer's Liability | \$1,000,000/\$1,000,000/\$1,000,000 |
| Professional Liability (Claims made form) | \$1,000,000.00 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services. |

15.4 The insurance policies required by this Contract shall contain the following clauses:

The insurer will endeavor to provide thirty (30) days prior written notice of cancellation.

15.5. 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 **CONTRACTOR'S** insurance policies.

XVI. INDEMNITY

16.1 **CONTRACTOR** covenants and agrees to **FULLY INDEMNIFY and HOLD HARMLESS** the CITY and the elected officials, employees, officers, directors, volunteers, and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, or death and real or tangible personal property damage, made upon the CITY and arising out of, resulting from or related to and proximately caused by the **CONTRACTOR'S** negligence or willful misconduct while performing services under this **CONTRACT**, including any acts or omissions of the **CONTRACTOR**, any agent, officer, director, representative, employee, consultant or subcontractor of the **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 costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature resulting from the direct or indirect activities of CITY, its elected officials, employees, officers, directors, volunteers, and representatives of the CITY, individually or collectively. Such direct or indirect acts include, by way of example and not by way of limitation, those responsibilities of CITY as described in each engagement letter executed by CITY and **CONTRACTOR** in accordance with Article VIII hereof and attached hereto as Exhibit A. **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 FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENT IMMUNITY AVAILIABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

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

XVII. INDEPENDENT CONTRACTOR

- 17.1 It is expressly understood and agreed that the **CONTRACTOR** provides services as an independent **CONTRACTOR** responsible for its own acts or omissions and that **CITY** shall in no way be responsible therefore and **CONTRACTOR** shall in no way be responsible for **CITY'S** acts and omissions. 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.

XVIII. CHANGES AND AMENDMENTS

- 18.1 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.
- 18.2 The parties hereto understand and agree that the request by the **CITY** to provide additional services as listed in Article IV is not an amendment to the provisions of this Contract.
- 18.3 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.

XIX. LICENSES/CERTIFICATIONS

- 19.1 **CONTRACTOR** warrants and confirms 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.

XX. OTHER AGREEMENTS

- 20.1 It is acknowledged and understood by the parties hereto that simultaneously with the execution of this Contract, two other such contracts will be executed by and with the remaining **CPA Contractors**. As such, all three Contracts, the authorizing ordinance and any Exhibits to the Contracts constitute the final and entire agreement between **CITY** and **CPA Contractors** and contain all of the terms and conditions agreed upon. It is also acknowledged and understood that at the inception of each annual audit, an engagement letter consistent with the provisions of this Contract shall be executed by **CITY** and **CONTRACTOR**.

XXI. SEVERABILITY

- 21.1 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.

XXII. NOTICES

- 22.1 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 of San Antonio
Attn: Milo Nitschke, Director of Finance
P. O. Box 839966
San Antonio, Texas 78283-3966

XXIII. LAW APPLICABLE

- 23.1 This Contract shall be construed under and in accordance with the laws of the State of Texas without regard to the choice of law principles thereof and all obligations of the parties created hereunder are performable in Bexar County, Texas.
- 23.2 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.

XXIV. LEGAL AUTHORITY

- 24.1 The signer of this Contract for **CONTRACTOR** represents, and warrants, 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.

XXV. PARTIES BOUND

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

XXVI. GENDER

- 26.1 Words of any gender used in this Contract shall be held and construed to include any other gender.

XXVII. CAPTIONS

27.1 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.

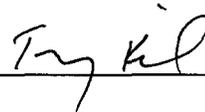
EXECUTED and AGREED to this the 20th day of November, 2001

**CITY:
CITY OF SAN ANTONIO**

**CONTRACTOR
DELOITTE & TOUCHE LLP**

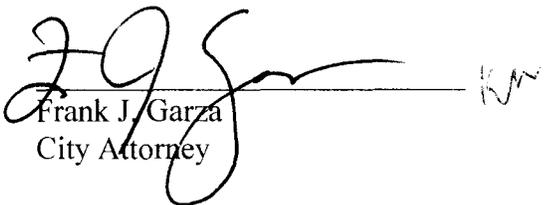


J. Rolando Bono
Deputy City Manager



Terry Kile
Director

Approved as to form:



Frank J. Garza
City Attorney

**GASB STATEMENT NO. 34 IMPLEMENTATION ASSISTANCE AND AUDIT
SERVICES CONTRACT**

STATE OF TEXAS

COUNTY OF BEXAR

This Contract 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 or her designee, pursuant to Ordinance No. 94740, passed and approved on October 18, 2001, and **GARZA/GONZALEZ AND ASSOCIATES** acting by and through its Senior Partner, Gregory R. Garza, (herein referred to as "**CONTRACTOR**").

WHEREAS, Section 107 of the City of San Antonio City Charter requires that at the close of each fiscal year, an audit be performed on the **CITY'S** financial records by an independent certified public accountant; and

WHEREAS, Chapter 103 of the Texas Local Government Code requires the **CITY** to have its records and accounts audited annually by an independent certified public accountant; and

WHEREAS, the Single Audit Act Amendments of 1996 and related OMB Circular A-133 and the State of Texas Single Audit Circular contain certain audit and financial reporting requirements; and

WHEREAS, the **CITY** has gone through an extensive selection process and chosen three entities (collectively referred to as "**CPA Contractors**") to collectively provide the services described herein for a five year period to include the required audits for the fiscal years ending September 30, 2002, 2003 and 2004, with years 2005 and 2006 to be negotiated conditioned upon mutually agreed consideration and determination of the scope of the audit for each such year;

WHEREAS, the **CITY** will execute Contracts containing the same terms and conditions, with all three entities referred to as "**CPA Contractors**," wherein each party is jointly and severally bound to provide the services contained in this Contract; **NOW THEREFORE:**

FOR VALUABLE CONSIDERATION, the parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

- 1.1 For purposes of this Contract, the word "**CONTRACTOR**" as used herein shall refer to **GARZA/GONZALEZ AND ASSOCIATES**
- 1.2 For purposes of this Contract, the term "**CPA Contractors**" as used herein shall refer to **DELOITTE AND TOUCHE LLP, GARZA/GONZALEZ AND ASSOCIATES, and ROBERT J. WILLIAMS, CPA.**

II. PROVISION OF SERVICES

- 2.1 It is acknowledged and understood that before the commencement of the provision of services described in Article III, **CPA Contractors** will each execute an annual engagement letter with the **CITY** that will establish the obligations, duties and scope of the **CPA Contractors'** responsibility for each year's audit, the allocation of work to be performed as part of each audit by each **CPA Contractor**, and the portion of the total compensation for such audits that each **CPA Contractor** will be paid, consistent with the provisions contained in Article VII, subsections 7.1 through 7.5.
- 2.2 **CITY** and **CPA Contractors** mutually agree that the engagement letter executed by the **CONTRACTOR** shall become part of this Contract, each time it is executed in accordance with Article VIII and that this Contract and the other two Contracts executed with the other **CPA Contractors** and the engagement letters shall govern the agreement between the parties for the fiscal year noted in the engagement letters.
- 2.3 It is also understood and agreed that **DELOITTE AND TOUCHE LLP**, has been designated as the coordinator entity for the **CPA Contractors**. In this regard, the coordinator will serve as the point of contact for **CITY** in facilitating and administering the Contracts. In designating tasks to **CPA Contractors**, **DELOITTE AND TOUCHE LLP**, agrees to give careful consideration to promoting the professional development of each **CPA Contractor** and will use its best commercially reasonable efforts in accordance with applicable professional standards so that the work is equitably designated. **DELOITTE AND TOUCHE LLP**, agrees to carefully consult with each **CPA Contractor** to determine which tasks will be designated to each **CPA Contractor**.
- 2.4 **CONTRACTOR**, by executing this Contract, acknowledges the existence of two other Contracts containing substantially similar terms and conditions. **CONTRACTOR**, therefore, understands and agrees that no one **CPA Contractor** has the exclusive right to perform the services, either in whole or in part, listed in this Contract. Thereby, **CITY** reserves the right to request the services to be provided by one, two, or all three of **CPA Contractors** at any time, provided that each of the **CPA Contractors** reserve the right to agree or decline to perform such services in accordance with such **CPA Contractor's** applicable professional standards.

III. SCOPE OF SERVICES

CPA Contractors, including but not limited to **CONTRACTOR**, in accordance with each annual engagement letter, shall provide the following services:

INDEPENDENT AUDIT SERVICES

- 3.1 **CPA Contractors** are to collectively audit the financial statements of **CITY** during the Contract period and evaluate the fairness of presentation of the statements in conformity with generally accepted accounting principles. **CONTRACTOR** agrees to meet with the other **CPA Contractors** selected by **CITY**, to agree with such other **CPA Contractors**, on a cooperative audit plan acceptable to **CITY** permitting each **CPA Contractor** to participate in each annual audit performed pursuant to the provisions contained in this Contract; to perform the work allocated to it under such **CPA Contractor's** engagement

letter; and to evaluate and review the work performed by the other **CPA Contractors** to the extent necessary or desirable to permit it to issue its opinion or opinions required hereby. It is understood that this audit will be conducted in accordance with generally accepted auditing standards, which will include a review of the system of internal controls and tests of transactions to the extent necessary. Accordingly, the audit will not include a detailed audit of transactions to the extent, which would be required if intended to disclose defalcations or other irregularities, although the possibility exists that such discovery may result. The San Antonio Water System, the City Public Service Board, San Antonio Fire and Police Pension Fund, San Antonio Retiree Health Care Fund, and certain other component units of **CITY** are audited by other auditors. These component units which currently are or those which may be included in the future with the application of GASB 14 "the Financial Reporting Entity," are included in the scope of work to be performed hereunder but limited only to their respective incorporation into **CITY'S** Comprehensive Annual Financial Report (CAFR).

- 3.2 **CPA Contractors** agree to perform in accordance with generally accepted auditing standards adopted by the American Institute of Certified Public Accountants, Government Auditing Standards, issued by the Comptroller General of the United States, and Office of Management and Budget (OMB) Circular A-133, the State of Texas Single Audit Circular and any other authoritative pronouncements which may be deemed applicable. Those standards require that **CPA Contractors** plan and perform the audit to obtain reasonable assurance about whether the general-purpose financial statements and financial statements as required and in accordance with GASB Statement No. 34 *Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments*, are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the general-purpose financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall general-purpose financial statement presentation. The objective of this audit is the expression of an opinion of **CPA Contractors**, including but not limited to **CONTRACTOR**, or in the event such an opinion is not practicable, consistent with prevailing law, regulation, rule and/or professional standards issued by the American Institute of Certified Public Accountants or the Texas State Board of Public Accountancy ("Professional Standards"), as evidenced by a letter drafted and issued by **CONTRACTOR**, **CONTRACTOR'S** legal counsel, the American Institute of Certified Public Accountants or the Texas State Board of Public Accountancy, that **CONTRACTOR** is unable, because of a certain Professional Standard identified in or referred to in said letter, to issue an opinion jointly with other **CPA Contractors**, the expression of an individual and separate opinion by **CONTRACTOR**, in accordance with the provisions of this Contract. The wording of the audit opinion will, of course, be dependent on the facts and circumstances at the date of the reports. If the opinion will be other than unqualified, the reasons therefore will be fully disclosed. The opinion will be signed by **CPA Contractors** who will assume responsibility both jointly and severally, for the audit of the financial statements of **CITY**.
- 3.3 **CITY** agrees that it will maintain at least its present degree of conformance to the standards of the Governmental Accounting Standards Board pertaining to internal controls, and the recording of financial transactions, and that the Contract price for the audits by **CPA Contractors** as quoted in Article VII, is predicated upon this conformance. **CITY** agrees that the detailed annual financial statements and notes to such statements will be

prepared by its Department of Finance as nearly as practical in accordance with the form outlined in "Governmental Accounting, Auditing, and Financial Reporting" published by the Government Finance Officers Association on such financial statements, and any supplemental schedules which it prepares will be submitted and provided to the **CONTRACTOR** in sufficient time (as completed) for full reconciliation with **CONTRACTOR'S** findings, and to facilitate publication of **CITY'S** Comprehensive Annual Financial Report within approximately 120 days after the close of each fiscal year. Responsibility for the proper recording of transactions into the books of account, and for the accuracy of the financial statements, which are the representations of management, are with **CITY**.

- 3.4 **CITY** shall have completed and balanced all accounts and have prepared financial statements and schedules for all funds, account groups and financial statements as required and in accordance with GASB Statement No. 34 to be audited by the **CPA Contractors** and shall provide **CPA Contractors** with working space deemed adequate by **CPA Contractors** for efficient conduct of the audit. **CITY** shall provide **CPA Contractors** for its use and retention, with copies of these financial statements and schedules and shall provide **CPA Contractors** with trial balances of the various funds and account groups and financial statements as required and in accordance with GASB Statement No. 34 in a form acceptable to **CPA Contractors**.
- 3.5 The Comprehensive Annual Financial Report will be completed and available for distribution within approximately 120 days of **CITY'S** fiscal year end of September 30. The "Management Letter" and "Single Audit Reports" will be completed and available for distribution within a reasonable period of time after completion of the Comprehensive Annual Financial Report.
- 3.6 **CONTRACTOR** understands and agrees that other provisions to the contrary notwithstanding, **CITY** requires the issuance of a joint opinion by **CPA Contractors** and that **CITY** will only accept singular opinion from **CONTRACTOR** in the event it is determined, in accordance with the provisions of subsections 3.2 and 10.7, that **CONTRACTOR** is unable to issue an opinion.
- 3.7 On an annual basis during the term of the Contract, **CPA Contractors** will provide an aggregate of twenty-four (24) hours of continuing professional education training to **CITY'S** professional accounting and internal audit staff. **CPA Contractors** must be registered with the Texas State Board of Public Accountancy as a provider of Continuing Professional Education and the training will be based on mutually agreed topics. This service is considered a part of the fee structure for the independent audit.

GASB STATEMENT NO. 34 IMPLEMENTATION ASSISTANCE

- 3.8 **CITY** will be required to implement GASB Statement No. 34, "*Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments*" and any related statements on October 1, 2001. **CITY** has performed an analysis of the pronouncement and has developed a task statement and timeline for its implementation. The Finance Department staff is analyzing the **CITY'S** current financial reporting model and comparing that to the GASB's new requirements. Each key task to be accomplished will be documented and compiled in written form for **CONTRACTOR'S** review,

concurrence, and acceptance. Review will include, but is not limited to such items as the classification of program revenue versus general revenues; accounting estimates, such as those for compensated absences and asset depreciation lives; and proper classification of current funds (enterprise versus special revenue, etc.). **CONTRACTOR** will be required to review policies and procedures that are currently being developed such as the **CITY'S** fixed assets and accounts receivable policies. **CONTRACTOR** will assist the **CITY** in identifying issues relating to the retroactive infrastructure reporting not including inventory and valuation services. **CONTRACTOR** shall recommend any additional key tasks or policies that should be addressed to achieve proper implementation for GASB Statement No. 34.

3.9 **CONTRACTOR** will provide answers to questions arising from **CITY'S** review and analysis of GASB Statement No. 34 requirements, and questions which may arise that require technical interpretation and implementation assistance. These questions will be submitted to **CONTRACTOR** in writing for evaluation. **CITY** will upon acceptance and concurrence by the **CONTRACTOR** of the **CITY'S** task statement and methodology will restate the fiscal year 2000 CAFR to conform to the GASB Statement No. 34 requirements. Restated CAFR (the "mock CAFR") will consist of government-wide statements, fund statements, management discussion and analysis, footnotes to the financial statements, and required supplementary information that is required under GASB Statement No. 34 and related statements. **CONTRACTOR** will review the financial statement presentation, footnotes to the financial statements, required supplementary information, and management discussion and analysis to ensure that financial reports adhere to GASB standards. **CONTRACTOR** will submit to **CITY** in writing all changes suggested in order to ensure compliance. The "mock CAFR" will be used as a model for the implementation of GASB statement number 34 for fiscal year ending September 30, 2002.

3.10 **CITY** agrees that **CONTRACTOR** and its personnel shall not be liable to **CITY** for any claims, liabilities, or expenses relating to the services provided, as it relates to negligence, pursuant to this Section 3.8 and Section 3.9 for an aggregate amount in excess of twice the fees paid by **CITY** to **CONTRACTOR** pursuant Section 7.6 of this Agreement, except to the extent finally judicially determined to have resulted primarily from the bad faith or intentional misconduct of **CONTRACTOR**. In no event shall **CONTRACTOR** or its personnel be liable for consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense relating to the performance of services pursuant to Section 3.8 and Section 3.9.

IV. CONTINGENT ADDITIONAL SERVICES

4.1 **CONTRACTOR** acknowledges that the services listed below were identified in the Request for Proposal under "Other Services" as those additional services, which the **CITY** may request **CONTRACTOR** to provide. If requested, and **CONTRACTOR** agrees, **CONTRACTOR** shall provide said service(s) under the same terms and conditions of this Contract, save and except those provisions specifically revised by the Director of Finance in the forwarded request (subsection 4.2).

4.2 **CITY** will effect such a request for contingent additional services by forwarding a written request, executed by the Director of Finance or his designee, to the **CONTRACTOR** at its

respective address provided herein. Within said request, the Director of Finance shall state the scope of services **CONTRACTOR** has been requested to provide; the period of time within which said services are to be completed; and the consideration to be paid by **CITY** for the services provided, in accordance with subsection 7.10. The coordinator entity shall notify **CITY** as to which of the **CPA Contractors** will provide the contingent additional service; provided however, if **CITY**, at its discretion, designates the **CPA Contractors** to provide said contingent additional services, the request for the provision of contingent additional services shall be forwarded directly to that designated **CPA Contractors**.

- 4.3 The **CPA Contractors** selected agree to provide the following services at the request of the **CITY**:
- 4.3.1 Consulting services on tax, compliance, or other non-audit consultation matters.
 - 4.3.2 Assistance with the preparation of aspects of the annual report or the analysis of new accounting standards or pronouncements.
 - 4.3.3 Advisory or consultant services to assist in the resolution of audit findings and questioned costs reported by Federal and State Agencies.
 - 4.3.4 Other services that may be required for a **CITY** bond offering.

V. QUALITY CONTROL REVIEWS

- 5.1 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 within three working days by **CONTRACTOR** in the event of any such request. **CITY** will not reimburse costs incurred by **CONTRACTOR** related to such review of audit quality. To the extent such work papers 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 State of Texas Single Audit Circular, **CONTRACTOR** will notify and discuss such request with **CITY** prior to any costs being incurred by **CONTRACTOR**. Any such costs agreed to be reimbursed by **CITY** will be based on fees negotiated on an individual engagement basis.

VI. TERM AND COMMENCEMENT OF WORK

- 6.1 Unless earlier termination shall occur pursuant to any of the provisions of this Contract, the term of this Contract shall be from the effective date of the signatures through September 30, 2006 and shall include the audits of the **CITY'S** records and accounts for the fiscal years ending September 30, 2002, 2003, 2004, 2005, and 2006 with fees for years 2005 and 2006 to be negotiated conditioned upon the successful negotiation of consideration as identified in Section VII below (Pricing and Billing). Continuation of this Contract beyond the first year and each and every year thereafter is subject to and contingent upon an annual appropriation of funds by City Council. The City shall notify **CONTRACTOR** promptly if there has not been made the necessary appropriation of funds.

- 6.2 In the event **CITY** requests **CPA Contractors** to provide the contingent additional services set out in Section IV, the commencement and termination dates shall be established in the written request from the Director of Finance and as agreed to by the **CPA Contractors**.

VII. CONTRACT PRICING AND BILLING

- 7.1 The total of all payments and other obligations made and incurred by **CITY** hereunder, in performance of the services provided for in Article III (except Articles 3.8 and 3.9) and IV for fiscal year 2002 shall not exceed the amount of \$270,000; for fiscal year 2003 shall not exceed the amount of \$278,100; and for fiscal year 2004 shall not exceed the amount of \$286,443. Such fees being predicated on the expectation that the Finance Department of the **CITY** will provide the preparation of the annual financial reports and statements, and supporting work papers and schedules at a comparable level with prior years, and that the Office of Internal Review will provide 1,500 hours of assistance to the annual audit process. In the event that the **CITY** is unable to provide the 1,500 hours of assistance provided by the Office of Internal Review, the maximum dollar amounts identified above may at the City's discretion, after consultation with **CPA Contractors**, be adjusted by increasing those amounts by not more than twenty-five percent (25%) for each fiscal year.

- 7.2 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Article III (except Articles 3.8 and 3.9) and IV under this Contract for the audit of fiscal year 2002 shall not exceed \$270,000.00, it is understood that this sum will be paid individually as follows:

| | |
|-------------------------------|--------------|
| Deloitte and Touche LLP | \$145,800.00 |
| Garza/Gonzalez and Associates | \$105,300.00 |
| Robert J. Williams, CPA | \$ 18,900.00 |

- 7.3 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Article III (except Articles 3.8 and 3.9) and IV under this Contract for the audit of fiscal year 2003 shall not exceed \$278,100.00, it is understood that this sum will be paid individually as follows:

| | |
|-------------------------------|--------------|
| Deloitte and Touche LLP | \$150,174.00 |
| Garza/Gonzalez and Associates | \$108,459.00 |
| Robert J. Williams, CPA | \$ 19,467.00 |

- 7.4 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Article III (except Articles 3.8 and 3.9) and IV under this Contract for the audit of fiscal year 2004 shall not exceed \$286,443.00, it is understood that this sum will be paid individually as follows:

| | |
|-------------------------------|--------------|
| Deloitte and Touche LLP | \$154,679.00 |
| Garza/Gonzalez and Associates | \$111,713.00 |
| Robert J. Williams, CPA | \$ 20,051.00 |

- 7.5 It is further understood and agreed by the parties hereto that the work performed and the total fee for the services related to Article III (except Articles 3.8 and 3.9) and IV under this

Contract for the audit of fiscal year 2005 and 2006 shall be negotiated contingent upon City Council approval.

- 7.6 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Articles 3.8 and 3.9 above (GASB Statement No. 34 work) shall be monitored by **DELOITTE AND TOUCHE LLP**, and divided between the **CPA Contractors**. For GASB Statement No. 34 work, the rate shall be \$150 per hour, not to exceed a total fee of \$100,000 over the term of the Contract. Although the percentages identified in Section 7.2 above do not specifically apply, **DELOITTE AND TOUCHE LLP** shall use its best commercially reasonable efforts to ensure that the GASB Statement No. 34 work is divided equitably in accordance with applicable professional standards.
- 7.7 Subject to subsections 7.1 through 7.5, **CONTRACTOR** agrees that all **CONTRACTOR** labor, supervision of work, report reproduction, typing, travel, insurance, communication, computer access, materials, supplies, subcontractor costs, if any, and all other **CONTRACTOR** expenses necessary to complete the services stated herein shall be borne at **CONTRACTOR'S** sole cost and expense.
- 7.8 Progress billings for the annual fees established herein 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. However, **CITY** will retain ten percent (10%) of the total annual fee, until the **CITY'S** Comprehensive Annual Financial Report, Single Audit Reports, and Management Letter have been completed provided that the total audit fees for any fiscal year shall be paid in full prior to any services being rendered for the subsequent fiscal year.
- 7.9 In the event that the **CITY** does not provide assistance as provided for in subsection 7.1, 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 III in excess of the annual amounts as stated for each fiscal year established in subsections 7.1 through 7.5 without formal written revision of this Contract and related City Council approval.
- 7.10 Payments for contingent additional services provided in accordance with Article IV, payments for any costs to be reimbursed by **CITY** in accordance with Article V, and payments for any additional work required in accordance with subsection 10.5.1 or 10.6.2, will be based on fees negotiated on an individual engagement basis. **DELOITTE AND TOUCHE LLP, GARZA/GONZALEZ AND ASSOCIATES**, and/or **ROBERT J. WILLIAMS, CPA**, as the entity designated to provide said services shall prepare and submit a billing statement to **CITY** specifying the scope of work performed and amount due. Upon receipt of the billing statement, **CITY** will review and if in compliance with the established fees herein, pay the amount specified due on such statement to the appropriate entity.

VIII. INCORPORATION BY REFERENCE

- 8.1 The engagement letter executed by **CITY** and **CONTRACTOR**, attached hereto as

Exhibit A, is hereby incorporated into this Contract and specifically made a part hereof as though it is fully set out herein.

- 8.2 The parties hereto acknowledge and agree that prior to the commencement of the 2002, 2003, 2004, 2005, and 2006 audits herein required, **CITY** and **CONTRACTOR** will execute a new engagement letter for the upcoming fiscal year. That engagement letter, once executed, shall be incorporated herein for that next fiscal year and shall supersede the previously attached engagement letter for audit services.
- 8.3 In the event of a conflict or inconsistency between the terms of this Contract and the provisions of any of the engagement letters ultimately attached hereto as Exhibit A, the terms of this Contract shall govern and prevail.

IX. RECORDS

- 9.1 **CONTRACTOR** shall properly, accurately and completely maintain all non-confidential and non-proprietary 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 business hours of **CONTRACTOR** and as often as **CITY** may deem necessary during the Contract period, including any extension or renewal hereof, for purposes of inspection, examination, and making excerpts or copies of same by **CITY** and any of its authorized representatives.
- 9.2 **CONTRACTOR** shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years from the date of termination of the Contract. If at the end of four (4) 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 other such questions.
- 9.3 **CITY** shall 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 9.1 and 9.2. As such, **CONTRACTOR** understands and agrees that **CITY** will process and handle all such requests.

X. TERMINATION

- 10.1 For purposes of this Contract, "termination" of this Contract shall mean termination by completion of the provision of services required herein or earlier termination pursuant to any of the provisions hereof.
- 10.2 Other provisions of this Contract notwithstanding, **CITY** may terminate this Contract as to **CONTRACTOR** in accordance with this clause, in whole or in part, for any of the following
 - 10.2.1 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

- 10.2.2 Violation by **CONTRACTOR** of any applicable rule, regulation or law to which **CONTRACTOR** is bound or shall be bound by terms of this Contract.
- 10.2.3 The **CITY** shall also have the right to terminate this Contract or any portion thereof for convenience upon thirty (30) days notice. If **CITY** elects to terminate for convenience as described, the **CITY** shall pay **CONTRACTOR** for services rendered up to and including date of termination.
- 10.3 Subsection 10.2 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 receipt of 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 **CONTRACTOR**.
- 10.4 Upon a decision to terminate by **CITY** and the expiration of any cure period, written-notice of such shall be promptly provided to **CONTRACTOR** specifying the basis for said termination, the effective date of termination, and the extent to which performance of work under this Contract will be terminated. A copy of said notice shall be provided, for informational purposes only, by **CITY** to the remaining **CPA Contractors**, by hand or facsimile, as soon as practicable.
- 10.4.1 Upon receipt of a notice to terminate, all finished reports for which payment has been received, prepared by **CONTRACTOR** under this Contract, shall at the option of **CITY**, and in accordance herewith and with applicable professional standards, be accessible to the **CITY** as provided in Article IX.
- 10.4.2 Within thirty (30) days of the effective date of termination **CONTRACTOR** shall submit to **CITY** its claim in detail for any monies owed by **CITY** for services performed under this Contract, including all work performed by **CONTRACTOR** required by the provisions of this Contract to the date of notice and for any necessary and proper work performed in the ensuing thirty day period, to be determined after discussion with **CITY**, provided however, that such payment does not exceed the maximum amount set out in subsections 7.1 through 7.5.
- 10.5 In the event **CITY** terminates any other **CPA Contractor** under the Contract between them, **CITY** shall deliver a copy of said notice to **CONTRACTOR** for informational purposes only, by hand or facsimile, as soon as practicable.
- 10.5.1 In the event of such termination (subsection 10.5), **CITY** and **CONTRACTOR** shall meet within ten (10) days of the effective date of termination specified in the notice of termination and shall agree to make all reasonable efforts to complete the services required herein with any remaining **CPA Contractors**. **CITY** and the remaining **CPA Contractors** shall execute new engagement letters redefining the roles and tasks of **CPA Contractors**. To the extent termination of others results in additional work for the remaining **CPA Contractors** in order to complete the services required herein, **CITY** and **CPA Contractors** agree in good faith to

renegotiate fees, which agreement shall be reflected in the new engagement letter. Said new engagement letters shall supersede any previously executed engagement letters.

- 10.5.2 In the event **CITY** and **CONTRACTOR** are unable or fail to agree on any issue the subject of the renegotiations cited in 10.5.1 within ten (10) days of said renegotiations meeting, **CITY** may terminate this Contract upon giving written notice in accordance with Article XXII. In the event of any such termination, **CITY** and **CONTRACTOR** shall proceed in accordance with subsections 10.4, 10.4.1 and 10.4.2.
- 10.5.3 If **CITY** chooses, as a result of any such termination (subsection 10.5), to select and hire another Certified Public Accountant or Certified Accounting firm or firms, other than the remaining **CPA Contractors**, **CITY** agrees to coordinate said selection with **CONTRACTOR**. However, the final selection and hiring of said CPA, CPA firm or firms shall be at the **CITY'S** sole discretion.
- 10.6 In the event **CONTRACTOR** is unable to issue a joint opinion with either or both of the other **CPA Contractors** because of a certain prevailing law, regulation, rule and/or professional standards issued by Professional Standards, as evidenced by and in a letter drafted and issued by **CONTRACTOR**, **CONTRACTOR'S** legal counsel, the American Institute of Certified Public Accountants or the Texas State Board of Public Accountancy, **CITY** shall have the right to obtain separate and singular opinions from **CONTRACTOR**; and **CONTRACTOR** shall issue separate and singular opinions.
- 10.6.1 In the event **CITY** decides to obtain separate and singular opinions from **CONTRACTOR**, and **CONTRACTOR** is unable to rely on the work provided by one or both of the other **CPA Contractors** or if **CONTRACTOR'S** issuing its separate opinions results in additional work, **CITY** and **CONTRACTOR** agree, in good faith, to renegotiate fees and services to be performed in order to complete the separate opinions. Said agreements shall be reflected in a new engagement letter, which shall supersede any previously, executed engagement letter.
- 10.6.2 In the event **CITY** and **CONTRACTOR** are unable or fail to agree on any issue the subject of the renegotiations cited in 10.6.1 within ten (10) days of said renegotiations meeting **CITY** may terminate this Contract upon giving written notice in accordance with Article XXII. In the event of any such termination, **CITY** and **CONTRACTOR** shall proceed in accordance with subsections 10.4, 10.4.1 and 10.4.2.
- 10.7 The parties understand and agree that in the event **CITY** terminates any **CPA Contractors** other than **CONTRACTOR**, all references to "**CPA Contractor(s)**" contained herein shall thereafter refer to **CONTRACTOR** and any other remaining **CPA Contractors**.

XI. SUBCONTRACTING

- 11.1 Due to the professional experience required to perform the **CONTRACTOR** services specified in this Contract, **CONTRACTOR** must obtain prior written approval from the City's Director of Finance before engaging the services of any subcontractor. 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**.

XII. ASSIGNABILITY

- 12.1 **CONTRACTOR** shall not assign any interest in this Contract to any other party without the prior written consent of **CITY** as evidenced by ordinance.

XIII. CONFLICT OF INTEREST

- 13.1 **CONTRACTOR** acknowledges that it is informed that the City of San Antonio **CITY** Charter prohibits Contracts between the **CONTRACTOR** 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.

For purposes of this Article 13.1 "CONTRACTOR" shall mean personnel of **CONTRACTOR** performing services under this Agreement.

- 13.2 **CONTRACTOR** acknowledges that from time to time **CITY** releases Request for Proposals or other solicitations. **CONTRACTOR** agrees that to the best of the **CONTRACTOR** engagement leader's knowledge, including constructive knowledge, in the event it chooses to submit a proposal in response to any of **CITY'S** solicitations, it will notify **CITY** of said submittal, in writing, in accordance with Article XXII.
- 13.3 In the event that **CONTRACTOR** is involved in any other project or engagement with the **CITY**, **CONTRACTOR** shall confirm that such work does not jeopardize **CONTRACTOR'S** independence in performing the work specified in this Contract.

XIV. COMPLIANCE

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

14.3 **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 Amendments of 1996, OMB Circular A-133, the State of Texas Single Audit Circular, Chapter 103 of the Texas Local Government Code, and Section 107 of the San Antonio City Charter.

XV. INSURANCE

15.1 Prior to execution of this Contract, **CONTRACTOR** shall furnish a completed Certificate of Insurance to the Finance Department, Attention: Milo Nitschke, 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 standard 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.

15.2 **CITY** reserves the right to review the insurance requirement of this section during the effective period of the Contract and to amend insurance coverage and its limit when deemed necessary and prudent by the Risk Management Division based upon changes in statutory law, court decisions or the claims history of the industry, as well as the **CONTRACTOR** and in no instance will the **CITY** allow modification whereupon the **CITY** may incur increased risk.

15.3 **CONTRACTOR** shall procure, pay for and maintain insurance for the term of this Contract, including any extensions or renewals hereof, 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:

| <u>TYPE</u> | <u>AMOUNT</u> |
|--|--|
| Business Automobile Liability | Combined Single Limit \$1,000,000 per occurrence |
| Owned/leased vehicles | |
| Non-owned vehicles | |
| Hired vehicles | |
| Commercial General (Public) Liability Insurance to include coverage for the following: | |
| Contractual Liability | Bodily injury and property damage of |
| Premises/Operations | \$1,000,000 per occurrence with a |
| Personal/Advertising | \$2,000,000 general aggregate or its |
| Injury Liability | equivalent in umbrella or excess |
| Products/Completed | liability coverage. |
| Operations | |
| Independent Contractors | |
| Workers' Compensation and Employer's Liability | |
| Workers' Compensation | Statutory |
| Employer's Liability | \$1,000,000/\$1,000,000/\$1,000,000 |
| Professional Liability | \$1,000,000.00 per claim to pay on |

(Claims made form)

behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.

15.4 The insurance policies required by this Contract shall contain the following clauses:

The insurer will endeavor to provide thirty (30) days prior written notice of cancellation.

15.5. 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 CONTRACTOR'S insurance policies.

XVI. INDEMNITY

16.1 **CONTRACTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS the CITY and the elected officials, employees, officers, directors, volunteers, and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, or death and real or tangible personal property damage, made upon the CITY and arising out of, resulting from or related to and proximately caused by the CONTRACTOR'S negligence or willful misconduct while performing services under this CONTRACT, including any acts or omissions of the CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of the 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 costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature resulting from the direct or indirect activities of CITY, its elected officials, employees, officers, directors, volunteers, and representatives of the CITY, individually or collectively. Such direct or indirect acts include, by way of example and not by way of limitation, those responsibilities of CITY as described in each engagement letter executed by CITY and CONTRACTOR in accordance with Article VIII hereof and attached hereto as Exhibit A. 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 FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENT IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

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

XVII. INDEPENDENT CONTRACTOR

- 17.1 It is expressly understood and agreed that the **CONTRACTOR** provides services as an independent **CONTRACTOR** responsible for its own acts or omissions and that **CITY** shall in no way be responsible therefore and **CONTRACTOR** shall in no way be responsible for **CITY'S** acts and omissions. 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.

XVIII. CHANGES AND AMENDMENTS

- 18.1 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.
- 18.2 The parties hereto understand and agree that the request by the **CITY** to provide additional services as listed in Article IV is not an amendment to the provisions of this Contract.
- 18.3 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.

XIX. LICENSES/CERTIFICATIONS

- 19.1 **CONTRACTOR** warrants and confirms 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.

XX. OTHER AGREEMENTS

- 20.1 It is acknowledged and understood by the parties hereto that simultaneously with the execution of this Contract, two other such contracts will be executed by and with the remaining **CPA Contractors**. As such, all three Contracts, the authorizing ordinance and any Exhibits to the Contracts constitute the final and entire agreement between **CITY** and **CPA Contractors** and contain all of the terms and conditions agreed upon. It is also acknowledged and understood that at the inception of each annual audit, an engagement letter consistent with the provisions of this Contract shall be executed by **CITY** and **CONTRACTOR**.

XXI. SEVERABILITY

- 21.1 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.

XXII. NOTICES

- 22.1 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 of San Antonio
Attn: Milo Nitschke, Director of Finance
P. O. Box 839966
San Antonio, Texas 78283-3966

XXIII. LAW APPLICABLE

- 23.1 This Contract shall be construed under and in accordance with the laws of the State of Texas without regard to the choice of law principles thereof and all obligations of the parties created hereunder are performable in Bexar County, Texas.
- 23.2 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.

XXIV. LEGAL AUTHORITY

- 24.1 The signer of this Contract for **CONTRACTOR** represents, and warrants, 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.

XXV. PARTIES BOUND

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

XXVI. GENDER

- 26.1 Words of any gender used in this Contract shall be held and construed to include any other gender.

XXVII. CAPTIONS

- 27.1 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 20th day of November, 2001

CITY:
CITY OF SAN ANTONIO



J. Rolando Bono
Deputy City Manager

CONTRACTOR
Garza/Gonzalez & Associates



Gregory R. Garza
Senior Partner

Approved as to form:



Frank J. Garza
City Attorney

**GASB STATEMENT NO. 34 IMPLEMENTATION ASSISTANCE AND AUDIT
SERVICES CONTRACT**

STATE OF TEXAS

COUNTY OF BEXAR

This Contract 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 or her designee, pursuant to Ordinance No. 94740, passed and approved on October 18, 2001, and **ROBERT J. WILLIAMS, CPA**, Certified Public Accountant, (herein referred to as "**CONTRACTOR**").

WHEREAS, Section 107 of the City of San Antonio City Charter requires that at the close of each fiscal year, an audit be performed on the **CITY'S** financial records by an independent certified public accountant; and

WHEREAS, Chapter 103 of the Texas Local Government Code requires the **CITY** to have its records and accounts audited annually by an independent certified public accountant; and

WHEREAS, the Single Audit Act Amendments of 1996 and related OMB Circular A-133 and the State of Texas Single Audit Circular contain certain audit and financial reporting requirements; and

WHEREAS, the **CITY** has gone through an extensive selection process and chosen three entities (collectively referred to as "**CPA Contractors**") to collectively provide the services described herein for a five year period to include the required audits for the fiscal years ending September 30, 2002, 2003 and 2004, with years 2005 and 2006 to be negotiated conditioned upon mutually agreed consideration and determination of the scope of the audit for each such year;

WHEREAS, the **CITY** will execute Contracts containing the same terms and conditions, with all three entities referred to as "**CPA Contractors**," wherein each party is jointly and severally bound to provide the services contained in this Contract; **NOW THEREFORE:**

FOR VALUABLE CONSIDERATION, the parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

- 1.1 For purposes of this Contract, the word "**CONTRACTOR**" as used herein shall refer to Robert J. Williams, CPA
- 1.2 For purposes of this Contract, the term "**CPA Contractors**" as used herein shall refer to **DELOITTE AND TOUCHE LLP, GARZA/GONZALEZ AND ASSOCIATES, and ROBERT J. WILLIAMS, CPA.**

II. PROVISION OF SERVICES

- 2.1 It is acknowledged and understood that before the commencement of the provision of services described in Article III, **CPA Contractors** will each execute an annual engagement letter with the **CITY** that will establish the obligations, duties and scope of the **CPA Contractors'** responsibility for each year's audit, the allocation of work to be performed as part of each audit by each **CPA Contractor**, and the portion of the total compensation for such audits that each **CPA Contractor** will be paid, consistent with the provisions contained in Article VII, subsections 7.1 through 7.5.
- 2.2 **CITY** and **CPA Contractors** mutually agree that the engagement letter executed by the **CONTRACTOR** shall become part of this Contract, each time it is executed in accordance with Article VIII and that this Contract and the other two Contracts executed with the other **CPA Contractors** and the engagement letters shall govern the agreement between the parties for the fiscal year noted in the engagement letters.
- 2.3 It is also understood and agreed that **DELOITTE AND TOUCHE LLP**, has been designated as the coordinator entity for the **CPA Contractors**. In this regard, the coordinator will serve as the point of contact for **CITY** in facilitating and administering the Contracts. In designating tasks to **CPA Contractors**, **DELOITTE AND TOUCHE LLP**, agrees to give careful consideration to promoting the professional development of each **CPA Contractor** and will use its best commercially reasonable efforts in accordance with applicable professional standards so that the work is equitably designated. **DELOITTE AND TOUCHE LLP**, agrees to carefully consult with each **CPA Contractor** to determine which tasks will be designated to each **CPA Contractor**.
- 2.4 **CONTRACTOR**, by executing this Contract, acknowledges the existence of two other Contracts containing substantially similar terms and conditions. **CONTRACTOR**, therefore, understands and agrees that no one **CPA Contractor** has the exclusive right to perform the services, either in whole or in part, listed in this Contract. Thereby, **CITY** reserves the right to request the services to be provided by one, two, or all three of **CPA Contractors** at any time, provided that each of the **CPA Contractors** reserve the right to agree or decline to perform such services in accordance with such **CPA Contractor's** applicable professional standards.

III. SCOPE OF SERVICES

CPA Contractors, including but not limited to **CONTRACTOR**, in accordance with each annual engagement letter, shall provide the following services:

INDEPENDENT AUDIT SERVICES

- 3.1 **CPA Contractors** are to collectively audit the financial statements of **CITY** during the Contract period and evaluate the fairness of presentation of the statements in conformity with generally accepted accounting principles. **CONTRACTOR** agrees to meet with the other **CPA Contractors** selected by **CITY**, to agree with such other **CPA Contractors**, on a cooperative audit plan acceptable to **CITY** permitting each **CPA Contractor** to participate in each annual audit performed pursuant to the provisions contained in this Contract; to perform the work allocated to it under such **CPA Contractor's** engagement

letter; and to evaluate and review the work performed by the other **CPA Contractors** to the extent necessary or desirable to permit it to issue its opinion or opinions required hereby. It is understood that this audit will be conducted in accordance with generally accepted auditing standards, which will include a review of the system of internal controls and tests of transactions to the extent necessary. Accordingly, the audit will not include a detailed audit of transactions to the extent, which would be required if intended to disclose defalcations or other irregularities, although the possibility exists that such discovery may result. The San Antonio Water System, the City Public Service Board, San Antonio Fire and Police Pension Fund, San Antonio Retiree Health Care Fund, and certain other component units of **CITY** are audited by other auditors. These component units which currently are or those which may be included in the future with the application of GASB 14 "the Financial Reporting Entity," are included in the scope of work to be performed hereunder but limited only to their respective incorporation into **CITY'S** Comprehensive Annual Financial Report (CAFR).

- 3.2 **CPA Contractors** agree to perform in accordance with generally accepted auditing standards adopted by the American Institute of Certified Public Accountants, Government Auditing Standards, issued by the Comptroller General of the United States, and Office of Management and Budget (OMB) Circular A-133, the State of Texas Single Audit Circular and any other authoritative pronouncements which may be deemed applicable. Those standards require that **CPA Contractors** plan and perform the audit to obtain reasonable assurance about whether the general-purpose financial statements and financial statements as required and in accordance with GASB Statement No. 34 *Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments*, are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the general-purpose financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall general-purpose financial statement presentation. The objective of this audit is the expression of an opinion of **CPA Contractors**, including but not limited to **CONTRACTOR**, or in the event such an opinion is not practicable, consistent with prevailing law, regulation, rule and/or professional standards issued by the American Institute of Certified Public Accountants or the Texas State Board of Public Accountancy ("Professional Standards"), as evidenced by a letter drafted and issued by **CONTRACTOR**, **CONTRACTOR'S** legal counsel, the American Institute of Certified Public Accountants or the Texas State Board of Public Accountancy, that **CONTRACTOR** is unable, because of a certain Professional Standard identified in or referred to in said letter, to issue an opinion jointly with other **CPA Contractors**, the expression of an individual and separate opinion by **CONTRACTOR**, in accordance with the provisions of this Contract. The wording of the audit opinion will, of course, be dependent on the facts and circumstances at the date of the reports. If the opinion will be other than unqualified, the reasons therefore will be fully disclosed. The opinion will be signed by **CPA Contractors** who will assume responsibility both jointly and severally, for the audit of the financial statements of **CITY**.
- 3.3 **CITY** agrees that it will maintain at least its present degree of conformance to the standards of the Governmental Accounting Standards Board pertaining to internal controls, and the recording of financial transactions, and that the Contract price for the audits by **CPA Contractors** as quoted in Article VII, is predicated upon this conformance. **CITY** agrees that the detailed annual financial statements and notes to such statements will be

prepared by its Department of Finance as nearly as practical in accordance with the form outlined in "Governmental Accounting, Auditing, and Financial Reporting" published by the Government Finance Officers Association on such financial statements, and any supplemental schedules which it prepares will be submitted and provided to the **CONTRACTOR** in sufficient time (as completed) for full reconciliation with **CONTRACTOR'S** findings, and to facilitate publication of **CITY'S** Comprehensive Annual Financial Report within approximately 120 days after the close of each fiscal year. Responsibility for the proper recording of transactions into the books of account, and for the accuracy of the financial statements, which are the representations of management, are with **CITY**.

- 3.4 **CITY** shall have completed and balanced all accounts and have prepared financial statements and schedules for all funds, account groups and financial statements as required and in accordance with GASB Statement No. 34 to be audited by the **CPA Contractors** and shall provide **CPA Contractors** with working space deemed adequate by **CPA Contractors** for efficient conduct of the audit. **CITY** shall provide **CPA Contractors** for its use and retention, with copies of these financial statements and schedules and shall provide **CPA Contractors** with trial balances of the various funds and account groups and financial statements as required and in accordance with GASB Statement No. 34 in a form acceptable to **CPA Contractors**.
- 3.5 The Comprehensive Annual Financial Report will be completed and available for distribution within approximately 120 days of **CITY'S** fiscal year end of September 30. The "Management Letter" and "Single Audit Reports" will be completed and available for distribution within a reasonable period of time after completion of the Comprehensive Annual Financial Report.
- 3.6 **CONTRACTOR** understands and agrees that other provisions to the contrary notwithstanding, **CITY** requires the issuance of a joint opinion by **CPA Contractors** and that **CITY** will only accept singular opinion from **CONTRACTOR** in the event it is determined, in accordance with the provisions of subsections 3.2 and 10.7, that **CONTRACTOR** is unable to issue an opinion.
- 3.7 On an annual basis during the term of the Contract, **CPA Contractors** will provide an aggregate of twenty-four (24) hours of continuing professional education training to **CITY'S** professional accounting and internal audit staff. **CPA Contractors** must be registered with the Texas State Board of Public Accountancy as a provider of Continuing Professional Education and the training will be based on mutually agreed topics. This service is considered a part of the fee structure for the independent audit.

GASB STATEMENT NO. 34 IMPLEMENTATION ASSISTANCE

- 3.8 **CITY** will be required to implement GASB Statement No. 34, "*Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments*" and any related statements on October 1, 2001. **CITY** has performed an analysis of the pronouncement and has developed a task statement and timeline for its implementation. The Finance Department staff is analyzing the **CITY'S** current financial reporting model and comparing that to the GASB's new requirements. Each key task to be accomplished will be documented and compiled in written form for **CONTRACTOR'S** review,

concurrence, and acceptance. Review will include, but is not limited to such items as the classification of program revenue versus general revenues; accounting estimates, such as those for compensated absences and asset depreciation lives; and proper classification of current funds (enterprise versus special revenue, etc.). **CONTRACTOR** will be required to review policies and procedures that are currently being developed such as the **CITY'S** fixed assets and accounts receivable policies. **CONTRACTOR** will assist the **CITY** in identifying issues relating to the retroactive infrastructure reporting not including inventory and valuation services. **CONTRACTOR** shall recommend any additional key tasks or policies that should be addressed to achieve proper implementation for GASB Statement No. 34.

- 3.9 **CONTRACTOR** will provide answers to questions arising from **CITY'S** review and analysis of GASB Statement No. 34 requirements, and questions which may arise that require technical interpretation and implementation assistance. These questions will be submitted to **CONTRACTOR** in writing for evaluation. **CITY** will upon acceptance and concurrence by the **CONTRACTOR** of the **CITY'S** task statement and methodology will restate the fiscal year 2000 CAFR to conform to the GASB Statement No. 34 requirements. Restated CAFR (the "mock CAFR") will consist of government-wide statements, fund statements, management discussion and analysis, footnotes to the financial statements, and required supplementary information that is required under GASB Statement No. 34 and related statements. **CONTRACTOR** will review the financial statement presentation, footnotes to the financial statements, required supplementary information, and management discussion and analysis to ensure that financial reports adhere to GASB standards. **CONTRACTOR** will submit to **CITY** in writing all changes suggested in order to ensure compliance. The "mock CAFR" will be used as a model for the implementation of GASB statement number 34 for fiscal year ending September 30, 2002.
- 3.10 **CITY** agrees that **CONTRACTOR** and its personnel shall not be liable to **CITY** for any claims, liabilities, or expenses relating to the services provided, as it relates to negligence, pursuant to this Section 3.8 and Section 3.9 for an aggregate amount in excess of twice the fees paid by **CITY** to **CONTRACTOR** pursuant Section 7.6 of this Agreement, except to the extent finally judicially determined to have resulted primarily from the bad faith or intentional misconduct of **CONTRACTOR**. In no event shall **CONTRACTOR** or its personnel be liable for consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense relating to the performance of services pursuant to Section 3.8 and Section 3.9.

IV. CONTINGENT ADDITIONAL SERVICES

- 4.1 **CONTRACTOR** acknowledges that the services listed below were identified in the Request for Proposal under "Other Services" as those additional services, which the **CITY** may request **CONTRACTOR** to provide. If requested, and **CONTRACTOR** agrees, **CONTRACTOR** shall provide said service(s) under the same terms and conditions of this Contract, save and except those provisions specifically revised by the Director of Finance in the forwarded request (subsection 4.2).
- 4.2 **CITY** will effect such a request for contingent additional services by forwarding a written request, executed by the Director of Finance or his designee, to the **CONTRACTOR** at its

respective address provided herein. Within said request, the Director of Finance shall state the scope of services **CONTRACTOR** has been requested to provide; the period of time within which said services are to be completed; and the consideration to be paid by **CITY** for the services provided, in accordance with subsection 7.10. The coordinator entity shall notify **CITY** as to which of the **CPA Contractors** will provide the contingent additional service; provided however, if **CITY**, at its discretion, designates the **CPA Contractors** to provide said contingent additional services, the request for the provision of contingent additional services shall be forwarded directly to that designated **CPA Contractors**.

- 4.3 The **CPA Contractors** selected agree to provide the following services at the request of the **CITY**:
- 4.3.1 Consulting services on tax, compliance, or other non-audit consultation matters.
 - 4.3.2 Assistance with the preparation of aspects of the annual report or the analysis of new accounting standards or pronouncements.
 - 4.3.3 Advisory or consultant services to assist in the resolution of audit findings and questioned costs reported by Federal and State Agencies.
 - 4.3.4 Other services that may be required for a **CITY** bond offering.

V. QUALITY CONTROL REVIEWS

- 5.1 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 within three working days by **CONTRACTOR** in the event of any such request. **CITY** will not reimburse costs incurred by **CONTRACTOR** related to such review of audit quality. To the extent such work papers 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 State of Texas Single Audit Circular, **CONTRACTOR** will notify and discuss such request with **CITY** prior to any costs being incurred by **CONTRACTOR**. Any such costs agreed to be reimbursed by **CITY** will be based on fees negotiated on an individual engagement basis.

VI. TERM AND COMMENCEMENT OF WORK

- 6.1 Unless earlier termination shall occur pursuant to any of the provisions of this Contract, the term of this Contract shall be from the effective date of the signatures through September 30, 2006 and shall include the audits of the **CITY'S** records and accounts for the fiscal years ending September 30, 2002, 2003, 2004, 2005, and 2006 with fees for years 2005 and 2006 to be negotiated conditioned upon the successful negotiation of consideration as identified in Section VII below (Pricing and Billing). Continuation of this Contract beyond the first year and each and every year thereafter is subject to and contingent upon an annual appropriation of funds by City Council. The City shall notify **CONTRACTOR** promptly if there has not been made the necessary appropriation of funds.

- 6.2 In the event **CITY** requests **CPA Contractors** to provide the contingent additional services set out in Section IV, the commencement and termination dates shall be established in the written request from the Director of Finance and as agreed to by the **CPA Contractors**.

VII. CONTRACT PRICING AND BILLING

- 7.1 The total of all payments and other obligations made and incurred by **CITY** hereunder, in performance of the services provided for in Article III (except Articles 3.8 and 3.9) and IV for fiscal year 2002 shall not exceed the amount of \$270,000; for fiscal year 2003 shall not exceed the amount of \$278,100; and for fiscal year 2004 shall not exceed the amount of \$286,443. Such fees being predicated on the expectation that the Finance Department of the **CITY** will provide the preparation of the annual financial reports and statements, and supporting work papers and schedules at a comparable level with prior years, and that the Office of Internal Review will provide 1,500 hours of assistance to the annual audit process. In the event that the **CITY** is unable to provide the 1,500 hours of assistance provided by the Office of Internal Review, the maximum dollar amounts identified above may at the City's discretion, after consultation with **CPA Contractors**, be adjusted by increasing those amounts by not more than twenty-five percent (25%) for each fiscal year.
- 7.2 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Article III (except Articles 3.8 and 3.9) and IV under this Contract for the audit of fiscal year 2002 shall not exceed \$270,000.00, it is understood that this sum will be paid individually as follows:

| | |
|-------------------------------|--------------|
| Deloitte and Touche LLP | \$145,800.00 |
| Garza/Gonzalez and Associates | \$105,300.00 |
| Robert J. Williams, CPA | \$ 18,900.00 |

- 7.3 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Article III (except Articles 3.8 and 3.9) and IV under this Contract for the audit of fiscal year 2003 shall not exceed \$278,100.00, it is understood that this sum will be paid individually as follows:

| | |
|-------------------------------|--------------|
| Deloitte and Touche LLP | \$150,174.00 |
| Garza/Gonzalez and Associates | \$108,459.00 |
| Robert J. Williams, CPA | \$ 19,467.00 |

- 7.4 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Article III (except Articles 3.8 and 3.9) and IV under this Contract for the audit of fiscal year 2004 shall not exceed \$286,443.00, it is understood that this sum will be paid individually as follows:

| | |
|-------------------------------|--------------|
| Deloitte and Touche LLP | \$154,679.00 |
| Garza/Gonzalez and Associates | \$111,713.00 |
| Robert J. Williams, CPA | \$ 20,051.00 |

- 7.5 It is further understood and agreed by the parties hereto that the work performed and the total fee for the services related to Article III (except Articles 3.8 and 3.9) and IV under this

Contract for the audit of fiscal year 2005 and 2006 shall be negotiated contingent upon City Council approval.

- 7.6 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Articles 3.8 and 3.9 above (GASB Statement No. 34 work) shall be monitored by **DELOITTE AND TOUCHE LLP**, and divided between the **CPA Contractors**. For GASB Statement No. 34 work, the rate shall be \$150 per hour, not to exceed a total fee of \$100,000 over the term of the Contract. Although the percentages identified in Section 7.2 above do not specifically apply, **DELOITTE AND TOUCHE LLP** shall use its best commercially reasonable efforts to ensure that the GASB Statement No. 34 work is divided equitably in accordance with applicable professional standards.
- 7.7 Subject to subsections 7.1 through 7.5, **CONTRACTOR** agrees that all **CONTRACTOR** labor, supervision of work, report reproduction, typing, travel, insurance, communication, computer access, materials, supplies, subcontractor costs, if any, and all other **CONTRACTOR** expenses necessary to complete the services stated herein shall be borne at **CONTRACTOR'S** sole cost and expense.
- 7.8 Progress billings for the annual fees established herein 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. However, **CITY** will retain ten percent (10%) of the total annual fee, until the **CITY'S** Comprehensive Annual Financial Report, Single Audit Reports, and Management Letter have been completed provided that the total audit fees for any fiscal year shall be paid in full prior to any services being rendered for the subsequent fiscal year.
- 7.9 In the event that the **CITY** does not provide assistance as provided for in subsection 7.1, 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 III in excess of the annual amounts as stated for each fiscal year established in subsections 7.1 through 7.5 without formal written revision of this Contract and related City Council approval.
- 7.10 Payments for contingent additional services provided in accordance with Article IV, payments for any costs to be reimbursed by **CITY** in accordance with Article V, and payments for any additional work required in accordance with subsection 10.5.1 or 10.6.2, will be based on fees negotiated on an individual engagement basis. **DELOITTE AND TOUCHE LLP, GARZA/GONZALEZ AND ASSOCIATES**, and/or **ROBERT J. WILLIAMS, CPA**, as the entity designated to provide said services shall prepare and submit a billing statement to **CITY** specifying the scope of work performed and amount due. Upon receipt of the billing statement, **CITY** will review and if in compliance with the established fees herein, pay the amount specified due on such statement to the appropriate entity.

VIII. INCORPORATION BY REFERENCE

- 8.1 The engagement letter executed by **CITY** and **CONTRACTOR**, attached hereto as

Exhibit A, is hereby incorporated into this Contract and specifically made a part hereof as though it is fully set out herein.

- 8.2 The parties hereto acknowledge and agree that prior to the commencement of the 2002, 2003, 2004, 2005, and 2006 audits herein required, **CITY** and **CONTRACTOR** will execute a new engagement letter for the upcoming fiscal year. That engagement letter, once executed, shall be incorporated herein for that next fiscal year and shall supersede the previously attached engagement letter for audit services.
- 8.3 In the event of a conflict or inconsistency between the terms of this Contract and the provisions of any of the engagement letters ultimately attached hereto as Exhibit A, the terms of this Contract shall govern and prevail.

IX. RECORDS

- 9.1 **CONTRACTOR** shall properly, accurately and completely maintain all non-confidential and non-proprietary 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 business hours of **CONTRACTOR** and as often as **CITY** may deem necessary during the Contract period, including any extension or renewal hereof, for purposes of inspection, examination, and making excerpts or copies of same by **CITY** and any of its authorized representatives.
- 9.2 **CONTRACTOR** shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years from the date of termination of the Contract. If at the end of four (4) 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 other such questions.
- 9.3 **CITY** shall 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 9.1 and 9.2. As such, **CONTRACTOR** understands and agrees that **CITY** will process and handle all such requests.

X. TERMINATION

- 10.1 For purposes of this Contract, "termination" of this Contract shall mean termination by completion of the provision of services required herein or earlier termination pursuant to any of the provisions hereof.
- 10.2 Other provisions of this Contract notwithstanding, **CITY** may terminate this Contract as to **CONTRACTOR** in accordance with this clause, in whole or in part, for any of the following
- 10.2.1 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

- 10.2.2 Violation by **CONTRACTOR** of any applicable rule, regulation or law to which **CONTRACTOR** is bound or shall be bound by terms of this Contract.
- 10.2.3 The **CITY** shall also have the right to terminate this Contract or any portion thereof for convenience upon thirty (30) days notice. If **CITY** elects to terminate for convenience as described, the **CITY** shall pay **CONTRACTOR** for services rendered up to and including date of termination.
- 10.3 Subsection 10.2 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 receipt of 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 **CONTRACTOR**.
- 10.4 Upon a decision to terminate by **CITY** and the expiration of any cure period, written-notice of such shall be promptly provided to **CONTRACTOR** specifying the basis for said termination, the effective date of termination, and the extent to which performance of work under this Contract will be terminated. A copy of said notice shall be provided, for informational purposes only, by **CITY** to the remaining **CPA Contractors**, by hand or facsimile, as soon as practicable.
- 10.4.1 Upon receipt of a notice to terminate, all finished reports for which payment has been received, prepared by **CONTRACTOR** under this Contract, shall at the option of **CITY**, and in accordance herewith and with applicable professional standards, be accessible to the **CITY** as provided in Article IX.
- 10.4.2 Within thirty (30) days of the effective date of termination **CONTRACTOR** shall submit to **CITY** its claim in detail for any monies owed by **CITY** for services performed under this Contract, including all work performed by **CONTRACTOR** required by the provisions of this Contract to the date of notice and for any necessary and proper work performed in the ensuing thirty day period, to be determined after discussion with **CITY**, provided however, that such payment does not exceed the maximum amount set out in subsections 7.1 through 7.5.
- 10.5 In the event **CITY** terminates any other **CPA Contractor** under the Contract between them, **CITY** shall deliver a copy of said notice to **CONTRACTOR** for informational purposes only, by hand or facsimile, as soon as practicable.
- 10.5.1 In the event of such termination (subsection 10.5), **CITY** and **CONTRACTOR** shall meet within ten (10) days of the effective date of termination specified in the notice of termination and shall agree to make all reasonable efforts to complete the services required herein with any remaining **CPA Contractors**. **CITY** and the remaining **CPA Contractors** shall execute new engagement letters redefining the roles and tasks of **CPA Contractors**. To the extent termination of others results in additional work for the remaining **CPA Contractors** in order to complete the services required herein, **CITY** and **CPA Contractors** agree in good faith to renegotiate fees, which agreement shall be reflected in the new engagement letter. Said new engagement letters shall supersede any previously executed engagement letters.

- 10.5.2 In the event **CITY** and **CONTRACTOR** are unable or fail to agree on any issue the subject of the renegotiations cited in 10.5.1 within ten (10) days of said renegotiations meeting, **CITY** may terminate this Contract upon giving written notice in accordance with Article XXII. In the event of any such termination, **CITY** and **CONTRACTOR** shall proceed in accordance with subsections 10.4, 10.4.1 and 10.4.2.
- 10.5.3 If **CITY** chooses, as a result of any such termination (subsection 10.5), to select and hire another Certified Public Accountant or Certified Accounting firm or firms, other than the remaining **CPA Contractors**, **CITY** agrees to coordinate said selection with **CONTRACTOR**. However, the final selection and hiring of said CPA, CPA firm or firms shall be at the **CITY'S** sole discretion.
- 10.6 In the event **CONTRACTOR** is unable to issue a joint opinion with either or both of the other **CPA Contractors** because of a certain prevailing law, regulation, rule and/or professional standards issued by Professional Standards, as evidenced by and in a letter drafted and issued by **CONTRACTOR**, **CONTRACTOR'S** legal counsel, the American Institute of Certified Public Accountants or the Texas State Board of Public Accountancy, **CITY** shall have the right to obtain separate and singular opinions from **CONTRACTOR**; and **CONTRACTOR** shall issue separate and singular opinions.
- 10.6.1 In the event **CITY** decides to obtain separate and singular opinions from **CONTRACTOR**, and **CONTRACTOR** is unable to rely on the work provided by one or both of the other **CPA Contractors** or if **CONTRACTOR'S** issuing its separate opinions results in additional work, **CITY** and **CONTRACTOR** agree, in good faith, to renegotiate fees and services to be performed in order to complete the separate opinions. Said agreements shall be reflected in a new engagement letter, which shall supersede any previously, executed engagement letter.
- 10.6.2 In the event **CITY** and **CONTRACTOR** are unable or fail to agree on any issue the subject of the renegotiations cited in 10.6.1 within ten (10) days of said renegotiations meeting **CITY** may terminate this Contract upon giving written notice in accordance with Article XXII. In the event of any such termination, **CITY** and **CONTRACTOR** shall proceed in accordance with subsections 10.4, 10.4.1 and 10.4.2.
- 10.7 The parties understand and agree that in the event **CITY** terminates any **CPA Contractors** other than **CONTRACTOR**, all references to "**CPA Contractor(s)**" contained herein shall thereafter refer to **CONTRACTOR** and any other remaining **CPA Contractors**.

XI. SUBCONTRACTING

- 11.1 Due to the professional experience required to perform the **CONTRACTOR** services specified in this Contract, **CONTRACTOR** must obtain prior written approval from the City's Director of Finance before engaging the services of any subcontractor. 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**.

XII. ASSIGNABILITY

- 12.1 **CONTRACTOR** shall not assign any interest in this Contract to any other party without the prior written consent of **CITY** as evidenced by ordinance.

XIII. CONFLICT OF INTEREST

- 13.1 **CONTRACTOR** acknowledges that it is informed that the City of San Antonio **CITY** Charter prohibits Contracts between the **CONTRACTOR** 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.

For purposes of this Article 13.1 “**CONTRACTOR**” shall mean personnel of **CONTRACTOR** performing services under this Agreement.

- 13.2 **CONTRACTOR** acknowledges that from time to time **CITY** releases Request for Proposals or other solicitations. **CONTRACTOR** agrees that to the best of the **CONTRACTOR** engagement leader’s knowledge, including constructive knowledge, in the event it chooses to submit a proposal in response to any of **CITY'S** solicitations, it will notify **CITY** of said submittal, in writing, in accordance with Article XXII.
- 13.3 In the event that **CONTRACTOR** is involved in any other project or engagement with the **CITY**, **CONTRACTOR** shall confirm that such work does not jeopardize **CONTRACTOR'S** independence in performing the work specified in this Contract.

XIV. COMPLIANCE

- 14.1 **CONTRACTOR** shall comply with the applicable independence standards promulgated by the American Institute of Certified Public Accountants and any other applicable standard related to independence promulgated by any other relevant authoritative body, as applicable to the services provided hereunder.
- 14.2 **CONTRACTOR** shall comply with any and all other applicable standards promulgated by the American Institute of Certified Public Accountants and by any other relevant authoritative body, as applicable to the services provided herein, while in the performance of the services hereunder.
- 14.3 **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 Amendments of 1996, OMB Circular A-133, the State of Texas Single Audit Circular, Chapter 103 of the Texas Local Government Code, and Section 107 of the San Antonio City Charter.

XV. INSURANCE

- 15.1 Prior to execution of this Contract, **CONTRACTOR** shall furnish a completed Certificate of Insurance to the Finance Department, Attention: Milo Nitschke, 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 standard 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.
- 15.2 **CITY** reserves the right to review the insurance requirement of this section during the effective period of the Contract and to amend insurance coverage and its limit when deemed necessary and prudent by the Risk Management Division based upon changes in statutory law, court decisions or the claims history of the industry, as well as the **CONTRACTOR** and in no instance will the **CITY** allow modification whereupon the **CITY** may incur increased risk.
- 15.3 **CONTRACTOR** shall procure, pay for and maintain insurance for the term of this Contract, including any extensions or renewals hereof, 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:

| <u>TYPE</u> | <u>AMOUNT</u> |
|--|--|
| Business Automobile Liability | Combined Single Limit \$1,000,000 per occurrence |
| Owned/leased vehicles | |
| Non-owned vehicles | |
| Hired vehicles | |
| Commercial General (Public) Liability Insurance to include coverage for the following: | |
| Contractual Liability | Bodily injury and property damage of |
| Premises/Operations | \$1,000,000 per occurrence with a |
| Personal/Advertising | \$2,000,000 general aggregate or its |
| Injury Liability | equivalent in umbrella or excess |
| Products/Completed | liability coverage. |
| Operations | |
| Independent Contractors | |
| Workers' Compensation and Employer's Liability | |
| Workers' Compensation | Statutory |
| Employer's Liability | \$1,000,000/\$1,000,000/\$1,000,000 |
| Professional Liability | \$1,000,000.00 per claim to pay on |
| (Claims made form) | behalf of the insured all sums which |

the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.

15.4 The insurance policies required by this Contract shall contain the following clauses:

The insurer will endeavor to provide thirty (30) days prior written notice of cancellation.

15.5. 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 CONTRACTOR'S insurance policies.

XVI. INDEMNITY

16.1 **CONTRACTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS the CITY and the elected officials, employees, officers, directors, volunteers, and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, or death and real or tangible personal property damage, made upon the CITY and arising out of, resulting from or related to and proximately caused by the CONTRACTOR'S negligence or willful misconduct while performing services under this CONTRACT, including any acts or omissions of the CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of the 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 costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature resulting from the direct or indirect activities of CITY, its elected officials, employees, officers, directors, volunteers, and representatives of the CITY, individually or collectively. Such direct or indirect acts include, by way of example and not by way of limitation, those responsibilities of CITY as described in each engagement letter executed by CITY and CONTRACTOR in accordance with Article VIII hereof and attached hereto as Exhibit A. 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 FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENT IMMUNITY AVAILIABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

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

XVII. INDEPENDENT CONTRACTOR

- 17.1 It is expressly understood and agreed that the **CONTRACTOR** provides services as an independent **CONTRACTOR** responsible for its own acts or omissions and that **CITY** shall in no way be responsible therefore and **CONTRACTOR** shall in no way be responsible for **CITY'S** acts and omissions. 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.

XVIII. CHANGES AND AMENDMENTS

- 18.1 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.
- 18.2 The parties hereto understand and agree that the request by the **CITY** to provide additional services as listed in Article IV is not an amendment to the provisions of this Contract.
- 18.3 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.

XIX. LICENSES/CERTIFICATIONS

- 19.1 **CONTRACTOR** warrants and confirms 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.

XX. OTHER AGREEMENTS

- 20.1 It is acknowledged and understood by the parties hereto that simultaneously with the execution of this Contract, two other such contracts will be executed by and with the remaining **CPA Contractors**. As such, all three Contracts, the authorizing ordinance and any Exhibits to the Contracts constitute the final and entire agreement between **CITY** and **CPA Contractors** and contain all of the terms and conditions agreed upon. It is also acknowledged and understood that at the inception of each annual audit, an engagement letter consistent with the provisions of this Contract shall be executed by **CITY** and **CONTRACTOR**.

XXI. SEVERABILITY

- 21.1 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.

XXII. NOTICES

- 22.1 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 of San Antonio
Attn: Milo Nitschke, Director of Finance
P. O. Box 839966
San Antonio, Texas 78283-3966

XXIII. LAW APPLICABLE

- 23.1 This Contract shall be construed under and in accordance with the laws of the State of Texas without regard to the choice of law principles thereof and all obligations of the parties created hereunder are performable in Bexar County, Texas.
- 23.2 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.

XXIV. LEGAL AUTHORITY

- 24.1 The signer of this Contract for **CONTRACTOR** represents, and warrants, 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.

XXV. PARTIES BOUND

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

XXVI. GENDER

- 26.1 Words of any gender used in this Contract shall be held and construed to include any other gender.

XXVII. CAPTIONS

- 27.1 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 20th day of November, 2001

CITY:
CITY OF SAN ANTONIO



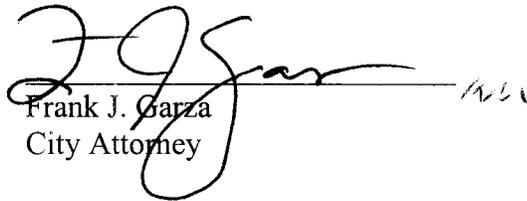
J. Rolando Bono
Deputy City Manager

CONTRACTOR
Robert J. Williams,
Certified Public Accountant



Robert J. Williams
Principal

Approved as to form:



Frank J. Garza
City Attorney

DO NOT TYPE IN THIS SPACE

CITY OF SAN ANTONIO

Request For Ordinance/Resolution

MEMORANDUM
Date: _____
To: _____
From: _____
Subject: _____

| | | |
|--|--|---|
| Date: Thursday, October 04, | Department: Finance | Contact Person/Phone #: Milo Nitschke 207-8620 |
| Date Council Consideration Requested: Thursday, October 18, 2001 | Deadline for Action: October 18, 2001 | Dept. Head Signature <i>Milo Nitschke</i> |

SUMMARY OF ORDINANCE

An Ordinance approving the firms of Deloitte and Touche LLP, Garza/Gonzalez and Associates, and Robert J. Williams, CPA, to provide the City GASB Statement No. 34 implementation assistance and independent audit services for the fiscal years of 2002, 2003, 2004, 2005, and 2006, at a total fee for audit services of \$270,000 for year one, \$278,100 for year two, \$286,443 for year three, with years 2005 and 2006 to be negotiated, with City Council approval, and an amount not to exceed \$100,000 over the term of the contract for GASB Statement No. 34 implementation assistance.

Council Memorandum Must be Attached To Original

Other Depts., Boards, Committees Involved (please specify):
Audit and Contract Review Committee, City Attorney's Office, Office of Internal Review, Economic Development, Public Works, Aviation, Housing & Community Development, Community Initiatives, City Manager's Office

Contract signed by other party
Yes No

FISCAL DATA (If Applicable)

| | | |
|---------------------|-----------------------|---|
| Fund No. 11-000 | Amt. Expended 270,000 | Funds/Staffing Budgeted Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
| | 100,000 | |
| Activity No. 800206 | SID No. | Positions Currently Authorized |
| 070301 | | |
| Index Code 419226 | Project No. | Impact of future O & M |
| 216200 | | |
| Object Code | 02160 | |

Comments:

If positions added, specify class and no.

Coordinator - White
Legal - Green
Budget - Canary
Finance - Pink
Originator - Gold

**Caption for GASB Statement No. 34 Implementation Assistance and Independent Audit
Services Contracts for October 18, 2001:**

An Ordinance approving the firms of Deloitte and Touche LLP, Garza/Gonzalez and Associates, and Robert J. Williams, CPA, to provide the City GASB Statement No. 34 implementation assistance and independent audit services for the fiscal years of 2002, 2003, 2004, 2005, and 2006, at a total fee for audit services of \$270,000 for year one, \$278,100 for year two, \$286,443 for year three, with years 2005 and 2006 to be negotiated, with City Council approval, and an amount not to exceed \$100,000 over the term of the contract for GASB Statement No. 34 implementation assistance.

Staff recommends approval of this Ordinance.

CITY OF SAN ANTONIO
Finance Department
Controller's Office

[Handwritten signature]

TO: Norma S. Rodriguez, City Clerk; Keith Martin, City Attorney's Office
FROM: Susan Rios, CPA, Assistant Controller
COPIES: Milo Nitschke, Director, Finance Department; Troy Elliott, CPA, Controller; Susan Rios, CPA, Assistant Controller; file
SUBJECT: Final Executed GASB Statement No. 34 Implementation Assistance and Independent Audit Services Contracts

DATE: December 7, 2001

Attached, please find original signed contracts authorized by Ordinance 94740 on October 18, 2001. The audit firms of Deloitte and Touche LLP, Garza/Gonzalez and Associates and Robert J. Williams, CPA, comprise the City's audit team for fiscal years 2002, 2003, 2004, 2005 and 2006.

Should you have any questions please contact me at extension 78636.

[Handwritten signature: Susan Rios]
Susan Rios
Assistant Controller

RECEIVED
CITY OF SAN ANTONIO
OFFICE OF THE CONTROLLER
DEC 11 2001

**GASB STATEMENT NO. 34 IMPLEMENTATION ASSISTANCE AND AUDIT
SERVICES CONTRACT**

STATE OF TEXAS

COUNTY OF BEXAR

This Contract 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 or her designee, pursuant to Ordinance No. 94740, passed and approved on October 18, 2001, and **ROBERT J. WILLIAMS, CPA**, Certified Public Accountant, (herein referred to as "**CONTRACTOR**").

WHEREAS, Section 107 of the City of San Antonio City Charter requires that at the close of each fiscal year, an audit be performed on the **CITY'S** financial records by an independent certified public accountant; and

WHEREAS, Chapter 103 of the Texas Local Government Code requires the **CITY** to have its records and accounts audited annually by an independent certified public accountant; and

WHEREAS, the Single Audit Act Amendments of 1996 and related OMB Circular A-133 and the State of Texas Single Audit Circular contain certain audit and financial reporting requirements; and

WHEREAS, the **CITY** has gone through an extensive selection process and chosen three entities (collectively referred to as "**CPA Contractors**") to collectively provide the services described herein for a five year period to include the required audits for the fiscal years ending September 30, 2002, 2003 and 2004, with years 2005 and 2006 to be negotiated conditioned upon mutually agreed consideration and determination of the scope of the audit for each such year;

WHEREAS, the **CITY** will execute Contracts containing the same terms and conditions, with all three entities referred to as "**CPA Contractors**," wherein each party is jointly and severally bound to provide the services contained in this Contract; **NOW THEREFORE:**

FOR VALUABLE CONSIDERATION, the parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

- 1.1 For purposes of this Contract, the word "**CONTRACTOR**" as used herein shall refer to Robert J. Williams, CPA
- 1.2 For purposes of this Contract, the term "**CPA Contractors**" as used herein shall refer to **DELOITTE AND TOUCHE LLP, GARZA/GONZALEZ AND ASSOCIATES, and ROBERT J. WILLIAMS, CPA.**

II. PROVISION OF SERVICES

- 2.1 It is acknowledged and understood that before the commencement of the provision of services described in Article III, **CPA Contractors** will each execute an annual engagement letter with the **CITY** that will establish the obligations, duties and scope of the **CPA Contractors'** responsibility for each year's audit, the allocation of work to be performed as part of each audit by each **CPA Contractor**, and the portion of the total compensation for such audits that each **CPA Contractor** will be paid, consistent with the provisions contained in Article VII, subsections 7.1 through 7.5.
- 2.2 **CITY** and **CPA Contractors** mutually agree that the engagement letter executed by the **CONTRACTOR** shall become part of this Contract, each time it is executed in accordance with Article VIII and that this Contract and the other two Contracts executed with the other **CPA Contractors** and the engagement letters shall govern the agreement between the parties for the fiscal year noted in the engagement letters.
- 2.3 It is also understood and agreed that **DELOITTE AND TOUCHE LLP**, has been designated as the coordinator entity for the **CPA Contractors**. In this regard, the coordinator will serve as the point of contact for **CITY** in facilitating and administering the Contracts. In designating tasks to **CPA Contractors**, **DELOITTE AND TOUCHE LLP**, agrees to give careful consideration to promoting the professional development of each **CPA Contractor** and will use its best commercially reasonable efforts in accordance with applicable professional standards so that the work is equitably designated. **DELOITTE AND TOUCHE LLP**, agrees to carefully consult with each **CPA Contractor** to determine which tasks will be designated to each **CPA Contractor**.
- 2.4 **CONTRACTOR**, by executing this Contract, acknowledges the existence of two other Contracts containing substantially similar terms and conditions. **CONTRACTOR**, therefore, understands and agrees that no one **CPA Contractor** has the exclusive right to perform the services, either in whole or in part, listed in this Contract. Thereby, **CITY** reserves the right to request the services to be provided by one, two, or all three of **CPA Contractors** at any time, provided that each of the **CPA Contractors** reserve the right to agree or decline to perform such services in accordance with such **CPA Contractor's** applicable professional standards.

III. SCOPE OF SERVICES

CPA Contractors, including but not limited to **CONTRACTOR**, in accordance with each annual engagement letter, shall provide the following services:

INDEPENDENT AUDIT SERVICES

- 3.1 **CPA Contractors** are to collectively audit the financial statements of **CITY** during the Contract period and evaluate the fairness of presentation of the statements in conformity with generally accepted accounting principles. **CONTRACTOR** agrees to meet with the other **CPA Contractors** selected by **CITY**, to agree with such other **CPA Contractors**, on a cooperative audit plan acceptable to **CITY** permitting each **CPA Contractor** to participate in each annual audit performed pursuant to the provisions contained in this Contract; to perform the work allocated to it under such **CPA Contractor's** engagement

letter; and to evaluate and review the work performed by the other **CPA Contractors** to the extent necessary or desirable to permit it to issue its opinion or opinions required hereby. It is understood that this audit will be conducted in accordance with generally accepted auditing standards, which will include a review of the system of internal controls and tests of transactions to the extent necessary. Accordingly, the audit will not include a detailed audit of transactions to the extent, which would be required if intended to disclose defalcations or other irregularities, although the possibility exists that such discovery may result. The San Antonio Water System, the City Public Service Board, San Antonio Fire and Police Pension Fund, San Antonio Retiree Health Care Fund, and certain other component units of **CITY** are audited by other auditors. These component units which currently are or those which may be included in the future with the application of GASB 14 "the Financial Reporting Entity," are included in the scope of work to be performed hereunder but limited only to their respective incorporation into **CITY'S** Comprehensive Annual Financial Report (CAFR).

- 3.2 **CPA Contractors** agree to perform in accordance with generally accepted auditing standards adopted by the American Institute of Certified Public Accountants, Government Auditing Standards, issued by the Comptroller General of the United States, and Office of Management and Budget (OMB) Circular A-133, the State of Texas Single Audit Circular and any other authoritative pronouncements which may be deemed applicable. Those standards require that **CPA Contractors** plan and perform the audit to obtain reasonable assurance about whether the general-purpose financial statements and financial statements as required and in accordance with GASB Statement No. 34 *Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments*, are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the general-purpose financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall general-purpose financial statement presentation. The objective of this audit is the expression of an opinion of **CPA Contractors**, including but not limited to **CONTRACTOR**, or in the event such an opinion is not practicable, consistent with prevailing law, regulation, rule and/or professional standards issued by the American Institute of Certified Public Accountants or the Texas State Board of Public Accountancy ("Professional Standards"), as evidenced by a letter drafted and issued by **CONTRACTOR**, **CONTRACTOR'S** legal counsel, the American Institute of Certified Public Accountants or the Texas State Board of Public Accountancy, that **CONTRACTOR** is unable, because of a certain Professional Standard identified in or referred to in said letter, to issue an opinion jointly with other **CPA Contractors**, the expression of an individual and separate opinion by **CONTRACTOR**, in accordance with the provisions of this Contract. The wording of the audit opinion will, of course, be dependent on the facts and circumstances at the date of the reports. If the opinion will be other than unqualified, the reasons therefore will be fully disclosed. The opinion will be signed by **CPA Contractors** who will assume responsibility both jointly and severally, for the audit of the financial statements of **CITY**.
- 3.3 **CITY** agrees that it will maintain at least its present degree of conformance to the standards of the Governmental Accounting Standards Board pertaining to internal controls, and the recording of financial transactions, and that the Contract price for the audits by **CPA Contractors** as quoted in Article VII, is predicated upon this conformance. **CITY** agrees that the detailed annual financial statements and notes to such statements will be

prepared by its Department of Finance as nearly as practical in accordance with the form outlined in "Governmental Accounting, Auditing, and Financial Reporting" published by the Government Finance Officers Association on such financial statements, and any supplemental schedules which it prepares will be submitted and provided to the **CONTRACTOR** in sufficient time (as completed) for full reconciliation with **CONTRACTOR'S** findings, and to facilitate publication of **CITY'S** Comprehensive Annual Financial Report within approximately 120 days after the close of each fiscal year. Responsibility for the proper recording of transactions into the books of account, and for the accuracy of the financial statements, which are the representations of management, are with **CITY**.

- 3.4 **CITY** shall have completed and balanced all accounts and have prepared financial statements and schedules for all funds, account groups and financial statements as required and in accordance with GASB Statement No. 34 to be audited by the **CPA Contractors** and shall provide **CPA Contractors** with working space deemed adequate by **CPA Contractors** for efficient conduct of the audit. **CITY** shall provide **CPA Contractors** for its use and retention, with copies of these financial statements and schedules and shall provide **CPA Contractors** with trial balances of the various funds and account groups and financial statements as required and in accordance with GASB Statement No. 34 in a form acceptable to **CPA Contractors**.
- 3.5 The Comprehensive Annual Financial Report will be completed and available for distribution within approximately 120 days of **CITY'S** fiscal year end of September 30. The "Management Letter" and "Single Audit Reports" will be completed and available for distribution within a reasonable period of time after completion of the Comprehensive Annual Financial Report.
- 3.6 **CONTRACTOR** understands and agrees that other provisions to the contrary notwithstanding, **CITY** requires the issuance of a joint opinion by **CPA Contractors** and that **CITY** will only accept singular opinion from **CONTRACTOR** in the event it is determined, in accordance with the provisions of subsections 3.2 and 10.7, that **CONTRACTOR** is unable to issue an opinion.
- 3.7 On an annual basis during the term of the Contract, **CPA Contractors** will provide an aggregate of twenty-four (24) hours of continuing professional education training to **CITY'S** professional accounting and internal audit staff. **CPA Contractors** must be registered with the Texas State Board of Public Accountancy as a provider of Continuing Professional Education and the training will be based on mutually agreed topics. This service is considered a part of the fee structure for the independent audit.

GASB STATEMENT NO. 34 IMPLEMENTATION ASSISTANCE

- 3.8 **CITY** will be required to implement GASB Statement No. 34, "*Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments*" and any related statements on October 1, 2001. **CITY** has performed an analysis of the pronouncement and has developed a task statement and timeline for its implementation. The Finance Department staff is analyzing the **CITY'S** current financial reporting model and comparing that to the GASB's new requirements. Each key task to be accomplished will be documented and compiled in written form for **CONTRACTOR'S** review,

concurrence, and acceptance. Review will include, but is not limited to such items as the classification of program revenue versus general revenues; accounting estimates, such as those for compensated absences and asset depreciation lives; and proper classification of current funds (enterprise versus special revenue, etc.). **CONTRACTOR** will be required to review policies and procedures that are currently being developed such as the **CITY'S** fixed assets and accounts receivable policies. **CONTRACTOR** will assist the **CITY** in identifying issues relating to the retroactive infrastructure reporting not including inventory and valuation services. **CONTRACTOR** shall recommend any additional key tasks or policies that should be addressed to achieve proper implementation for GASB Statement No. 34.

- 3.9 **CONTRACTOR** will provide answers to questions arising from **CITY'S** review and analysis of GASB Statement No. 34 requirements, and questions which may arise that require technical interpretation and implementation assistance. These questions will be submitted to **CONTRACTOR** in writing for evaluation. **CITY** will upon acceptance and concurrence by the **CONTRACTOR** of the **CITY'S** task statement and methodology will restate the fiscal year 2000 CAFR to conform to the GASB Statement No. 34 requirements. Restated CAFR (the "mock CAFR") will consist of government-wide statements, fund statements, management discussion and analysis, footnotes to the financial statements, and required supplementary information that is required under GASB Statement No. 34 and related statements. **CONTRACTOR** will review the financial statement presentation, footnotes to the financial statements, required supplementary information, and management discussion and analysis to ensure that financial reports adhere to GASB standards. **CONTRACTOR** will submit to **CITY** in writing all changes suggested in order to ensure compliance. The "mock CAFR" will be used as a model for the implementation of GASB statement number 34 for fiscal year ending September 30, 2002.
- 3.10 **CITY** agrees that **CONTRACTOR** and its personnel shall not be liable to **CITY** for any claims, liabilities, or expenses relating to the services provided, as it relates to negligence, pursuant to this Section 3.8 and Section 3.9 for an aggregate amount in excess of twice the fees paid by **CITY** to **CONTRACTOR** pursuant Section 7.6 of this Agreement, except to the extent finally judicially determined to have resulted primarily from the bad faith or intentional misconduct of **CONTRACTOR**. In no event shall **CONTRACTOR** or its personnel be liable for consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense relating to the performance of services pursuant to Section 3.8 and Section 3.9.

IV. CONTINGENT ADDITIONAL SERVICES

- 4.1 **CONTRACTOR** acknowledges that the services listed below were identified in the Request for Proposal under "Other Services" as those additional services, which the **CITY** may request **CONTRACTOR** to provide. If requested, and **CONTRACTOR** agrees, **CONTRACTOR** shall provide said service(s) under the same terms and conditions of this Contract, save and except those provisions specifically revised by the Director of Finance in the forwarded request (subsection 4.2).
- 4.2 **CITY** will effect such a request for contingent additional services by forwarding a written request, executed by the Director of Finance or his designee, to the **CONTRACTOR** at its

respective address provided herein. Within said request, the Director of Finance shall state the scope of services **CONTRACTOR** has been requested to provide; the period of time within which said services are to be completed; and the consideration to be paid by **CITY** for the services provided, in accordance with subsection 7.10. The coordinator entity shall notify **CITY** as to which of the **CPA Contractors** will provide the contingent additional service; provided however, if **CITY**, at its discretion, designates the **CPA Contractors** to provide said contingent additional services, the request for the provision of contingent additional services shall be forwarded directly to that designated **CPA Contractors**.

- 4.3 The **CPA Contractors** selected agree to provide the following services at the request of the **CITY**:
- 4.3.1 Consulting services on tax, compliance, or other non-audit consultation matters.
 - 4.3.2 Assistance with the preparation of aspects of the annual report or the analysis of new accounting standards or pronouncements.
 - 4.3.3 Advisory or consultant services to assist in the resolution of audit findings and questioned costs reported by Federal and State Agencies.
 - 4.3.4 Other services that may be required for a **CITY** bond offering.

V. QUALITY CONTROL REVIEWS

- 5.1 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 within three working days by **CONTRACTOR** in the event of any such request. **CITY** will not reimburse costs incurred by **CONTRACTOR** related to such review of audit quality. To the extent such work papers 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 State of Texas Single Audit Circular, **CONTRACTOR** will notify and discuss such request with **CITY** prior to any costs being incurred by **CONTRACTOR**. Any such costs agreed to be reimbursed by **CITY** will be based on fees negotiated on an individual engagement basis.

VI. TERM AND COMMENCEMENT OF WORK

- 6.1 Unless earlier termination shall occur pursuant to any of the provisions of this Contract, the term of this Contract shall be from the effective date of the signatures through September 30, 2006 and shall include the audits of the **CITY'S** records and accounts for the fiscal years ending September 30, 2002, 2003, 2004, 2005, and 2006 with fees for years 2005 and 2006 to be negotiated conditioned upon the successful negotiation of consideration as identified in Section VII below (Pricing and Billing). Continuation of this Contract beyond the first year and each and every year thereafter is subject to and contingent upon an annual appropriation of funds by City Council. The City shall notify **CONTRACTOR** promptly if there has not been made the necessary appropriation of funds.

- 6.2 In the event **CITY** requests **CPA Contractors** to provide the contingent additional services set out in Section IV, the commencement and termination dates shall be established in the written request from the Director of Finance and as agreed to by the **CPA Contractors**.

VII. CONTRACT PRICING AND BILLING

- 7.1 The total of all payments and other obligations made and incurred by **CITY** hereunder, in performance of the services provided for in Article III (except Articles 3.8 and 3.9) and IV for fiscal year 2002 shall not exceed the amount of \$270,000; for fiscal year 2003 shall not exceed the amount of \$278,100; and for fiscal year 2004 shall not exceed the amount of \$286,443. Such fees being predicated on the expectation that the Finance Department of the **CITY** will provide the preparation of the annual financial reports and statements, and supporting work papers and schedules at a comparable level with prior years, and that the Office of Internal Review will provide 1,500 hours of assistance to the annual audit process. In the event that the **CITY** is unable to provide the 1,500 hours of assistance provided by the Office of Internal Review, the maximum dollar amounts identified above may at the City's discretion, after consultation with **CPA Contractors**, be adjusted by increasing those amounts by not more than twenty-five percent (25%) for each fiscal year.

- 7.2 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Article III (except Articles 3.8 and 3.9) and IV under this Contract for the audit of fiscal year 2002 shall not exceed \$270,000.00, it is understood that this sum will be paid individually as follows:

| | |
|-------------------------------|--------------|
| Deloitte and Touche LLP | \$145,800.00 |
| Garza/Gonzalez and Associates | \$105,300.00 |
| Robert J. Williams, CPA | \$ 18,900.00 |

- 7.3 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Article III (except Articles 3.8 and 3.9) and IV under this Contract for the audit of fiscal year 2003 shall not exceed \$278,100.00, it is understood that this sum will be paid individually as follows:

| | |
|-------------------------------|--------------|
| Deloitte and Touche LLP | \$150,174.00 |
| Garza/Gonzalez and Associates | \$108,459.00 |
| Robert J. Williams, CPA | \$ 19,467.00 |

- 7.4 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Article III (except Articles 3.8 and 3.9) and IV under this Contract for the audit of fiscal year 2004 shall not exceed \$286,443.00, it is understood that this sum will be paid individually as follows:

| | |
|-------------------------------|--------------|
| Deloitte and Touche LLP | \$154,679.00 |
| Garza/Gonzalez and Associates | \$111,713.00 |
| Robert J. Williams, CPA | \$ 20,051.00 |

- 7.5 It is further understood and agreed by the parties hereto that the work performed and the total fee for the services related to Article III (except Articles 3.8 and 3.9) and IV under this

Contract for the audit of fiscal year 2005 and 2006 shall be negotiated contingent upon City Council approval.

- 7.6 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Articles 3.8 and 3.9 above (GASB Statement No. 34 work) shall be monitored by **DELOITTE AND TOUCHE LLP**, and divided between the **CPA Contractors**. For GASB Statement No. 34 work, the rate shall be \$150 per hour, not to exceed a total fee of \$100,000 over the term of the Contract. Although the percentages identified in Section 7.2 above do not specifically apply, **DELOITTE AND TOUCHE LLP** shall use its best commercially reasonable efforts to ensure that the GASB Statement No. 34 work is divided equitably in accordance with applicable professional standards.
- 7.7 Subject to subsections 7.1 through 7.5, **CONTRACTOR** agrees that all **CONTRACTOR** labor, supervision of work, report reproduction, typing, travel, insurance, communication, computer access, materials, supplies, subcontractor costs, if any, and all other **CONTRACTOR** expenses necessary to complete the services stated herein shall be borne at **CONTRACTOR'S** sole cost and expense.
- 7.8 Progress billings for the annual fees established herein 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. However, **CITY** will retain ten percent (10%) of the total annual fee, until the **CITY'S** Comprehensive Annual Financial Report, Single Audit Reports, and Management Letter have been completed provided that the total audit fees for any fiscal year shall be paid in full prior to any services being rendered for the subsequent fiscal year.
- 7.9 In the event that the **CITY** does not provide assistance as provided for in subsection 7.1, 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 III in excess of the annual amounts as stated for each fiscal year established in subsections 7.1 through 7.5 without formal written revision of this Contract and related City Council approval.
- 7.10 Payments for contingent additional services provided in accordance with Article IV, payments for any costs to be reimbursed by **CITY** in accordance with Article V, and payments for any additional work required in accordance with subsection 10.5.1 or 10.6.2, will be based on fees negotiated on an individual engagement basis. **DELOITTE AND TOUCHE LLP, GARZA/GONZALEZ AND ASSOCIATES, and/or ROBERT J. WILLIAMS, CPA**, as the entity designated to provide said services shall prepare and submit a billing statement to **CITY** specifying the scope of work performed and amount due. Upon receipt of the billing statement, **CITY** will review and if in compliance with the established fees herein, pay the amount specified due on such statement to the appropriate entity.

VIII. INCORPORATION BY REFERENCE

- 8.1 The engagement letter executed by **CITY** and **CONTRACTOR**, attached hereto as

Exhibit A, is hereby incorporated into this Contract and specifically made a part hereof as though it is fully set out herein.

- 8.2 The parties hereto acknowledge and agree that prior to the commencement of the 2002, 2003, 2004, 2005, and 2006 audits herein required, **CITY** and **CONTRACTOR** will execute a new engagement letter for the upcoming fiscal year. That engagement letter, once executed, shall be incorporated herein for that next fiscal year and shall supersede the previously attached engagement letter for audit services.
- 8.3 In the event of a conflict or inconsistency between the terms of this Contract and the provisions of any of the engagement letters ultimately attached hereto as Exhibit A, the terms of this Contract shall govern and prevail.

IX. RECORDS

- 9.1 **CONTRACTOR** shall properly, accurately and completely maintain all non-confidential and non-proprietary 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 business hours of **CONTRACTOR** and as often as **CITY** may deem necessary during the Contract period, including any extension or renewal hereof, for purposes of inspection, examination, and making excerpts or copies of same by **CITY** and any of its authorized representatives.
- 9.2 **CONTRACTOR** shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years from the date of termination of the Contract. If at the end of four (4) 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 other such questions.
- 9.3 **CITY** shall 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 9.1 and 9.2. As such, **CONTRACTOR** understands and agrees that **CITY** will process and handle all such requests.

X. TERMINATION

- 10.1 For purposes of this Contract, "termination" of this Contract shall mean termination by completion of the provision of services required herein or earlier termination pursuant to any of the provisions hereof.
- 10.2 Other provisions of this Contract notwithstanding, **CITY** may terminate this Contract as to **CONTRACTOR** in accordance with this clause, in whole or in part, for any of the following
 - 10.2.1 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

- 10.2.2 Violation by **CONTRACTOR** of any applicable rule, regulation or law to which **CONTRACTOR** is bound or shall be bound by terms of this Contract.
- 10.2.3 The **CITY** shall also have the right to terminate this Contract or any portion thereof for convenience upon thirty (30) days notice. If **CITY** elects to terminate for convenience as described, the **CITY** shall pay **CONTRACTOR** for services rendered up to and including date of termination.
- 10.3 Subsection 10.2 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 receipt of 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 **CONTRACTOR**.
- 10.4 Upon a decision to terminate by **CITY** and the expiration of any cure period, written notice of such shall be promptly provided to **CONTRACTOR** specifying the basis for said termination, the effective date of termination, and the extent to which performance of work under this Contract will be terminated. A copy of said notice shall be provided, for informational purposes only, by **CITY** to the remaining **CPA Contractors**, by hand or facsimile, as soon as practicable.
- 10.4.1 Upon receipt of a notice to terminate, all finished reports for which payment has been received, prepared by **CONTRACTOR** under this Contract, shall at the option of **CITY**, and in accordance herewith and with applicable professional standards, be accessible to the **CITY** as provided in Article IX.
- 10.4.2 Within thirty (30) days of the effective date of termination **CONTRACTOR** shall submit to **CITY** its claim in detail for any monies owed by **CITY** for services performed under this Contract, including all work performed by **CONTRACTOR** required by the provisions of this Contract to the date of notice and for any necessary and proper work performed in the ensuing thirty day period, to be determined after discussion with **CITY**, provided however, that such payment does not exceed the maximum amount set out in subsections 7.1 through 7.5.
- 10.5 In the event **CITY** terminates any other **CPA Contractor** under the Contract between them, **CITY** shall deliver a copy of said notice to **CONTRACTOR** for informational purposes only, by hand or facsimile, as soon as practicable.
- 10.5.1 In the event of such termination (subsection 10.5), **CITY** and **CONTRACTOR** shall meet within ten (10) days of the effective date of termination specified in the notice of termination and shall agree to make all reasonable efforts to complete the services required herein with any remaining **CPA Contractors**. **CITY** and the remaining **CPA Contractors** shall execute new engagement letters redefining the roles and tasks of **CPA Contractors**. To the extent termination of others results in additional work for the remaining **CPA Contractors** in order to complete the services required herein, **CITY** and **CPA Contractors** agree in good faith to renegotiate fees, which agreement shall be reflected in the new engagement letter. Said new engagement letters shall supersede any previously executed engagement letters.

- 10.5.2 In the event **CITY** and **CONTRACTOR** are unable or fail to agree on any issue the subject of the renegotiations cited in 10.5.1 within ten (10) days of said renegotiations meeting, **CITY** may terminate this Contract upon giving written notice in accordance with Article XXII. In the event of any such termination, **CITY** and **CONTRACTOR** shall proceed in accordance with subsections 10.4, 10.4.1 and 10.4.2.
- 10.5.3 If **CITY** chooses, as a result of any such termination (subsection 10.5), to select and hire another Certified Public Accountant or Certified Accounting firm or firms, other than the remaining **CPA Contractors**, **CITY** agrees to coordinate said selection with **CONTRACTOR**. However, the final selection and hiring of said CPA, CPA firm or firms shall be at the **CITY'S** sole discretion.
- 10.6 In the event **CONTRACTOR** is unable to issue a joint opinion with either or both of the other **CPA Contractors** because of a certain prevailing law, regulation, rule and/or professional standards issued by Professional Standards, as evidenced by and in a letter drafted and issued by **CONTRACTOR**, **CONTRACTOR'S** legal counsel, the American Institute of Certified Public Accountants or the Texas State Board of Public Accountancy, **CITY** shall have the right to obtain separate and singular opinions from **CONTRACTOR**; and **CONTRACTOR** shall issue separate and singular opinions.
- 10.6.1 In the event **CITY** decides to obtain separate and singular opinions from **CONTRACTOR**, and **CONTRACTOR** is unable to rely on the work provided by one or both of the other **CPA Contractors** or if **CONTRACTOR'S** issuing its separate opinions results in additional work, **CITY** and **CONTRACTOR** agree, in good faith, to renegotiate fees and services to be performed in order to complete the separate opinions. Said agreements shall be reflected in a new engagement letter, which shall supersede any previously, executed engagement letter.
- 10.6.2 In the event **CITY** and **CONTRACTOR** are unable or fail to agree on any issue the subject of the renegotiations cited in 10.6.1 within ten (10) days of said renegotiations meeting **CITY** may terminate this Contract upon giving written notice in accordance with Article XXII. In the event of any such termination, **CITY** and **CONTRACTOR** shall proceed in accordance with subsections 10.4, 10.4.1 and 10.4.2.
- 10.7 The parties understand and agree that in the event **CITY** terminates any **CPA Contractors** other than **CONTRACTOR**, all references to "**CPA Contractor(s)**" contained herein shall thereafter refer to **CONTRACTOR** and any other remaining **CPA Contractors**.

XI. SUBCONTRACTING

- 11.1 Due to the professional experience required to perform the **CONTRACTOR** services specified in this Contract, **CONTRACTOR** must obtain prior written approval from the City's Director of Finance before engaging the services of any subcontractor. 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**.

XII. ASSIGNABILITY

- 12.1 **CONTRACTOR** shall not assign any interest in this Contract to any other party without the prior written consent of **CITY** as evidenced by ordinance.

XIII. CONFLICT OF INTEREST

- 13.1 **CONTRACTOR** acknowledges that it is informed that the City of San Antonio **CITY** Charter prohibits Contracts between the **CONTRACTOR** 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.

For purposes of this Article 13.1 “**CONTRACTOR**” shall mean personnel of **CONTRACTOR** performing services under this Agreement.

- 13.2 **CONTRACTOR** acknowledges that from time to time **CITY** releases Request for Proposals or other solicitations. **CONTRACTOR** agrees that to the best of the **CONTRACTOR** engagement leader’s knowledge, including constructive knowledge, in the event it chooses to submit a proposal in response to any of **CITY'S** solicitations, it will notify **CITY** of said submittal, in writing, in accordance with Article XXII.
- 13.3 In the event that **CONTRACTOR** is involved in any other project or engagement with the **CITY**, **CONTRACTOR** shall confirm that such work does not jeopardize **CONTRACTOR’S** independence in performing the work specified in this Contract.

XIV. COMPLIANCE

- 14.1 **CONTRACTOR** shall comply with the applicable independence standards promulgated by the American Institute of Certified Public Accountants and any other applicable standard related to independence promulgated by any other relevant authoritative body, as applicable to the services provided hereunder.
- 14.2 **CONTRACTOR** shall comply with any and all other applicable standards promulgated by the American Institute of Certified Public Accountants and by any other relevant authoritative body, as applicable to the services provided herein, while in the performance of the services hereunder.
- 14.3 **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 Amendments of 1996, OMB Circular A-133, the State of Texas Single Audit Circular, Chapter 103 of the Texas Local Government Code, and Section 107 of the San Antonio City Charter.

XV. INSURANCE

- 15.1 Prior to execution of this Contract, **CONTRACTOR** shall furnish a completed Certificate of Insurance to the Finance Department, Attention: Milo Nitschke, 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 standard 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.
- 15.2 **CITY** reserves the right to review the insurance requirement of this section during the effective period of the Contract and to amend insurance coverage and its limit when deemed necessary and prudent by the Risk Management Division based upon changes in statutory law, court decisions or the claims history of the industry, as well as the **CONTRACTOR** and in no instance will the **CITY** allow modification whereupon the **CITY** may incur increased risk.
- 15.3 **CONTRACTOR** shall procure, pay for and maintain insurance for the term of this Contract, including any extensions or renewals hereof, 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:

| <u>TYPE</u> | <u>AMOUNT</u> |
|--|--|
| Business Automobile Liability | Combined Single Limit \$1,000,000 per occurrence |
| Owned/leased vehicles | |
| Non-owned vehicles | |
| Hired vehicles | |
| Commercial General (Public) Liability Insurance to include coverage for the following: | |
| Contractual Liability | Bodily injury and property damage of |
| Premises/Operations | \$1,000,000 per occurrence with a |
| Personal/Advertising | \$2,000,000 general aggregate or its |
| Injury Liability | equivalent in umbrella or excess |
| Products/Completed | liability coverage. |
| Operations | |
| Independent Contractors | |
| Workers' Compensation and Employer's Liability | |
| Workers' Compensation | Statutory |
| Employer's Liability | \$1,000,000/\$1,000,000/\$1,000,000 |
| Professional Liability | \$1,000,000.00 per claim to pay on |
| (Claims made form) | behalf of the insured all sums which |

the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.

15.4 The insurance policies required by this Contract shall contain the following clauses:

The insurer will endeavor to provide thirty (30) days prior written notice of cancellation.

15.5. 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 CONTRACTOR'S insurance policies.

XVI. INDEMNITY

16.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS the CITY and the elected officials, employees, officers, directors, volunteers, and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, or death and real or tangible personal property damage, made upon the CITY and arising out of, resulting from or related to and proximately caused by the CONTRACTOR'S negligence or willful misconduct while performing services under this CONTRACT, including any acts or omissions of the CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of the 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 costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature resulting from the direct or indirect activities of CITY, its elected officials, employees, officers, directors, volunteers, and representatives of the CITY, individually or collectively. Such direct or indirect acts include, by way of example and not by way of limitation, those responsibilities of CITY as described in each engagement letter executed by CITY and CONTRACTOR in accordance with Article VIII hereof and attached hereto as Exhibit A. 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 FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENT IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

XVII. INDEPENDENT CONTRACTOR

- 17.1 It is expressly understood and agreed that the **CONTRACTOR** provides services as an independent **CONTRACTOR** responsible for its own acts or omissions and that **CITY** shall in no way be responsible therefore and **CONTRACTOR** shall in no way be responsible for **CITY'S** acts and omissions. 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.

XVIII. CHANGES AND AMENDMENTS

- 18.1 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.
- 18.2 The parties hereto understand and agree that the request by the **CITY** to provide additional services as listed in Article IV is not an amendment to the provisions of this Contract.
- 18.3 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.

XIX. LICENSES/CERTIFICATIONS

- 19.1 **CONTRACTOR** warrants and confirms 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.

XX. OTHER AGREEMENTS

- 20.1 It is acknowledged and understood by the parties hereto that simultaneously with the execution of this Contract, two other such contracts will be executed by and with the remaining **CPA Contractors**. As such, all three Contracts, the authorizing ordinance and any Exhibits to the Contracts constitute the final and entire agreement between **CITY** and **CPA Contractors** and contain all of the terms and conditions agreed upon. It is also acknowledged and understood that at the inception of each annual audit, an engagement letter consistent with the provisions of this Contract shall be executed by **CITY** and **CONTRACTOR**.

XXI. SEVERABILITY

- 21.1 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.

XXII. NOTICES

- 22.1 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 of San Antonio
Attn: Milo Nitschke, Director of Finance
P. O. Box 839966
San Antonio, Texas 78283-3966

XXIII. LAW APPLICABLE

- 23.1 This Contract shall be construed under and in accordance with the laws of the State of Texas without regard to the choice of law principles thereof and all obligations of the parties created hereunder are performable in Bexar County, Texas.
- 23.2 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.

XXIV. LEGAL AUTHORITY

- 24.1 The signer of this Contract for **CONTRACTOR** represents, and warrants, 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.

XXV. PARTIES BOUND

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

XXVI. GENDER

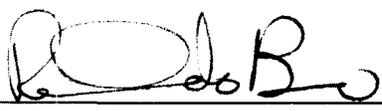
- 26.1 Words of any gender used in this Contract shall be held and construed to include any other gender.

XXVII. CAPTIONS

- 27.1 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 20th day of November, 2001

CITY:
CITY OF SAN ANTONIO



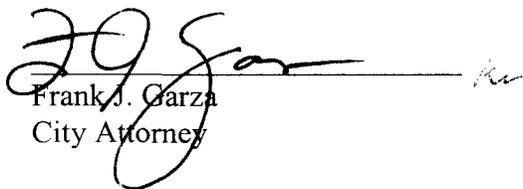
J. Rolando Bono
Deputy City Manager

CONTRACTOR
Robert J. Williams,
Certified Public Accountant



Robert J. Williams
Principal

Approved as to form:



Frank J. Garza
City Attorney

**GASB STATEMENT NO. 34 IMPLEMENTATION ASSISTANCE AND AUDIT
SERVICES CONTRACT**

STATE OF TEXAS

COUNTY OF BEXAR

This Contract 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 or her designee, pursuant to Ordinance No. 94740, passed and approved on October 18, 2001, and **DELOITTE AND TOUCHE LLP** a Delaware limited liability partnership acting by and through its Director, Terry Kile, (herein referred to as "**CONTRACTOR**").

WHEREAS, Section 107 of the City of San Antonio City Charter requires that at the close of each fiscal year, an audit be performed on the **CITY'S** financial records by an independent certified public accountant; and

WHEREAS, Chapter 103 of the Texas Local Government Code requires the **CITY** to have its records and accounts audited annually by an independent certified public accountant; and

WHEREAS, the Single Audit Act Amendments of 1996 and related OMB Circular A-133 and the State of Texas Single Audit Circular contain certain audit and financial reporting requirements; and

WHEREAS, the **CITY** has gone through an extensive selection process and chosen three entities (collectively referred to as "**CPA Contractors**") to collectively provide the services described herein for a five year period to include the required audits for the fiscal years ending September 30, 2002, 2003 and 2004, with years 2005 and 2006 to be negotiated conditioned upon mutually agreed consideration and determination of the scope of the audit for each such year;

WHEREAS, the **CITY** will execute Contracts containing the same terms and conditions, with all three entities referred to as "**CPA Contractors**," wherein each party is jointly and severally bound to provide the services contained in this Contract; **NOW THEREFORE:**

FOR VALUABLE CONSIDERATION, the parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

- 1.1 For purposes of this Contract, the word "**CONTRACTOR**" as used herein shall refer to **DELOITTE AND TOUCHE LLP**
- 1.2 For purposes of this Contract, the term "**CPA Contractors**" as used herein shall refer to **DELOITTE AND TOUCHE LLP, GARZA/GONZALEZ AND ASSOCIATES, and ROBERT J. WILLIAMS, CPA.**

II. PROVISION OF SERVICES

- 2.1 It is acknowledged and understood that before the commencement of the provision of services described in Article III, **CPA Contractors** will each execute an annual engagement letter with the **CITY** that will establish the obligations, duties and scope of the **CPA Contractors'** responsibility for each year's audit, the allocation of work to be performed as part of each audit by each **CPA Contractor**, and the portion of the total compensation for such audits that each **CPA Contractor** will be paid, consistent with the provisions contained in Article VII, subsections 7.1 through 7.5.
- 2.2 **CITY** and **CPA Contractors** mutually agree that the engagement letter executed by the **CONTRACTOR** shall become part of this Contract, each time it is executed in accordance with Article VIII and that this Contract and the other two Contracts executed with the other **CPA Contractors** and the engagement letters shall govern the agreement between the parties for the fiscal year noted in the engagement letters.
- 2.3 It is also understood and agreed that **DELOITTE AND TOUCHE LLP**, has been designated as the coordinator entity for the **CPA Contractors**. In this regard, the coordinator will serve as the point of contact for **CITY** in facilitating and administering the Contracts. In designating tasks to **CPA Contractors**, **DELOITTE AND TOUCHE LLP**, agrees to give careful consideration to promoting the professional development of each **CPA Contractor** and will use its best commercially reasonable efforts in accordance with applicable professional standards so that the work is equitably designated. **DELOITTE AND TOUCHE LLP**, agrees to carefully consult with each **CPA Contractor** to determine which tasks will be designated to each **CPA Contractor**.
- 2.4 **CONTRACTOR**, by executing this Contract, acknowledges the existence of two other Contracts containing substantially similar terms and conditions. **CONTRACTOR**, therefore, understands and agrees that no one **CPA Contractor** has the exclusive right to perform the services, either in whole or in part, listed in this Contract. Thereby, **CITY** reserves the right to request the services to be provided by one, two, or all three of **CPA Contractors** at any time, provided that each of the **CPA Contractors** reserve the right to agree or decline to perform such services in accordance with such **CPA Contractor's** applicable professional standards.

III. SCOPE OF SERVICES

CPA Contractors, including but not limited to **CONTRACTOR**, in accordance with each annual engagement letter, shall provide the following services:

INDEPENDENT AUDIT SERVICES

- 3.1 **CPA Contractors** are to collectively audit the financial statements of **CITY** during the Contract period and evaluate the fairness of presentation of the statements in conformity with generally accepted accounting principles. **CONTRACTOR** agrees to meet with the other **CPA Contractors** selected by **CITY**, to agree with such other **CPA Contractors**, on a cooperative audit plan acceptable to **CITY** permitting each **CPA Contractor** to participate in each annual audit performed pursuant to the provisions contained in this Contract; to perform the work allocated to it under such **CPA Contractor's** engagement

letter; and to evaluate and review the work performed by the other **CPA Contractors** to the extent necessary or desirable to permit it to issue its opinion or opinions required hereby. It is understood that this audit will be conducted in accordance with generally accepted auditing standards, which will include a review of the system of internal controls and tests of transactions to the extent necessary. Accordingly, the audit will not include a detailed audit of transactions to the extent, which would be required if intended to disclose defalcations or other irregularities, although the possibility exists that such discovery may result. The San Antonio Water System, the City Public Service Board, San Antonio Fire and Police Pension Fund, San Antonio Retiree Health Care Fund, and certain other component units of **CITY** are audited by other auditors. These component units which currently are or those which may be included in the future with the application of GASB 14 "the Financial Reporting Entity," are included in the scope of work to be performed hereunder but limited only to their respective incorporation into **CITY'S** Comprehensive Annual Financial Report (CAFR).

- 3.2 **CPA Contractors** agree to perform in accordance with generally accepted auditing standards adopted by the American Institute of Certified Public Accountants, Government Auditing Standards, issued by the Comptroller General of the United States, and Office of Management and Budget (OMB) Circular A-133, the State of Texas Single Audit Circular and any other authoritative pronouncements which may be deemed applicable. Those standards require that **CPA Contractors** plan and perform the audit to obtain reasonable assurance about whether the general-purpose financial statements and financial statements as required and in accordance with GASB Statement No. 34 *Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments*, are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the general-purpose financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall general-purpose financial statement presentation. The objective of this audit is the expression of an opinion of **CPA Contractors**, including but not limited to **CONTRACTOR**, or in the event such an opinion is not practicable, consistent with prevailing law, regulation, rule and/or professional standards issued by the American Institute of Certified Public Accountants or the Texas State Board of Public Accountancy ("Professional Standards"), as evidenced by a letter drafted and issued by **CONTRACTOR**, **CONTRACTOR'S** legal counsel, the American Institute of Certified Public Accountants or the Texas State Board of Public Accountancy, that **CONTRACTOR** is unable, because of a certain Professional Standard identified in or referred to in said letter, to issue an opinion jointly with other **CPA Contractors**, the expression of an individual and separate opinion by **CONTRACTOR**, in accordance with the provisions of this Contract. The wording of the audit opinion will, of course, be dependent on the facts and circumstances at the date of the reports. If the opinion will be other than unqualified, the reasons therefore will be fully disclosed. The opinion will be signed by **CPA Contractors** who will assume responsibility both jointly and severally, for the audit of the financial statements of **CITY**.
- 3.3 **CITY** agrees that it will maintain at least its present degree of conformance to the standards of the Governmental Accounting Standards Board pertaining to internal controls, and the recording of financial transactions, and that the Contract price for the audits by **CPA Contractors** as quoted in Article VII, is predicated upon this conformance. **CITY** agrees that the detailed annual financial statements and notes to such statements will be

prepared by its Department of Finance as nearly as practical in accordance with the form outlined in "Governmental Accounting, Auditing, and Financial Reporting" published by the Government Finance Officers Association on such financial statements, and any supplemental schedules which it prepares will be submitted and provided to the **CONTRACTOR** in sufficient time (as completed) for full reconciliation with **CONTRACTOR'S** findings, and to facilitate publication of **CITY'S** Comprehensive Annual Financial Report within approximately 120 days after the close of each fiscal year. Responsibility for the proper recording of transactions into the books of account, and for the accuracy of the financial statements, which are the representations of management, are with **CITY**.

- 3.4 **CITY** shall have completed and balanced all accounts and have prepared financial statements and schedules for all funds, account groups and financial statements as required and in accordance with GASB Statement No. 34 to be audited by the **CPA Contractors** and shall provide **CPA Contractors** with working space deemed adequate by **CPA Contractors** for efficient conduct of the audit. **CITY** shall provide **CPA Contractors** for its use and retention, with copies of these financial statements and schedules and shall provide **CPA Contractors** with trial balances of the various funds and account groups and financial statements as required and in accordance with GASB Statement No. 34 in a form acceptable to **CPA Contractors**.
- 3.5 The Comprehensive Annual Financial Report will be completed and available for distribution within approximately 120 days of **CITY'S** fiscal year end of September 30. The "Management Letter" and "Single Audit Reports" will be completed and available for distribution within a reasonable period of time after completion of the Comprehensive Annual Financial Report.
- 3.6 **CONTRACTOR** understands and agrees that other provisions to the contrary notwithstanding, **CITY** requires the issuance of a joint opinion by **CPA Contractors** and that **CITY** will only accept singular opinion from **CONTRACTOR** in the event it is determined, in accordance with the provisions of subsections 3.2 and 10.7, that **CONTRACTOR** is unable to issue an opinion.
- 3.7 On an annual basis during the term of the Contract, **CPA Contractors** will provide an aggregate of twenty-four (24) hours of continuing professional education training to **CITY'S** professional accounting and internal audit staff. **CPA Contractors** must be registered with the Texas State Board of Public Accountancy as a provider of Continuing Professional Education and the training will be based on mutually agreed topics. This service is considered a part of the fee structure for the independent audit.

GASB STATEMENT NO. 34 IMPLEMENTATION ASSISTANCE

- 3.8 **CITY** will be required to implement GASB Statement No. 34, "*Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments*" and any related statements on October 1, 2001. **CITY** has performed an analysis of the pronouncement and has developed a task statement and timeline for its implementation. The Finance Department staff is analyzing the **CITY'S** current financial reporting model and comparing that to the GASB's new requirements. Each key task to be accomplished will be documented and compiled in written form for **CONTRACTOR'S** review,

concurrence, and acceptance. Review will include, but is not limited to such items as the classification of program revenue versus general revenues; accounting estimates, such as those for compensated absences and asset depreciation lives; and proper classification of current funds (enterprise versus special revenue, etc.). **CONTRACTOR** will be required to review policies and procedures that are currently being developed such as the **CITY'S** fixed assets and accounts receivable policies. **CONTRACTOR** will assist the **CITY** in identifying issues relating to the retroactive infrastructure reporting not including inventory and valuation services. **CONTRACTOR** shall recommend any additional key tasks or policies that should be addressed to achieve proper implementation for GASB Statement No. 34.

- 3.9 **CONTRACTOR** will provide answers to questions arising from **CITY'S** review and analysis of GASB Statement No. 34 requirements, and questions which may arise that require technical interpretation and implementation assistance. These questions will be submitted to **CONTRACTOR** in writing for evaluation. **CITY** will upon acceptance and concurrence by the **CONTRACTOR** of the **CITY'S** task statement and methodology will restate the fiscal year 2000 CAFR to conform to the GASB Statement No. 34 requirements. Restated CAFR (the "mock CAFR") will consist of government-wide statements, fund statements, management discussion and analysis, footnotes to the financial statements, and required supplementary information that is required under GASB Statement No. 34 and related statements. **CONTRACTOR** will review the financial statement presentation, footnotes to the financial statements, required supplementary information, and management discussion and analysis to ensure that financial reports adhere to GASB standards. **CONTRACTOR** will submit to **CITY** in writing all changes suggested in order to ensure compliance. The "mock CAFR" will be used as a model for the implementation of GASB statement number 34 for fiscal year ending September 30, 2002.
- 3.10 **CITY** agrees that **CONTRACTOR** and its personnel shall not be liable to **CITY** for any claims, liabilities, or expenses relating to the services provided, as it relates to negligence, pursuant to this Section 3.8 and Section 3.9 for an aggregate amount in excess of twice the fees paid by **CITY** to **CONTRACTOR** pursuant Section 7.6 of this Agreement, except to the extent finally judicially determined to have resulted primarily from the bad faith or intentional misconduct of **CONTRACTOR**. In no event shall **CONTRACTOR** or its personnel be liable for consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense relating to the performance of services pursuant to Section 3.8 and Section 3.9.

IV. CONTINGENT ADDITIONAL SERVICES

- 4.1 **CONTRACTOR** acknowledges that the services listed below were identified in the Request for Proposal under "Other Services" as those additional services, which the **CITY** may request **CONTRACTOR** to provide. If requested, and **CONTRACTOR** agrees, **CONTRACTOR** shall provide said service(s) under the same terms and conditions of this Contract, save and except those provisions specifically revised by the Director of Finance in the forwarded request (subsection 4.2).
- 4.2 **CITY** will effect such a request for contingent additional services by forwarding a written request, executed by the Director of Finance or his designee, to the **CONTRACTOR** at its

respective address provided herein. Within said request, the Director of Finance shall state the scope of services **CONTRACTOR** has been requested to provide; the period of time within which said services are to be completed; and the consideration to be paid by **CITY** for the services provided, in accordance with subsection 7.10. The coordinator entity shall notify **CITY** as to which of the **CPA Contractors** will provide the contingent additional service; provided however, if **CITY**, at its discretion, designates the **CPA Contractors** to provide said contingent additional services, the request for the provision of contingent additional services shall be forwarded directly to that designated **CPA Contractors**.

4.3 The **CPA Contractors** selected agree to provide the following services at the request of the **CITY**:

4.3.1 Consulting services on tax, compliance, or other non-audit consultation matters.

4.3.2 Assistance with the preparation of aspects of the annual report or the analysis of new accounting standards or pronouncements.

4.3.3 Advisory or consultant services to assist in the resolution of audit findings and questioned costs reported by Federal and State Agencies.

4.3.4 Other services that may be required for a **CITY** bond offering.

V. QUALITY CONTROL REVIEWS

5.1 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 within three working days by **CONTRACTOR** in the event of any such request. **CITY** will not reimburse costs incurred by **CONTRACTOR** related to such review of audit quality. To the extent such work papers 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 State of Texas Single Audit Circular, **CONTRACTOR** will notify and discuss such request with **CITY** prior to any costs being incurred by **CONTRACTOR**. Any such costs agreed to be reimbursed by **CITY** will be based on fees negotiated on an individual engagement basis.

VI. TERM AND COMMENCEMENT OF WORK

6.1 Unless earlier termination shall occur pursuant to any of the provisions of this Contract, the term of this Contract shall be from the effective date of the signatures through September 30, 2006 and shall include the audits of the **CITY'S** records and accounts for the fiscal years ending September 30, 2002, 2003, 2004, 2005, and 2006 with fees for years 2005 and 2006 to be negotiated conditioned upon the successful negotiation of consideration as identified in Section VII below (Pricing and Billing). Continuation of this Contract beyond the first year and each and every year thereafter is subject to and contingent upon an annual appropriation of funds by City Council. The City shall notify **CONTRACTOR** promptly if there has not been made the necessary appropriation of funds.

- 6.2 In the event **CITY** requests **CPA Contractors** to provide the contingent additional services set out in Section IV, the commencement and termination dates shall be established in the written request from the Director of Finance and as agreed to by the **CPA Contractors**.

VII. CONTRACT PRICING AND BILLING

- 7.1 The total of all payments and other obligations made and incurred by **CITY** hereunder, in performance of the services provided for in Article III (except Articles 3.8 and 3.9) and IV for fiscal year 2002 shall not exceed the amount of \$270,000; for fiscal year 2003 shall not exceed the amount of \$278,100; and for fiscal year 2004 shall not exceed the amount of \$286,443. Such fees being predicated on the expectation that the Finance Department of the **CITY** will provide the preparation of the annual financial reports and statements, and supporting work papers and schedules at a comparable level with prior years, and that the Office of Internal Review will provide 1,500 hours of assistance to the annual audit process. In the event that the **CITY** is unable to provide the 1,500 hours of assistance provided by the Office of Internal Review, the maximum dollar amounts identified above may at the City's discretion, after consultation with **CPA Contractors**, be adjusted by increasing those amounts by not more than twenty-five percent (25%) for each fiscal year.
- 7.2 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Article III (except Articles 3.8 and 3.9) and IV under this Contract for the audit of fiscal year 2002 shall not exceed \$270,000.00, it is understood that this sum will be paid individually as follows:

| | |
|-------------------------------|--------------|
| Deloitte and Touche LLP | \$145,800.00 |
| Garza/Gonzalez and Associates | \$105,300.00 |
| Robert J. Williams, CPA | \$ 18,900.00 |

- 7.3 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Article III (except Articles 3.8 and 3.9) and IV under this Contract for the audit of fiscal year 2003 shall not exceed \$278,100.00, it is understood that this sum will be paid individually as follows:

| | |
|-------------------------------|--------------|
| Deloitte and Touche LLP | \$150,174.00 |
| Garza/Gonzalez and Associates | \$108,459.00 |
| Robert J. Williams, CPA | \$ 19,467.00 |

- 7.4 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Article III (except Articles 3.8 and 3.9) and IV under this Contract for the audit of fiscal year 2004 shall not exceed \$286,443.00, it is understood that this sum will be paid individually as follows:

| | |
|-------------------------------|--------------|
| Deloitte and Touche LLP | \$154,679.00 |
| Garza/Gonzalez and Associates | \$111,713.00 |
| Robert J. Williams, CPA | \$ 20,051.00 |

- 7.5 It is further understood and agreed by the parties hereto that the work performed and the

total fee for the services related to Article III (except Articles 3.8 and 3.9) and IV under this Contract for the audit of fiscal year 2005 and 2006 shall be negotiated contingent upon City Council approval.

- 7.6 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Articles 3.8 and 3.9 above (GASB Statement No. 34 work) shall be monitored by **DELOITTE AND TOUCHE LLP**, and divided between the **CPA Contractors**. For GASB Statement No. 34 work, the rate shall be \$150 per hour, not to exceed a total fee of \$100,000 over the term of the Contract. Although the percentages identified in Section 7.2 above do not specifically apply, **DELOITTE AND TOUCHE LLP** shall use its best commercially reasonable efforts to ensure that the GASB Statement No. 34 work is divided equitably in accordance with applicable professional standards..
- 7.7 Subject to subsections 7.1 through 7.5, **CONTRACTOR** agrees that all **CONTRACTOR** labor, supervision of work, report reproduction, typing, travel, insurance, communication, computer access, materials, supplies, subcontractor costs, if any, and all other **CONTRACTOR** expenses necessary to complete the services stated herein shall be borne at **CONTRACTOR'S** sole cost and expense.
- 7.8 Progress billings for the annual fees established herein 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. However, **CITY** will retain ten percent (10%) of the total annual fee, until the **CITY'S** Comprehensive Annual Financial Report, Single Audit Reports, and Management Letter have been completed provided that the total audit fees for any fiscal year shall be paid in full prior to any services being rendered for the subsequent fiscal year.
- 7.9 In the event that the **CITY** does not provide assistance as provided for in subsection 7.1, 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 III in excess of the annual amounts as stated for each fiscal year established in subsections 7.1 through 7.5 without formal written revision of this Contract and related City Council approval.
- 7.10 Payments for contingent additional services provided in accordance with Article IV, payments for any costs to be reimbursed by **CITY** in accordance with Article V, and payments for any additional work required in accordance with subsection 10.5.1 or 10.6.2, will be based on fees negotiated on an individual engagement basis. **DELOITTE AND TOUCHE LLP, GARZA/GONZALEZ AND ASSOCIATES, and/or ROBERT J. WILLIAMS, CPA**, as the entity designated to provide said services shall prepare and submit a billing statement to **CITY** specifying the scope of work performed and amount due. Upon receipt of the billing statement, **CITY** will review and if in compliance with the established fees herein, pay the amount specified due on such statement to the appropriate entity.

VIII. INCORPORATION BY REFERENCE

- 8.1 The engagement letter executed by **CITY** and **CONTRACTOR**, attached hereto as Exhibit A, is hereby incorporated into this Contract and specifically made a part hereof as though it is fully set out herein.
- 8.2 The parties hereto acknowledge and agree that prior to the commencement of the 2002, 2003, 2004, 2005, and 2006 audits herein required, **CITY** and **CONTRACTOR** will execute a new engagement letter for the upcoming fiscal year. That engagement letter, once executed, shall be incorporated herein for that next fiscal year and shall supersede the previously attached engagement letter for audit services.
- 8.3 In the event of a conflict or inconsistency between the terms of this Contract and the provisions of any of the engagement letters ultimately attached hereto as Exhibit A, the terms of this Contract shall govern and prevail.

IX. RECORDS

- 9.1 **CONTRACTOR** shall properly, accurately and completely maintain all non-confidential and non-proprietary 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 business hours of **CONTRACTOR** and as often as **CITY** may deem necessary during the Contract period, including any extension or renewal hereof, for purposes of inspection, examination, and making excerpts or copies of same by **CITY** and any of its authorized representatives.
- 9.2 **CONTRACTOR** shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years from the date of termination of the Contract. If at the end of four (4) 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 other such questions.
- 9.3 **CITY** shall 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 9.1 and 9.2. As such, **CONTRACTOR** understands and agrees that **CITY** will process and handle all such requests.

X. TERMINATION

- 10.1 For purposes of this Contract, "termination" of this Contract shall mean termination by completion of the provision of services required herein or earlier termination pursuant to any of the provisions hereof.
- 10.2 Other provisions of this Contract notwithstanding, **CITY** may terminate this Contract as to **CONTRACTOR** in accordance with this clause, in whole or in part, for any of the following

- 10.2.1 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
- 10.2.2 Violation by **CONTRACTOR** of any applicable rule, regulation or law to which **CONTRACTOR** is bound or shall be bound by terms of this Contract.
- 10.2.3 The **CITY** shall also have the right to terminate this Contract or any portion thereof for convenience upon thirty (30) days notice. If **CITY** elects to terminate for convenience as described, the **CITY** shall pay **CONTRACTOR** for services rendered up to and including date of termination.
- 10.3 Subsection 10.2 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 receipt of 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 **CONTRACTOR**.
- 10.4 Upon a decision to terminate by **CITY** and the expiration of any cure period, written-notice of such shall be promptly provided to **CONTRACTOR** specifying the basis for said termination, the effective date of termination, and the extent to which performance of work under this Contract will be terminated. A copy of said notice shall be provided, for informational purposes only, by **CITY** to the remaining **CPA Contractors**, by hand or facsimile, as soon as practicable.
- 10.4.1 Upon receipt of a notice to terminate, all finished reports for which payment has been received, prepared by **CONTRACTOR** under this Contract, shall at the option of **CITY**, and in accordance herewith and with applicable professional standards, be accessible to the **CITY** as provided in Article IX.
- 10.4.2 Within thirty (30) days of the effective date of termination **CONTRACTOR** shall submit to **CITY** its claim in detail for any monies owed by **CITY** for services performed under this Contract, including all work performed by **CONTRACTOR** required by the provisions of this Contract to the date of notice and for any necessary and proper work performed in the ensuing thirty day period, to be determined after discussion with **CITY**, provided however, that such payment does not exceed the maximum amount set out in subsections 7.1 through 7.5.
- 10.5 In the event **CITY** terminates any other **CPA Contractor** under the Contract between them, **CITY** shall deliver a copy of said notice to **CONTRACTOR** for informational purposes only, by hand or facsimile, as soon as practicable.
- 10.5.1 In the event of such termination (subsection 10.5), **CITY** and **CONTRACTOR** shall meet within ten (10) days of the effective date of termination specified in the notice of termination and shall agree to make all reasonable efforts to complete the services required herein with any remaining **CPA Contractors**. **CITY** and the remaining **CPA Contractors** shall execute new engagement letters redefining the roles and tasks of **CPA Contractors**. To the extent termination of others results in

additional work for the remaining **CPA Contractors** in order to complete the services required herein, **CITY** and **CPA Contractors** agree in good faith to renegotiate fees, which agreement shall be reflected in the new engagement letter. Said new engagement letters shall supersede any previously executed engagement letters.

- 10.5.2 In the event **CITY** and **CONTRACTOR** are unable or fail to agree on any issue the subject of the renegotiations cited in 10.5.1 within ten (10) days of said renegotiations meeting, **CITY** may terminate this Contract upon giving written notice in accordance with Article XXII. In the event of any such termination, **CITY** and **CONTRACTOR** shall proceed in accordance with subsections 10.4, 10.4.1 and 10.4.2.
- 10.5.3 If **CITY** chooses, as a result of any such termination (subsection 10.5), to select and hire another Certified Public Accountant or Certified Accounting firm or firms, other than the remaining **CPA Contractors**, **CITY** agrees to coordinate said selection with **CONTRACTOR**. However, the final selection and hiring of said CPA, CPA firm or firms shall be at the **CITY'S** sole discretion.
- 10.6 In the event **CONTRACTOR** is unable to issue a joint opinion with either or both of the other **CPA Contractors** because of a certain prevailing law, regulation, rule and/or professional standards issued by Professional Standards, as evidenced by and in a letter drafted and issued by **CONTRACTOR**, **CONTRACTOR'S** legal counsel, the American Institute of Certified Public Accountants or the Texas State Board of Public Accountancy, **CITY** shall have the right to obtain separate and singular opinions from **CONTRACTOR**; and **CONTRACTOR** shall issue separate and singular opinions.
- 10.6.1 In the event **CITY** decides to obtain separate and singular opinions from **CONTRACTOR**, and **CONTRACTOR** is unable to rely on the work provided by one or both of the other **CPA Constructors** or if **CONTRACTOR'S** issuing its separate opinions results in additional work, **CITY** and **CONTRACTOR** agree, in good faith, to renegotiate fees and services to be performed in order to complete the separate opinions. Said agreements shall be reflected in a new engagement letter, which shall supersede any previously, executed engagement letter.
- 10.6.2 In the event **CITY** and **CONTRACTOR** are unable or fail to agree on any issue the subject of the renegotiations cited in 10.6.1 within ten (10) days of said renegotiations meeting **CITY** may terminate this Contract upon giving written notice in accordance with Article XXII. In the event of any such termination, **CITY** and **CONTRACTOR** shall proceed in accordance with subsections 10.4, 10.4.1 and 10.4.2.
- 10.7 The parties understand and agree that in the event **CITY** terminates any **CPA Contractors** other than **CONTRACTOR**, all references to "**CPA Contractor(s)**" contained herein shall thereafter refer to **CONTRACTOR** and any other remaining **CPA Contractors**.

XI. SUBCONTRACTING

- 11.1 Due to the professional experience required to perform the **CONTRACTOR** services

specified in this Contract, **CONTRACTOR** must obtain prior written approval from the City's Director of Finance before engaging the services of any subcontractor. 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**.

XII. ASSIGNABILITY

- 12.1 **CONTRACTOR** shall not assign any interest in this Contract to any other party without the prior written consent of **CITY** as evidenced by ordinance.

XIII. CONFLICT OF INTEREST

- 13.1 **CONTRACTOR** acknowledges that it is informed that the City of San Antonio **CITY** Charter prohibits Contracts between the **CONTRACTOR** 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.

For purposes of this Article 13.1 "CONTRACTOR" shall mean personnel of **CONTRACTOR** performing services under this Agreement.

- 13.2 **CONTRACTOR** acknowledges that from time to time **CITY** releases Request for Proposals or other solicitations. **CONTRACTOR** agrees that to the best of the **CONTRACTOR** engagement leader's knowledge, including constructive knowledge, in the event it chooses to submit a proposal in response to any of **CITY'S** solicitations, it will notify **CITY** of said submittal, in writing, in accordance with Article XXII.
- 13.3 In the event that **CONTRACTOR** is involved in any other project or engagement with the **CITY**, **CONTRACTOR** shall confirm that such work does not jeopardize **CONTRACTOR'S** independence in performing the work specified in this Contract.

XIV. COMPLIANCE

- 14.1 **CONTRACTOR** shall comply with the applicable independence standards promulgated by the American Institute of Certified Public Accountants and any other applicable standard related to independence promulgated by any other relevant authoritative body, as applicable to the services provided hereunder.
- 14.2 **CONTRACTOR** shall comply with any and all other applicable standards promulgated by

the American Institute of Certified Public Accountants and by any other relevant authoritative body, as applicable to the services provided herein, while in the performance of the services hereunder.

- 14.3 **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 Amendments of 1996, OMB Circular A-133, the State of Texas Single Audit Circular, Chapter 103 of the Texas Local Government Code, and Section 107 of the San Antonio City Charter.

XV. INSURANCE

- 15.1 Prior to execution of this Contract, **CONTRACTOR** shall furnish a completed Certificate of Insurance to the Finance Department, Attention: Milo Nitschke, 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 standard 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.
- 15.2 **CITY** reserves the right to review the insurance requirement of this section during the effective period of the Contract and to amend insurance coverage and its limit when deemed necessary and prudent by the Risk Management Division based upon changes in statutory law, court decisions or the claims history of the industry, as well as the **CONTRACTOR** and in no instance will the **CITY** allow modification whereupon the **CITY** may incur increased risk.
- 15.3 **CONTRACTOR** shall procure, pay for and maintain insurance for the term of this Contract, including any extensions or renewals hereof, 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:

| <u>TYPE</u> | <u>AMOUNT</u> |
|---|--|
| Business Automobile Liability Owned/leased vehicles Non-owned vehicles Hired vehicles | Combined Single Limit \$1,000,000 per occurrence |
| Commercial General (Public) Liability Insurance to include coverage for the following: | |
| Contractual Liability Premises/Operations Personal/Advertising Injury Liability Products/Completed Operations Independent Contractors | Bodily injury and property damage of \$1,000,000 per occurrence with a \$2,000,000 general aggregate or its equivalent in umbrella or excess liability coverage. |

| Workers' Compensation and Employer's Liability | |
|--|---|
| Workers' Compensation | Statutory |
| Employer's Liability | \$1,000,000/\$1,000,000/\$1,000,000 |
| Professional Liability (Claims made form) | \$1,000,000.00 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services. |

15.4 The insurance policies required by this Contract shall contain the following clauses:

The insurer will endeavor to provide thirty (30) days prior written notice of cancellation.

15.5. 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 **CONTRACTOR'S** insurance policies.

XVI. INDEMNITY

16.1 CONTRACTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS the CITY and the elected officials, employees, officers, directors, volunteers, and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, or death and real or tangible personal property damage, made upon the CITY and arising out of, resulting from or related to and proximately caused by the CONTRACTOR'S negligence or willful misconduct while performing services under this CONTRACT, including any acts or omissions of the CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of the 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 costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature resulting from the direct or indirect activities of CITY, its elected officials, employees, officers, directors, volunteers, and representatives of the CITY, individually or collectively. Such direct or indirect acts include, by way of example and not by way of limitation, those responsibilities of CITY as described in each engagement letter executed by CITY and CONTRACTOR in accordance with Article VIII hereof and attached hereto as Exhibit A. 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 FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENT IMMUNITY AVAILIABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

XVII. INDEPENDENT CONTRACTOR

- 17.1 It is expressly understood and agreed that the **CONTRACTOR** provides services as an independent **CONTRACTOR** responsible for its own acts or omissions and that **CITY** shall in no way be responsible therefore and **CONTRACTOR** shall in no way be responsible for **CITY'S** acts and omissions. 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.

XVIII. CHANGES AND AMENDMENTS

- 18.1 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.
- 18.2 The parties hereto understand and agree that the request by the **CITY** to provide additional services as listed in Article IV is not an amendment to the provisions of this Contract.
- 18.3 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.

XIX. LICENSES/CERTIFICATIONS

- 19.1 **CONTRACTOR** warrants and confirms 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.

XX. OTHER AGREEMENTS

- 20.1 It is acknowledged and understood by the parties hereto that simultaneously with the execution of this Contract, two other such contracts will be executed by and with the remaining **CPA Contractors**. As such, all three Contracts, the authorizing ordinance and any Exhibits to the Contracts constitute the final and entire agreement between **CITY** and **CPA Contractors** and contain all of the terms and conditions agreed upon. It is also acknowledged and understood that at the inception of each annual audit, an engagement letter consistent with the provisions of this Contract shall be executed by **CITY** and **CONTRACTOR**.

XXI. SEVERABILITY

- 21.1 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.

XXII. NOTICES

- 22.1 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 of San Antonio
Attn: Milo Nitschke, Director of Finance
P. O. Box 839966
San Antonio, Texas 78283-3966

XXIII. LAW APPLICABLE

- 23.1 This Contract shall be construed under and in accordance with the laws of the State of Texas without regard to the choice of law principles thereof and all obligations of the parties created hereunder are performable in Bexar County, Texas.
- 23.2 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.

XXIV. LEGAL AUTHORITY

- 24.1 The signer of this Contract for **CONTRACTOR** represents, and warrants, 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.

XXV. PARTIES BOUND

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

XXVI. GENDER

- 26.1 Words of any gender used in this Contract shall be held and construed to include any other gender.

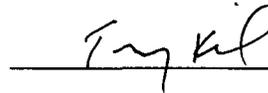
XXVII. CAPTIONS

27.1 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 20th day of November, 2001

**CITY:
CITY OF SAN ANTONIO**

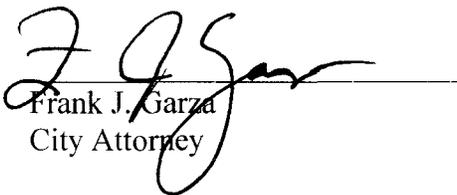
**CONTRACTOR
DELOITTE & TOUCHE LLP**



J. Rolando Bono
Deputy City Manager

Terry Kile
Director

Approved as to form:



Frank J. Garza
City Attorney

**GASB STATEMENT NO. 34 IMPLEMENTATION ASSISTANCE AND AUDIT
SERVICES CONTRACT**

STATE OF TEXAS

COUNTY OF BEXAR

This Contract 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 or her designee, pursuant to Ordinance No. 94740, passed and approved on October 18, 2001, and **GARZA/GONZALEZ AND ASSOCIATES** acting by and through its Senior Partner, Gregory R. Garza, (herein referred to as "**CONTRACTOR**").

WHEREAS, Section 107 of the City of San Antonio City Charter requires that at the close of each fiscal year, an audit be performed on the **CITY'S** financial records by an independent certified public accountant; and

WHEREAS, Chapter 103 of the Texas Local Government Code requires the **CITY** to have its records and accounts audited annually by an independent certified public accountant; and

WHEREAS, the Single Audit Act Amendments of 1996 and related OMB Circular A-133 and the State of Texas Single Audit Circular contain certain audit and financial reporting requirements; and

WHEREAS, the **CITY** has gone through an extensive selection process and chosen three entities (collectively referred to as "**CPA Contractors**") to collectively provide the services described herein for a five year period to include the required audits for the fiscal years ending September 30, 2002, 2003 and 2004, with years 2005 and 2006 to be negotiated conditioned upon mutually agreed consideration and determination of the scope of the audit for each such year;

WHEREAS, the **CITY** will execute Contracts containing the same terms and conditions, with all three entities referred to as "**CPA Contractors**," wherein each party is jointly and severally bound to provide the services contained in this Contract; **NOW THEREFORE:**

FOR VALUABLE CONSIDERATION, the parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

- 1.1 For purposes of this Contract, the word "**CONTRACTOR**" as used herein shall refer to **GARZA/GONZALEZ AND ASSOCIATES**
- 1.2 For purposes of this Contract, the term "**CPA Contractors**" as used herein shall refer to **DELOITTE AND TOUCHE LLP, GARZA/GONZALEZ AND ASSOCIATES, and ROBERT J. WILLIAMS, CPA.**

II. PROVISION OF SERVICES

- 2.1 It is acknowledged and understood that before the commencement of the provision of services described in Article III, **CPA Contractors** will each execute an annual engagement letter with the **CITY** that will establish the obligations, duties and scope of the **CPA Contractors'** responsibility for each year's audit, the allocation of work to be performed as part of each audit by each **CPA Contractor**, and the portion of the total compensation for such audits that each **CPA Contractor** will be paid, consistent with the provisions contained in Article VII, subsections 7.1 through 7.5.
- 2.2 **CITY** and **CPA Contractors** mutually agree that the engagement letter executed by the **CONTRACTOR** shall become part of this Contract, each time it is executed in accordance with Article VIII and that this Contract and the other two Contracts executed with the other **CPA Contractors** and the engagement letters shall govern the agreement between the parties for the fiscal year noted in the engagement letters.
- 2.3 It is also understood and agreed that **DELOITTE AND TOUCHE LLP**, has been designated as the coordinator entity for the **CPA Contractors**. In this regard, the coordinator will serve as the point of contact for **CITY** in facilitating and administering the Contracts. In designating tasks to **CPA Contractors**, **DELOITTE AND TOUCHE LLP**, agrees to give careful consideration to promoting the professional development of each **CPA Contractor** and will use its best commercially reasonable efforts in accordance with applicable professional standards so that the work is equitably designated. **DELOITTE AND TOUCHE LLP**, agrees to carefully consult with each **CPA Contractor** to determine which tasks will be designated to each **CPA Contractor**.
- 2.4 **CONTRACTOR**, by executing this Contract, acknowledges the existence of two other Contracts containing substantially similar terms and conditions. **CONTRACTOR**, therefore, understands and agrees that no one **CPA Contractor** has the exclusive right to perform the services, either in whole or in part, listed in this Contract. Thereby, **CITY** reserves the right to request the services to be provided by one, two, or all three of **CPA Contractors** at any time, provided that each of the **CPA Contractors** reserve the right to agree or decline to perform such services in accordance with such **CPA Contractor's** applicable professional standards.

III. SCOPE OF SERVICES

CPA Contractors, including but not limited to **CONTRACTOR**, in accordance with each annual engagement letter, shall provide the following services:

INDEPENDENT AUDIT SERVICES

- 3.1 **CPA Contractors** are to collectively audit the financial statements of **CITY** during the Contract period and evaluate the fairness of presentation of the statements in conformity with generally accepted accounting principles. **CONTRACTOR** agrees to meet with the other **CPA Contractors** selected by **CITY**, to agree with such other **CPA Contractors**, on a cooperative audit plan acceptable to **CITY** permitting each **CPA Contractor** to participate in each annual audit performed pursuant to the provisions contained in this Contract; to perform the work allocated to it under such **CPA Contractor's** engagement

letter; and to evaluate and review the work performed by the other **CPA Contractors** to the extent necessary or desirable to permit it to issue its opinion or opinions required hereby. It is understood that this audit will be conducted in accordance with generally accepted auditing standards, which will include a review of the system of internal controls and tests of transactions to the extent necessary. Accordingly, the audit will not include a detailed audit of transactions to the extent, which would be required if intended to disclose defalcations or other irregularities, although the possibility exists that such discovery may result. The San Antonio Water System, the City Public Service Board, San Antonio Fire and Police Pension Fund, San Antonio Retiree Health Care Fund, and certain other component units of **CITY** are audited by other auditors. These component units which currently are or those which may be included in the future with the application of GASB 14 "the Financial Reporting Entity," are included in the scope of work to be performed hereunder but limited only to their respective incorporation into **CITY'S** Comprehensive Annual Financial Report (CAFR).

- 3.2 **CPA Contractors** agree to perform in accordance with generally accepted auditing standards adopted by the American Institute of Certified Public Accountants, Government Auditing Standards, issued by the Comptroller General of the United States, and Office of Management and Budget (OMB) Circular A-133, the State of Texas Single Audit Circular and any other authoritative pronouncements which may be deemed applicable. Those standards require that **CPA Contractors** plan and perform the audit to obtain reasonable assurance about whether the general-purpose financial statements and financial statements as required and in accordance with GASB Statement No. 34 *Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments*, are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the general-purpose financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall general-purpose financial statement presentation. The objective of this audit is the expression of an opinion of **CPA Contractors**, including but not limited to **CONTRACTOR**, or in the event such an opinion is not practicable, consistent with prevailing law, regulation, rule and/or professional standards issued by the American Institute of Certified Public Accountants or the Texas State Board of Public Accountancy ("Professional Standards"), as evidenced by a letter drafted and issued by **CONTRACTOR**, **CONTRACTOR'S** legal counsel, the American Institute of Certified Public Accountants or the Texas State Board of Public Accountancy, that **CONTRACTOR** is unable, because of a certain Professional Standard identified in or referred to in said letter, to issue an opinion jointly with other **CPA Contractors**, the expression of an individual and separate opinion by **CONTRACTOR**, in accordance with the provisions of this Contract. The wording of the audit opinion will, of course, be dependent on the facts and circumstances at the date of the reports. If the opinion will be other than unqualified, the reasons therefore will be fully disclosed. The opinion will be signed by **CPA Contractors** who will assume responsibility both jointly and severally, for the audit of the financial statements of **CITY**.
- 3.3 **CITY** agrees that it will maintain at least its present degree of conformance to the standards of the Governmental Accounting Standards Board pertaining to internal controls, and the recording of financial transactions, and that the Contract price for the audits by **CPA Contractors** as quoted in Article VII, is predicated upon this conformance. **CITY** agrees that the detailed annual financial statements and notes to such statements will be

prepared by its Department of Finance as nearly as practical in accordance with the form outlined in "Governmental Accounting, Auditing, and Financial Reporting" published by the Government Finance Officers Association on such financial statements, and any supplemental schedules which it prepares will be submitted and provided to the **CONTRACTOR** in sufficient time (as completed) for full reconciliation with **CONTRACTOR'S** findings, and to facilitate publication of **CITY'S** Comprehensive Annual Financial Report within approximately 120 days after the close of each fiscal year. Responsibility for the proper recording of transactions into the books of account, and for the accuracy of the financial statements, which are the representations of management, are with **CITY**.

- 3.4 **CITY** shall have completed and balanced all accounts and have prepared financial statements and schedules for all funds, account groups and financial statements as required and in accordance with GASB Statement No. 34 to be audited by the **CPA Contractors** and shall provide **CPA Contractors** with working space deemed adequate by **CPA Contractors** for efficient conduct of the audit. **CITY** shall provide **CPA Contractors** for its use and retention, with copies of these financial statements and schedules and shall provide **CPA Contractors** with trial balances of the various funds and account groups and financial statements as required and in accordance with GASB Statement No. 34 in a form acceptable to **CPA Contractors**.
- 3.5 The Comprehensive Annual Financial Report will be completed and available for distribution within approximately 120 days of **CITY'S** fiscal year end of September 30. The "Management Letter" and "Single Audit Reports" will be completed and available for distribution within a reasonable period of time after completion of the Comprehensive Annual Financial Report.
- 3.6 **CONTRACTOR** understands and agrees that other provisions to the contrary notwithstanding, **CITY** requires the issuance of a joint opinion by **CPA Contractors** and that **CITY** will only accept singular opinion from **CONTRACTOR** in the event it is determined, in accordance with the provisions of subsections 3.2 and 10.7, that **CONTRACTOR** is unable to issue an opinion.
- 3.7 On an annual basis during the term of the Contract, **CPA Contractors** will provide an aggregate of twenty-four (24) hours of continuing professional education training to **CITY'S** professional accounting and internal audit staff. **CPA Contractors** must be registered with the Texas State Board of Public Accountancy as a provider of Continuing Professional Education and the training will be based on mutually agreed topics. This service is considered a part of the fee structure for the independent audit.

GASB STATEMENT NO. 34 IMPLEMENTATION ASSISTANCE

- 3.8 **CITY** will be required to implement GASB Statement No. 34, "*Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments*" and any related statements on October 1, 2001. **CITY** has performed an analysis of the pronouncement and has developed a task statement and timeline for its implementation. The Finance Department staff is analyzing the **CITY'S** current financial reporting model and comparing that to the GASB's new requirements. Each key task to be accomplished will be documented and compiled in written form for **CONTRACTOR'S** review,

concurrence, and acceptance. Review will include, but is not limited to such items as the classification of program revenue versus general revenues; accounting estimates, such as those for compensated absences and asset depreciation lives; and proper classification of current funds (enterprise versus special revenue, etc.). **CONTRACTOR** will be required to review policies and procedures that are currently being developed such as the **CITY'S** fixed assets and accounts receivable policies. **CONTRACTOR** will assist the **CITY** in identifying issues relating to the retroactive infrastructure reporting not including inventory and valuation services. **CONTRACTOR** shall recommend any additional key tasks or policies that should be addressed to achieve proper implementation for GASB Statement No. 34.

- 3.9 **CONTRACTOR** will provide answers to questions arising from **CITY'S** review and analysis of GASB Statement No. 34 requirements, and questions which may arise that require technical interpretation and implementation assistance. These questions will be submitted to **CONTRACTOR** in writing for evaluation. **CITY** will upon acceptance and concurrence by the **CONTRACTOR** of the **CITY'S** task statement and methodology will restate the fiscal year 2000 CAFR to conform to the GASB Statement No. 34 requirements. Restated CAFR (the "mock CAFR") will consist of government-wide statements, fund statements, management discussion and analysis, footnotes to the financial statements, and required supplementary information that is required under GASB Statement No. 34 and related statements. **CONTRACTOR** will review the financial statement presentation, footnotes to the financial statements, required supplementary information, and management discussion and analysis to ensure that financial reports adhere to GASB standards. **CONTRACTOR** will submit to **CITY** in writing all changes suggested in order to ensure compliance. The "mock CAFR" will be used as a model for the implementation of GASB statement number 34 for fiscal year ending September 30, 2002.
- 3.10 **CITY** agrees that **CONTRACTOR** and its personnel shall not be liable to **CITY** for any claims, liabilities, or expenses relating to the services provided, as it relates to negligence, pursuant to this Section 3.8 and Section 3.9 for an aggregate amount in excess of twice the fees paid by **CITY** to **CONTRACTOR** pursuant Section 7.6 of this Agreement, except to the extent finally judicially determined to have resulted primarily from the bad faith or intentional misconduct of **CONTRACTOR**. In no event shall **CONTRACTOR** or its personnel be liable for consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense relating to the performance of services pursuant to Section 3.8 and Section 3.9.

IV. CONTINGENT ADDITIONAL SERVICES

- 4.1 **CONTRACTOR** acknowledges that the services listed below were identified in the Request for Proposal under "Other Services" as those additional services, which the **CITY** may request **CONTRACTOR** to provide. If requested, and **CONTRACTOR** agrees, **CONTRACTOR** shall provide said service(s) under the same terms and conditions of this Contract, save and except those provisions specifically revised by the Director of Finance in the forwarded request (subsection 4.2).
- 4.2 **CITY** will effect such a request for contingent additional services by forwarding a written request, executed by the Director of Finance or his designee, to the **CONTRACTOR** at its

respective address provided herein. Within said request, the Director of Finance shall state the scope of services **CONTRACTOR** has been requested to provide; the period of time within which said services are to be completed; and the consideration to be paid by **CITY** for the services provided, in accordance with subsection 7.10. The coordinator entity shall notify **CITY** as to which of the **CPA Contractors** will provide the contingent additional service; provided however, if **CITY**, at its discretion, designates the **CPA Contractors** to provide said contingent additional services, the request for the provision of contingent additional services shall be forwarded directly to that designated **CPA Contractors**.

4.3 The **CPA Contractors** selected agree to provide the following services at the request of the **CITY**:

4.3.1 Consulting services on tax, compliance, or other non-audit consultation matters.

4.3.2 Assistance with the preparation of aspects of the annual report or the analysis of new accounting standards or pronouncements.

4.3.3 Advisory or consultant services to assist in the resolution of audit findings and questioned costs reported by Federal and State Agencies.

4.3.4 Other services that may be required for a **CITY** bond offering.

V. QUALITY CONTROL REVIEWS

5.1 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 within three working days by **CONTRACTOR** in the event of any such request. **CITY** will not reimburse costs incurred by **CONTRACTOR** related to such review of audit quality. To the extent such work papers 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 State of Texas Single Audit Circular, **CONTRACTOR** will notify and discuss such request with **CITY** prior to any costs being incurred by **CONTRACTOR**. Any such costs agreed to be reimbursed by **CITY** will be based on fees negotiated on an individual engagement basis.

VI. TERM AND COMMENCEMENT OF WORK

6.1 Unless earlier termination shall occur pursuant to any of the provisions of this Contract, the term of this Contract shall be from the effective date of the signatures through September 30, 2006 and shall include the audits of the **CITY'S** records and accounts for the fiscal years ending September 30, 2002, 2003, 2004, 2005, and 2006 with fees for years 2005 and 2006 to be negotiated conditioned upon the successful negotiation of consideration as identified in Section VII below (Pricing and Billing). Continuation of this Contract beyond the first year and each and every year thereafter is subject to and contingent upon an annual appropriation of funds by City Council. The City shall notify **CONTRACTOR** promptly if there has not been made the necessary appropriation of funds.

- 6.2 In the event **CITY** requests **CPA Contractors** to provide the contingent additional services set out in Section IV, the commencement and termination dates shall be established in the written request from the Director of Finance and as agreed to by the **CPA Contractors**.

VII. CONTRACT PRICING AND BILLING

- 7.1 The total of all payments and other obligations made and incurred by **CITY** hereunder, in performance of the services provided for in Article III (except Articles 3.8 and 3.9) and IV for fiscal year 2002 shall not exceed the amount of \$270,000; for fiscal year 2003 shall not exceed the amount of \$278,100; and for fiscal year 2004 shall not exceed the amount of \$286,443. Such fees being predicated on the expectation that the Finance Department of the **CITY** will provide the preparation of the annual financial reports and statements, and supporting work papers and schedules at a comparable level with prior years, and that the Office of Internal Review will provide 1,500 hours of assistance to the annual audit process. In the event that the **CITY** is unable to provide the 1,500 hours of assistance provided by the Office of Internal Review, the maximum dollar amounts identified above may at the City's discretion, after consultation with **CPA Contractors**, be adjusted by increasing those amounts by not more than twenty-five percent (25%) for each fiscal year.
- 7.2 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Article III (except Articles 3.8 and 3.9) and IV under this Contract for the audit of fiscal year 2002 shall not exceed \$270,000.00, it is understood that this sum will be paid individually as follows:

| | |
|-------------------------------|--------------|
| Deloitte and Touche LLP | \$145,800.00 |
| Garza/Gonzalez and Associates | \$105,300.00 |
| Robert J. Williams, CPA | \$ 18,900.00 |

- 7.3 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Article III (except Articles 3.8 and 3.9) and IV under this Contract for the audit of fiscal year 2003 shall not exceed \$278,100.00, it is understood that this sum will be paid individually as follows:

| | |
|-------------------------------|--------------|
| Deloitte and Touche LLP | \$150,174.00 |
| Garza/Gonzalez and Associates | \$108,459.00 |
| Robert J. Williams, CPA | \$ 19,467.00 |

- 7.4 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Article III (except Articles 3.8 and 3.9) and IV under this Contract for the audit of fiscal year 2004 shall not exceed \$286,443.00, it is understood that this sum will be paid individually as follows:

| | |
|-------------------------------|--------------|
| Deloitte and Touche LLP | \$154,679.00 |
| Garza/Gonzalez and Associates | \$111,713.00 |
| Robert J. Williams, CPA | \$ 20,051.00 |

- 7.5 It is further understood and agreed by the parties hereto that the work performed and the total fee for the services related to Article III (except Articles 3.8 and 3.9) and IV under this

Contract for the audit of fiscal year 2005 and 2006 shall be negotiated contingent upon City Council approval.

- 7.6 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Articles 3.8 and 3.9 above (GASB Statement No. 34 work) shall be monitored by **DELOITTE AND TOUCHE LLP**, and divided between the **CPA Contractors**. For GASB Statement No. 34 work, the rate shall be \$150 per hour, not to exceed a total fee of \$100,000 over the term of the Contract. Although the percentages identified in Section 7.2 above do not specifically apply, **DELOITTE AND TOUCHE LLP** shall use its best commercially reasonable efforts to ensure that the GASB Statement No. 34 work is divided equitably in accordance with applicable professional standards.
- 7.7 Subject to subsections 7.1 through 7.5, **CONTRACTOR** agrees that all **CONTRACTOR** labor, supervision of work, report reproduction, typing, travel, insurance, communication, computer access, materials, supplies, subcontractor costs, if any, and all other **CONTRACTOR** expenses necessary to complete the services stated herein shall be borne at **CONTRACTOR'S** sole cost and expense.
- 7.8 Progress billings for the annual fees established herein 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. However, **CITY** will retain ten percent (10%) of the total annual fee, until the **CITY'S** Comprehensive Annual Financial Report, Single Audit Reports, and Management Letter have been completed provided that the total audit fees for any fiscal year shall be paid in full prior to any services being rendered for the subsequent fiscal year.
- 7.9 In the event that the **CITY** does not provide assistance as provided for in subsection 7.1, 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 III in excess of the annual amounts as stated for each fiscal year established in subsections 7.1 through 7.5 without formal written revision of this Contract and related City Council approval.
- 7.10 Payments for contingent additional services provided in accordance with Article IV, payments for any costs to be reimbursed by **CITY** in accordance with Article V, and payments for any additional work required in accordance with subsection 10.5.1 or 10.6.2, will be based on fees negotiated on an individual engagement basis. **DELOITTE AND TOUCHE LLP, GARZA/GONZALEZ AND ASSOCIATES, and/or ROBERT J. WILLIAMS, CPA**, as the entity designated to provide said services shall prepare and submit a billing statement to **CITY** specifying the scope of work performed and amount due. Upon receipt of the billing statement, **CITY** will review and if in compliance with the established fees herein, pay the amount specified due on such statement to the appropriate entity.

VIII. INCORPORATION BY REFERENCE

- 8.1 The engagement letter executed by **CITY** and **CONTRACTOR**, attached hereto as

Exhibit A, is hereby incorporated into this Contract and specifically made a part hereof as though it is fully set out herein.

- 8.2 The parties hereto acknowledge and agree that prior to the commencement of the 2002, 2003, 2004, 2005, and 2006 audits herein required, **CITY** and **CONTRACTOR** will execute a new engagement letter for the upcoming fiscal year. That engagement letter, once executed, shall be incorporated herein for that next fiscal year and shall supersede the previously attached engagement letter for audit services.
- 8.3 In the event of a conflict or inconsistency between the terms of this Contract and the provisions of any of the engagement letters ultimately attached hereto as Exhibit A, the terms of this Contract shall govern and prevail.

IX. RECORDS

- 9.1 **CONTRACTOR** shall properly, accurately and completely maintain all non-confidential and non-proprietary 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 business hours of **CONTRACTOR** and as often as **CITY** may deem necessary during the Contract period, including any extension or renewal hereof, for purposes of inspection, examination, and making excerpts or copies of same by **CITY** and any of its authorized representatives.
- 9.2 **CONTRACTOR** shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years from the date of termination of the Contract. If at the end of four (4) 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 other such questions.
- 9.3 **CITY** shall 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 9.1 and 9.2. As such, **CONTRACTOR** understands and agrees that **CITY** will process and handle all such requests.

X. TERMINATION

- 10.1 For purposes of this Contract, "termination" of this Contract shall mean termination by completion of the provision of services required herein or earlier termination pursuant to any of the provisions hereof.
- 10.2 Other provisions of this Contract notwithstanding, **CITY** may terminate this Contract as to **CONTRACTOR** in accordance with this clause, in whole or in part, for any of the following
 - 10.2.1 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

- 10.2.2 Violation by **CONTRACTOR** of any applicable rule, regulation or law to which **CONTRACTOR** is bound or shall be bound by terms of this Contract.
- 10.2.3 The **CITY** shall also have the right to terminate this Contract or any portion thereof for convenience upon thirty (30) days notice. If **CITY** elects to terminate for convenience as described, the **CITY** shall pay **CONTRACTOR** for services rendered up to and including date of termination.
- 10.3 Subsection 10.2 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 receipt of 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 **CONTRACTOR**.
- 10.4 Upon a decision to terminate by **CITY** and the expiration of any cure period, written notice of such shall be promptly provided to **CONTRACTOR** specifying the basis for said termination, the effective date of termination, and the extent to which performance of work under this Contract will be terminated. A copy of said notice shall be provided, for informational purposes only, by **CITY** to the remaining **CPA Contractors**, by hand or facsimile, as soon as practicable.
- 10.4.1 Upon receipt of a notice to terminate, all finished reports for which payment has been received, prepared by **CONTRACTOR** under this Contract, shall at the option of **CITY**, and in accordance herewith and with applicable professional standards, be accessible to the **CITY** as provided in Article IX.
- 10.4.2 Within thirty (30) days of the effective date of termination **CONTRACTOR** shall submit to **CITY** its claim in detail for any monies owed by **CITY** for services performed under this Contract, including all work performed by **CONTRACTOR** required by the provisions of this Contract to the date of notice and for any necessary and proper work performed in the ensuing thirty day period, to be determined after discussion with **CITY**, provided however, that such payment does not exceed the maximum amount set out in subsections 7.1 through 7.5.
- 10.5 In the event **CITY** terminates any other **CPA Contractor** under the Contract between them, **CITY** shall deliver a copy of said notice to **CONTRACTOR** for informational purposes only, by hand or facsimile, as soon as practicable.
- 10.5.1 In the event of such termination (subsection 10.5), **CITY** and **CONTRACTOR** shall meet within ten (10) days of the effective date of termination specified in the notice of termination and shall agree to make all reasonable efforts to complete the services required herein with any remaining **CPA Contractors**. **CITY** and the remaining **CPA Contractors** shall execute new engagement letters redefining the roles and tasks of **CPA Contractors**. To the extent termination of others results in additional work for the remaining **CPA Contractors** in order to complete the services required herein, **CITY** and **CPA Contractors** agree in good faith to

renegotiate fees, which agreement shall be reflected in the new engagement letter. Said new engagement letters shall supersede any previously executed engagement letters.

- 10.5.2 In the event **CITY** and **CONTRACTOR** are unable or fail to agree on any issue the subject of the renegotiations cited in 10.5.1 within ten (10) days of said renegotiations meeting, **CITY** may terminate this Contract upon giving written notice in accordance with Article XXII. In the event of any such termination, **CITY** and **CONTRACTOR** shall proceed in accordance with subsections 10.4, 10.4.1 and 10.4.2.
- 10.5.3 If **CITY** chooses, as a result of any such termination (subsection 10.5), to select and hire another Certified Public Accountant or Certified Accounting firm or firms, other than the remaining **CPA Contractors**, **CITY** agrees to coordinate said selection with **CONTRACTOR**. However, the final selection and hiring of said CPA, CPA firm or firms shall be at the **CITY'S** sole discretion.
- 10.6 In the event **CONTRACTOR** is unable to issue a joint opinion with either or both of the other **CPA Contractors** because of a certain prevailing law, regulation, rule and/or professional standards issued by Professional Standards, as evidenced by and in a letter drafted and issued by **CONTRACTOR**, **CONTRACTOR'S** legal counsel, the American Institute of Certified Public Accountants or the Texas State Board of Public Accountancy, **CITY** shall have the right to obtain separate and singular opinions from **CONTRACTOR**; and **CONTRACTOR** shall issue separate and singular opinions.
- 10.6.1 In the event **CITY** decides to obtain separate and singular opinions from **CONTRACTOR**, and **CONTRACTOR** is unable to rely on the work provided by one or both of the other **CPA Contractors** or if **CONTRACTOR'S** issuing its separate opinions results in additional work, **CITY** and **CONTRACTOR** agree, in good faith, to renegotiate fees and services to be performed in order to complete the separate opinions. Said agreements shall be reflected in a new engagement letter, which shall supersede any previously, executed engagement letter.
- 10.6.2 In the event **CITY** and **CONTRACTOR** are unable or fail to agree on any issue the subject of the renegotiations cited in 10.6.1 within ten (10) days of said renegotiations meeting **CITY** may terminate this Contract upon giving written notice in accordance with Article XXII. In the event of any such termination, **CITY** and **CONTRACTOR** shall proceed in accordance with subsections 10.4, 10.4.1 and 10.4.2.
- 10.7 The parties understand and agree that in the event **CITY** terminates any **CPA Contractors** other than **CONTRACTOR**, all references to "**CPA Contractor(s)**" contained herein shall thereafter refer to **CONTRACTOR** and any other remaining **CPA Contractors**.

XI. SUBCONTRACTING

- 11.1 Due to the professional experience required to perform the **CONTRACTOR** services specified in this Contract, **CONTRACTOR** must obtain prior written approval from the City's Director of Finance before engaging the services of any subcontractor. 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**.

XII. ASSIGNABILITY

- 12.1 **CONTRACTOR** shall not assign any interest in this Contract to any other party without the prior written consent of **CITY** as evidenced by ordinance.

XIII. CONFLICT OF INTEREST

- 13.1 **CONTRACTOR** acknowledges that it is informed that the City of San Antonio **CITY** Charter prohibits Contracts between the **CONTRACTOR** 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.

For purposes of this Article 13.1 “**CONTRACTOR**” shall mean personnel of **CONTRACTOR** performing services under this Agreement.

- 13.2 **CONTRACTOR** acknowledges that from time to time **CITY** releases Request for Proposals or other solicitations. **CONTRACTOR** agrees that to the best of the **CONTRACTOR** engagement leader’s knowledge, including constructive knowledge, in the event it chooses to submit a proposal in response to any of **CITY'S** solicitations, it will notify **CITY** of said submittal, in writing, in accordance with Article XXII.
- 13.3 In the event that **CONTRACTOR** is involved in any other project or engagement with the **CITY**, **CONTRACTOR** shall confirm that such work does not jeopardize **CONTRACTOR’S** independence in performing the work specified in this Contract.

XIV. COMPLIANCE

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

14.3 **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 Amendments of 1996, OMB Circular A-133, the State of Texas Single Audit Circular, Chapter 103 of the Texas Local Government Code, and Section 107 of the San Antonio City Charter.

XV. INSURANCE

15.1 Prior to execution of this Contract, **CONTRACTOR** shall furnish a completed Certificate of Insurance to the Finance Department, Attention: Milo Nitschke, 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 standard 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.

15.2 **CITY** reserves the right to review the insurance requirement of this section during the effective period of the Contract and to amend insurance coverage and its limit when deemed necessary and prudent by the Risk Management Division based upon changes in statutory law, court decisions or the claims history of the industry, as well as the **CONTRACTOR** and in no instance will the **CITY** allow modification whereupon the **CITY** may incur increased risk.

15.3 **CONTRACTOR** shall procure, pay for and maintain insurance for the term of this Contract, including any extensions or renewals hereof, 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:

| <u>TYPE</u> | <u>AMOUNT</u> |
|--|--|
| Business Automobile Liability | Combined Single Limit \$1,000,000 per occurrence |
| Owned/leased vehicles | |
| Non-owned vehicles | |
| Hired vehicles | |
| Commercial General (Public) Liability Insurance to include coverage for the following: | |
| Contractual Liability | Bodily injury and property damage of |
| Premises/Operations | \$1,000,000 per occurrence with a |
| Personal/Advertising | \$2,000,000 general aggregate or its |
| Injury Liability | equivalent in umbrella or excess |
| Products/Completed | liability coverage. |
| Operations | |
| Independent Contractors | |
| Workers' Compensation and Employer's Liability | |
| Workers' Compensation | Statutory |
| Employer's Liability | \$1,000,000/\$1,000,000/\$1,000,000 |
| Professional Liability | \$1,000,000.00 per claim to pay on |

(Claims made form)

behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.

15.4 The insurance policies required by this Contract shall contain the following clauses:

The insurer will endeavor to provide thirty (30) days prior written notice of cancellation.

15.5. 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 **CONTRACTOR'S** insurance policies.

XVI. INDEMNITY

16.1 **CONTRACTOR** covenants and agrees to **FULLY INDEMNIFY** and **HOLD HARMLESS** the **CITY** and the elected officials, employees, officers, directors, volunteers, and representatives of the **CITY**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, or death and real or tangible personal property damage, made upon the **CITY** and arising out of, resulting from or related to and proximately caused by the **CONTRACTOR'S** negligence or willful misconduct while performing services under this **CONTRACT**, including any acts or omissions of the **CONTRACTOR**, any agent, officer, director, representative, employee, consultant or subcontractor of the **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 costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature resulting from the direct or indirect activities of **CITY**, its elected officials, employees, officers, directors, volunteers, and representatives of the **CITY**, individually or collectively. Such direct or indirect acts include, by way of example and not by way of limitation, those responsibilities of **CITY** as described in each engagement letter executed by **CITY** and **CONTRACTOR** in accordance with Article VIII hereof and attached hereto as Exhibit A. **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 FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENT IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

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

XVII. INDEPENDENT CONTRACTOR

- 17.1 It is expressly understood and agreed that the **CONTRACTOR** provides services as an independent **CONTRACTOR** responsible for its own acts or omissions and that **CITY** shall in no way be responsible therefore and **CONTRACTOR** shall in no way be responsible for **CITY'S** acts and omissions. 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.

XVIII. CHANGES AND AMENDMENTS

- 18.1 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.
- 18.2 The parties hereto understand and agree that the request by the **CITY** to provide additional services as listed in Article IV is not an amendment to the provisions of this Contract.
- 18.3 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.

XIX. LICENSES/CERTIFICATIONS

- 19.1 **CONTRACTOR** warrants and confirms 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.

XX. OTHER AGREEMENTS

- 20.1 It is acknowledged and understood by the parties hereto that simultaneously with the execution of this Contract, two other such contracts will be executed by and with the remaining **CPA Contractors**. As such, all three Contracts, the authorizing ordinance and any Exhibits to the Contracts constitute the final and entire agreement between **CITY** and **CPA Contractors** and contain all of the terms and conditions agreed upon. It is also acknowledged and understood that at the inception of each annual audit, an engagement letter consistent with the provisions of this Contract shall be executed by **CITY** and **CONTRACTOR**.

XXI. SEVERABILITY

- 21.1 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.

XXII. NOTICES

- 22.1 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 of San Antonio
Attn: Milo Nitschke, Director of Finance
P. O. Box 839966
San Antonio, Texas 78283-3966

XXIII. LAW APPLICABLE

- 23.1 This Contract shall be construed under and in accordance with the laws of the State of Texas without regard to the choice of law principles thereof and all obligations of the parties created hereunder are performable in Bexar County, Texas.
- 23.2 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.

XXIV. LEGAL AUTHORITY

- 24.1 The signer of this Contract for **CONTRACTOR** represents, and warrants, 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.

XXV. PARTIES BOUND

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

XXVI. GENDER

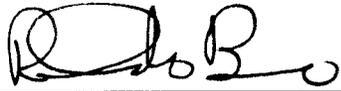
- 26.1 Words of any gender used in this Contract shall be held and construed to include any other gender.

XXVII. CAPTIONS

- 27.1 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 20th day of November, 2001

CITY:
CITY OF SAN ANTONIO



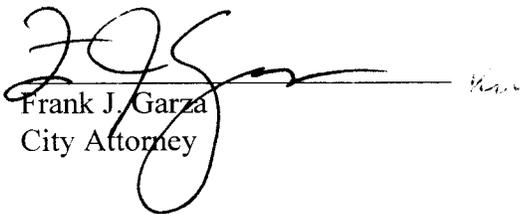
J. Rolando Bono
Deputy City Manager

CONTRACTOR
Garza/Gonzalez & Associates



Gregory R. Garza
Senior Partner

Approved as to form:



Frank J. Garza
City Attorney



January 30, 2002

Mr. Milo Nitschke
Finance Director
506 Dolorosa
San Antonio, Texas 78204

Dear Mr. Nitschke:

Deloitte & Touche LLP is pleased to provide this engagement letter to confirm this engagement to provide certain services to assist the City of San Antonio, Texas (the "City") in the assessment of its readiness to implement the requirements of Governmental Accounting Standards Board Statement No. 34, "Basic Financial Statements - and Management's Discussion and Analysis - for State and Local Governments" ("GASB 34"), on the terms and conditions set forth herein.

The services described herein shall be performed by Deloitte & Touche in accordance with the standards for consulting services of the American Institute of Certified Public Accountants.

Services to be Provided

This engagement letter describes a menu of services that Deloitte & Touche will provide to the City based upon the City's GASB 34 implementation needs. These services are those that have been currently requested by the City. We may provide other related services as requested by the City.

- The City has prepared a GASB 34 Checklist that outlines the tasks to be performed by the City in implementing GASB 34. In order to help ensure that all critical factors are comprehended in the list and have been considered by the City, we will read this checklist and provide comments and recommendations.
- We will work with the City to assist in the preparation of the basic financial statements and the required supplementary information, other than management discussion and analysis as provided in GASB 34. We will read the City's "mock CAFR", prepared from the 2000 financial statements and provide comments and recommendations. We will also complete the Government Finance Officer's Association Certificate checklist to identify potential "no" answers.
- We understand that the City has prepared various working papers, schedules and policies for use in the preparation of the "mock CAFR". We will read these documents and provide comments and recommendations.
- GASB 34 has complicated technical issues, and we expect that City employees will need technical guidance and advice when working on the implementation plan. We will be available to provide various accounting and auditing technical support for City employees when working on the implementation plan. We will answer questions and provide comments and recommendations.

The services that Deloitte & Touche is to perform hereunder at the request of the City are limited in nature and do not comprehend all matters that might be pertinent or necessary to the City's assessment of its readiness to implement the requirements of GASB 34.

Deloitte & Touche will not provide any assurances, nor will it express any opinion, relating to GASB 34 or the City's readiness to implement the requirements thereof.

The City acknowledges that (a) the nature, scope and design of its GASB Statement 34 implementation readiness assessment, for which the City has requested Deloitte & Touche's assistance pursuant to the terms hereof, is the sole responsibility of the City, (b) Deloitte & Touche has no responsibility to advise the City of alternative assessment methods that might be performed or conducted, and (c) Deloitte & Touche makes no representations as to the sufficiency of the City's GASB 34 implementation readiness assessment program.

Additional Services

Upon completion of the workplan described above, it is anticipated that additional work will be required to determine the appropriate steps to be taken by the City to implement the requirements of GASB 34 and to implement any recommendations proposed by Deloitte & Touche. Examples of such steps include, but are not limited to, implementing new information systems, preparing inventories of and valuing fixed assets, and revising external reporting processes. The implementation of any Deloitte & Touche recommendations and the general implementation of the requirements of GASB 34 are not a part of this engagement, and the City acknowledges and understands that certain items, facts or events may come to the City's or the implementer's attention during the course of any such implementation that may modify the findings or observations provided to you as part of this engagement.

Professional Fees and Terms

Our professional fees and terms of this engagement will be in accordance with our professional services contract with you, dated November 20, 2001.

* * * * *

This engagement letter, including the General Business Terms attached hereto as the Exhibit and made a part hereof, constitutes the entire agreement between the City and Deloitte & Touche with respect to this engagement, supersedes all other oral and written representations, understandings or agreements relating to this engagement, and may not be amended except by the mutual written agreement of the City and Deloitte & Touche. However, this engagement letter shall in no way supercede our professional services contract with the City, described above.

If the foregoing sets forth your understanding, and you are in agreement with the terms and conditions set forth herein, please sign the enclosed copy of this letter at the space indicated below, and return it to us.

Yours truly,

Deloitte & Touche LLP

ACCEPTED AND AGREED TO BY CITY OF SAN ANTONIO, TEXAS

Signature: 

Printed name of signer: Milo Nitschke

Title: Finance Director

Date: April 30, 2002

Attachment

EXHIBIT

GENERAL BUSINESS TERMS

1. **Services.** It is understood and agreed that D&T's services may include advice and recommendations, but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, the City of San Antonio, Texas (the "Client"). In connection with its services hereunder, D&T shall be entitled to rely on all decisions and approvals of the Client.
2. **Payment of Invoices.** D&T shall prepare and submit a billing statement to the Client specifying the scope of work performed and amount due. Upon receipt of the billing statement, Client will review and, if in compliance with the established fees in the professional contract between D&T and the Client dated November 20, 2001 ("Professional Contract"), pay the amount specified on such statement.
3. **Term.** Unless terminated sooner in accordance with its terms, this engagement shall terminate on the completion of D&T's services hereunder, and upon such terms as those described in Section X, "Termination", of the Professional Contract. In addition, this engagement may be terminated by either party at any time by giving written notice to the other party not less than thirty (30) days before the effective date of termination.
4. **Ownership.**
 - a) **D&T Technology.** D&T has created, acquired or otherwise has rights in, and may, in connection with the performance of services hereunder, employ, provide, modify, create, acquire or otherwise obtain rights in, various concepts, ideas, methods, methodologies, procedures, processes, know-how, and techniques (including, without limitation, function, process, system and data models); templates; generalized features of the structure, sequence and organization of software, user interfaces and screen designs; general purpose consulting and software tools, utilities and routines; and logic, coherence and methods of operation of systems (collectively, the "D&T Technology").
 - b) **Ownership of Deliverables.** Except as provided below, upon full and final payment to D&T hereunder, the tangible items specified as deliverables or work product in the engagement letter to which these terms are attached (the "Deliverables") shall become the property of the Client. To the extent that any D&T Technology is contained in any of the Deliverables, D&T hereby grants the Client, upon full and final payment to D&T hereunder, a royalty-free, fully paid-up, worldwide, non-exclusive license to use such D&T Technology in connection with the Deliverables.
 - c) **Ownership of D&T Property.** To the extent that D&T utilizes any of its property (including, without limitation, the D&T Technology or any hardware or software of D&T) in connection with the performance of services hereunder, such property shall remain the property of D&T and, except for the license expressly granted in the preceding paragraph, the Client shall acquire no right or interest in such property. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that (a) D&T shall own all right, title, and interest, including, without limitation, all rights under all copyright, patent and other intellectual property laws, in and to the D&T Technology and (b) D&T may employ, modify, disclose, and otherwise exploit the D&T Technology (including, without limitation, providing services or creating programming or materials for other clients). D&T does not agree to any terms that may be construed as precluding or limiting in any way its right to (a) provide consulting or other services of any kind or nature whatsoever to any person or entity as D&T in its sole discretion deems appropriate or (b) develop for itself, or for others, materials that are competitive with those produced as a result of the services provided hereunder, irrespective of their similarity to the Deliverables.
5. **Limitation on Damages.**
 - a) The Client agrees that D&T and its personnel shall not be liable to the Client for any claims, liabilities, or expenses relating to the services provided under this engagement for an aggregate amount in excess of twice the fees paid by the Client to D&T pursuant to this engagement, except to the extent finally judicially determined to have resulted primarily from the bad faith or intentional misconduct of D&T. In no event shall D&T or its personnel be

liable for consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense relating to the performance of services pursuant to this engagement.

b) The provisions of this Paragraph and Paragraphs 9 and 11(b) shall apply to the fullest extent of the law, whether in contract, statute, tort (such as negligence), or otherwise. In circumstances where all or any portion of the provisions of this Paragraph or Paragraph 11(b) are finally judicially determined to be unavailable, D&T's aggregate liability for any claims, liabilities, or expenses relating to this engagement shall not exceed an amount which is proportional to the relative fault that D&T's conduct bears to all other conduct giving rise to such claims, liabilities, or expenses.

6. Cooperation. The Client shall cooperate with D&T in the performance by D&T of its services hereunder, including, without limitation, providing D&T with reasonable facilities and timely access to data, information and personnel of the Client. The Client shall be responsible for the performance of its personnel and agents and for the accuracy and completeness of all data and information provided to D&T for purposes of the performance by D&T of its services hereunder.

7. Force Majeure. D&T shall not be liable for any delays or non-performance resulting from circumstances or causes beyond its reasonable control, including, without limitation, acts or omissions or the failure to cooperate by the Client (including, without limitation, entities or individuals under its control, or any of their respective officers, directors, employees, other personnel and agents), acts or omissions or the failure to cooperate by any third party, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority.

8. Independent Contractor. It is expressly understood and agreed that D&T provides services as an independent contractor responsible for its own acts or omissions, and that Client shall in no way be responsible therefore, and D&T shall in no way be responsible for Client's acts and omissions. Neither party hereto has authority to bind the other or hold out to third parties that it has the authority to bind the other.

9. Confidentiality and Internal Use.

a) The Client agrees that all services hereunder and Deliverables shall be solely for the Client's informational purposes and internal use, and are not intended to be and should not be used by any person or entity other than the Client. The Client further agrees that such services and Deliverables shall not be circulated, quoted, disclosed, or distributed to, nor shall reference to such services or Deliverables be made to, any person or entity other than the Client except (a) as may be required by law, regulation, judicial or administrative process, or in connection with litigation pertaining hereto, or (b) to the extent such information (i) shall have otherwise become publicly available (including, without limitation, any information filed with any governmental agency and available to the public) and (ii) is required to be disclosed through information sought by a third party through a request under the Texas public Information Act.

b) Notwithstanding anything to the contrary in these terms or the engagement letter to which these terms are attached, (i) D&T hereby acknowledges and agrees that there are no conditions of confidentiality associated with the tax services, if any, provided by D&T or its personnel under these terms or such engagement letter, (ii) neither D&T nor any party known to D&T has or claims to have any proprietary interest in the terms or substance of any tax services, if any, provided by D&T or its personnel under these terms or such engagement letter, and (iii) except as otherwise provided in this subparagraph (b), all services in connection with this engagement shall be solely for the Client's informational purposes and internal use, and this engagement does not create privity between D&T and any third party. This engagement is not intended for the express or implied benefit of any third party. No third party is entitled to rely, in any manner, or for any purpose, on the advice, opinions, reports, or other services or Deliverables of D&T. The Client further agrees that the advice, opinions, reports and Deliverables issued by D&T shall not be distributed to any third party without the prior written consent of D&T. D&T agrees that such consent will ordinarily be granted with respect to tax services-related materials, provided that the Client makes a specific written request of D&T and the third party seeking such tax services-related materials executes an acknowledgment of non-reliance and a release acceptable to D&T. In order to protect D&T from any unauthorized reliance or claims, and from breach of

the Client's obligation not to distribute D&T's advice, opinion, reports or Deliverables to any third party without D&T's prior written consent, the Client agrees to indemnify and hold harmless D&T and its personnel from all claims, liabilities, and expenses relating to such a breach. However, nothing in this Paragraph 11 shall be construed as limiting or restricting disclosure of every aspect of D&T's tax services, if any, provided under these terms or the engagement letter to which these terms are attached for purposes of §6111(d) of the Internal Revenue Code. The Client and its employees, representatives or agents may disclose the structure and tax aspects of a transaction to any and all persons without limitation of any kind.

c) To the extent that, in connection with this engagement, D&T comes into possession of any proprietary or confidential information of the Client, D&T will not disclose such information to any third party without the Client's consent, except (a) as may be required by law, regulation, judicial or administrative process, or in accordance with applicable professional standards, or in connection with litigation pertaining hereto, or (b) to the extent such information (i) shall have otherwise become publicly available (including, without limitation, any information filed with any governmental agency and available to the public) other than as the result of a disclosure by D&T in breach hereof, (ii) is disclosed by the Client to a third party without substantially the same restrictions as set forth herein, (iii) becomes available to D&T on a nonconfidential basis from a source other than the Client which D&T believes is not prohibited from disclosing such information to D&T by obligation to the Client, (iv) is known by D&T prior to its receipt from the Client without any obligation of confidentiality with respect thereto, or (v) is developed by D&T independently of any disclosures made by the Client to D&T of such information. In addition, the Client acknowledges and agrees that any such information that comes to the attention of D&T in the course of performing this engagement may be considered and used by D&T in the context of responding to its professional obligations as the independent accountants for the Client.

10. Survival and Interpretation. The agreements and undertakings of the Client contained in the engagement letter to which these terms are attached, together with the provisions of Paragraphs 1, 2, 4, 5, 6, 8, 10, 11, 12, 13, 15 and 16 hereof, shall survive the expiration or termination of this engagement. For purposes of these terms, "D&T" shall mean Deloitte & Touche LLP and its subsidiaries; to the extent providing services under the engagement letter to which these terms are attached, Deloitte Touche Tohmatsu, its member firms, and the affiliates of Deloitte & Touche LLP, Deloitte Touche Tohmatsu and its member firms; all of their partners, principals, members, owners, directors, staff and agents; and in all cases any successor or assignee.

11. Assignment. Except as provided below, neither party may assign, transfer or delegate any of its rights or obligations hereunder (including, without limitation, interests or claims relating to this engagement) without the prior written consent of the other party. In addition, D&T shall not assign any interest in the engagement to any other party without the prior written consent of the Client being evidenced by ordinance. D&T may, without the consent of the Client, assign or subcontract its rights and obligations hereunder to (a) any affiliate or related entity or (b) any entity which acquires all or a substantial part of the assets or business of D&T.

12. Entire Agreement, Amendment and Notices. These terms, and the engagement letter to which these terms are attached, including exhibits, constitute the entire agreement between D&T and the Client with respect to this engagement, supersede all other oral and written representations, understandings or agreements relating to this engagement, and may not be amended except by written agreement signed by the parties. However, this engagement letter shall in no way supercede the Professional Contract. In the event of any conflict, ambiguity, or inconsistency between these terms and the engagement letter to which these terms are attached, these terms shall govern and control. All notices hereunder shall be (i) in writing, (ii) delivered to the representatives of the parties at the addresses first set forth above, unless changed by either party by notice to the other party, and (iii) effective upon receipt.

13. Governing Law and Severability. These terms, the engagement letter to which these terms are attached, including exhibits, and all matters relating to this engagement shall be governed by, and construed in accordance with, the laws of the State of Texas (without regard to the choice of law principles thereof and all obligations of the parties created hereunder are performable in Bexar County, Texas.) If any clause or provision of this engagement 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 engagement 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 engagement that is invalid, illegal, or unenforceable, there be added as part of the engagement 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.

CITY OF SAN ANTONIO

GASB STATEMENT NO. 34 IMPLEMENTATION ASSISTANCE AND INDEPENDENT AUDIT SERVICES CONTRACTS

Agenda Item # 31

October 18, 2001

SELECTION PROCESS

Services to be Provided:

- **City's Financial Audits**
- **Federal and State Single Audits**
- **GASB Statement No. 34 Implementation Assistance**
- **Guidance on Tax, Compliance, Other Non-Audit Consultation Matters**
- **Services Required for Bond Offerings**
- **Analysis of New Accounting Standards and Pronouncements**

SELECTION PROCESS

Selection Committee Members

- ⇒ **Finance**
- ⇒ **Office of Internal Review**
- ⇒ **Economic Development**
- ⇒ **Housing and Community Development**
- ⇒ **Community Initiatives**
- ⇒ **Aviation**
- ⇒ **Public Works**

SELECTION PROCESS

Evaluation Criteria

- **Governmental Audit Experience**
- **GASB Statement No. 34 Experience**
- **Single Audit Experience**
- **Cost of Services**
- **Quality of Written Proposal**
- **Quality of Oral Presentation and Interview**
- **Qualifications of Assigned Staff**
- **SBEDA Goals**

SELECTION PROCESS

Evaluation Process

- **Eight Firms Submitted Proposals and Made Oral Presentations to the Selection Committee**
- **National and Local Firms were Grouped and Evaluated Separately to Provide Optimum Level of Experience and Expertise**

SELECTION PROCESS

Evaluation Process (cont'd)

- Step 1 - Selection Committee Evaluated and Scored Written Proposals Submitted by Independent Audit Firms**
- Step 2 - Selection Committee Scored, by Consensus, Oral Presentations**
- Step 3 - Based on the Written and Oral Scores, the Selection Committee, by Consensus Vote, Recommended Firms to Serve as Senior Audit Firm and Co-Audit Firms**

SELECTION PROCESS

Senior Audit Firm Attributes:

- National Presence
- National Resources
- Diverse Technical Experience-Advisory & Assurance Services-Tax-Business Consulting
- Focus on Public Sector
- Proactive, High Level Participation and Experience in GASB Statement No. 34
- National GASB No. 34 Resources in Texas
- SBEDA Goals

SELECTION PROCESS

Co-Audit Firms Attributes:

- **Single Audit Experience**
- **Experience with City Processes**
- **Opportunity for Further Development of Firms**
- **Local Presence**
- **SBEDA Goals**

SELECTION PROCESS

- **August 3, 2001: 31 Requests For Proposal Mailed and Posted on the Web**
- **RFP Published:**
 - **Express-News**
 - **San Antonio Business Journal**
 - **La Prensa**
 - **San Antonio Observer**
 - **Daily Commercial Recorder**
 - **San Antonio Informer**
- **September 7, 2001: Proposals Submitted to City Clerk's Office**

SELECTION PROCESS

- **September 21, 2001 - Selection Committee Evaluation and Scoring of Written Proposals From:**
 - ⇒ **Arthur Anderson LLP**
 - ⇒ **Deloitte and Touche LLP**
 - ⇒ **Garza/Gonzalez and Associates**
 - ⇒ **KPMG LLP**
 - ⇒ **Leal and Carter P.C.**
 - ⇒ **Martinez, Garcia and Company**
 - ⇒ **Padgett & Stratemann and Co. LLP**
 - ⇒ **Robert J. Williams, CPA**

SELECTION PROCESS

- **September 25-26, 2001 - Firms Made Oral Presentations and Selection Committee, By Consensus, Ranked Firms**
- **Deloitte and Touche LLP, Recommended as Senior Audit Firm**
- **Garza/Gonzalez & Associates and Robert J. Williams, CPA, Recommended as Co-Audit Firms**

PROPOSED AUDIT TEAM

| Firm | Classification | Role | Percent |
|------------------------------|--------------------------|-----------------------|----------------|
| Deloitte & Touche | N, R, L | Senior Auditor | 54% |
| Garza/Gonzalez | L, MBE, SBE | Co-Auditors | 39% |
| Robert J. Williams | L, MBE, SBE, AABE | Co-Auditors | 7% |

N = National
R = Regional
L = Local

MBE = Minority Business Enterprise
SBE = Small Business Enterprise
AABE = African American Business Enterprise

FEES FOR SERVICES

Audit Services (with 1,500 Hours of Internal Review Support)*

- Year One-FY 2002 \$270,000
- Year Two-FY 2003 \$278,100
- Year Three-FY 2004 \$286,443
- Years Four and Five to be Negotiated and Approved by City Council

GASB No. 34 Implementation Services

- Not to exceed \$100,000 Over Five Year Contract Term

***25% Increase in Annual Audit Fees with No Internal Review Support**

CITY OF SAN ANTONIO

**STAFF RECOMMENDS APPROVAL
OF THIS ORDINANCE**