

AN ORDINANCE

96458

AUTHORIZING THE EXECUTION OF CONTRACTS AND APPROVING THE FIRMS OF KPMG L.L.P., LEAL AND CARTER, P.C., AND ROBERT J. WILLIAMS, CPA, TO PROVIDE THE CITY INDEPENDENT AUDIT SERVICES FOR FISCAL YEARS 2002, 2003, AND 2004 AT A TOTAL FEE FOR AUDIT SERVICES RANGING FROM \$315,288.00 FOR YEAR ONE, \$315,288.00 FOR YEAR TWO AND \$330,740.00 FOR YEAR THREE WITH 1,500 HOURS OF AUDIT ASSISTANCE PROVIDED BY THE CITY'S OFFICE OF INTERNAL AUDIT TO A MAXIMUM FEE OF \$446,267.00 FOR YEAR ONE, \$446,267.00 FOR YEAR TWO AND \$468,134.00 FOR YEAR THREE WITH ZERO HOURS OF AUDIT ASSISTANCE PROVIDED BY THE CITY'S OFFICE OF INTERNAL AUDIT WITH TWO ONE-YEAR OPTIONS TO EXTEND THE CONTRACT, WITH CITY COUNCIL APPROVAL, FOR FISCAL YEARS 2005 AND 2006.

* * * * *

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 Qualifications to provide independent audit services for fiscal years ending September 30, 2002, 2003, and 2004 with two one-year options to six certified public accounting firms; and

WHEREAS, on August 26, 2002, the City received six responses to the Request for Qualifications that were evaluated by an "Audit Selection Committee," consisting of representatives from City Council District 2 and a staff appointed committee which included representatives from Finance, Office of Internal Audit, Economic Development, Community Initiatives, Aviation and Public Works; and

WHEREAS, the selection process utilized included an evaluation of written responses and a final ranking of each firm; and

WHEREAS, the Audit Selection Committee evaluated and scored the written responses 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 responses; and

WHEREAS, the Audit Selection Committee ranked the firms, by consensus, 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 now recommends an audit team of KPMG LLP, Leal and Carter, P.C., and Robert J. Williams, CPA, to provide the City independent audit services for the fiscal years of 2002, 2003 and 2004 with two one-year options for fiscal years 2005 and 2006; **NOW THEREFORE**:

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

SECTION 1. The audit team of KPMG LLP, Leal and Carter P.C., and Robert J. Williams, CPA, are hereby selected to provide the City of San Antonio with independent audit and related services for the fiscal years of 2002, 2003 and 2004 with two additional one-year options for fiscal years 2005 and 2006. Said firms are to provide services according to the following distribution: KPMG LLP 52%; Leal and Carter, P.C. 38%; and Robert J. Williams, CPA 10%.

SECTION 2. The Director of Finance or his designee is hereby authorized to execute contracts with said firms for a three year period for a total audit fee of \$315,288.00 for year one, \$315,288.00 for year two and \$330,740.00 for year three, with two one-year options for fiscal years 2005 and 2006. Copies of the contracts are attached hereto and incorporated herein as Attachments I, II and III respectively. The parties shall have 60 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/or 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 a request or initiation by the City.

SECTION 4. Funds in the amount of \$315,288 are authorized to be encumbered in fiscal year 2002-2003 in Fund 11-000 (General Fund Non-Departmental) Index Code 419226 (Professional Fees to Outside Auditors), and made payable as indicated below for audit services for fiscal year 2002:

KPMG LLP	\$163,950
Leal and Carter, P.C.	\$119,810
Robert J. Williams, CPA	<u>\$ 31,528</u>
	\$315,288

CSS
09-26-02
Item No. 37

Funding for the fiscal years of 2003 and 2004 and two additional one-year options is contingent upon annual budget appropriations.

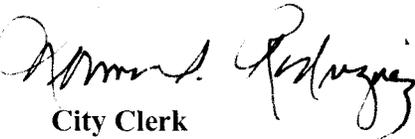
SECTION 5. The financial allocations in the Ordinance are subject to the approval by the Director of Finance, City of San Antonio. The Director, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Index Codes and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 6. This ordinance shall take effect on the tenth day from the date of passage hereof.

PASSED AND APPROVED this 26th day of September, 2002.


M A Y O R
EDWARD D. GARZA

ATTEST:


City Clerk

APPROVED AS TO FORM:


for City Attorney

02 - 36



MEETING OF THE CITY COUNCIL

ALAMODOME
ASSET MANAGEMENT
AVIATION
CITY ATTORNEY
MUNICIPAL COURT
REAL ESTATE (FASSNIDGE)
REAL ESTATE (WOOD)
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
FINANCE - DIRECTOR
FINANCE – ASSESSOR
FINANCE – CONTROLLER
FINANCE – GRANTS
FINANCE – PUBLIC UTILITIES SUPERVISOR
FINANCE- TREASURY
FIRE DEPARTMENT
HOUSING AND COMMUNITY DEVELOPMENT
HUMAN RESOURCES (PERSONNEL)
INFORMATION SERVICES
INTERNAL REVIEW
INTERNATIONAL AFFAIRS
LIBRARY
MANAGEMENT & BUDGET (OFFICE OF) OMB
MAYOR'S OFFICE
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

AGENDA ITEM NUMBER: _____

37
SEP 26 2002

DATE: _____

MOTION: Perez _____

Carpenter
96458

ORDINANCE NUMBER: _____

RESOLUTION NUMBER: _____

ZONING CASE NUMBER: _____

TRAVEL AUTHORIZATION: _____

NAME	ROLL	AYE	NAY
BOBBY PEREZ District 1		✓	
JOHN H. SANDERS District 2		✓	
ANTONIETTE "TONY" MOORHOUSE District 3		✓	
ENRIQUE "KIKE" MARTIN District 4		<u>absent</u>	
DAVID A. GARCIA District 5		✓	
ENRIQUE M. BARRERA District 6		✓	
JULIAN CASTRO District 7		✓	
BONNIE CONNER District 8		<u>absent</u>	
CARROLL W. SCHUBERT District 9		✓	
DAVID CARPENTER District 10		<u>absent</u>	
EDWARD D. GARZA Mayor		✓	

02-36 1

AUTHORIZING THE EXECUTION OF CONTRACTS AND APPROVING THE FIRMS OF KPMG L.L.P., LEAL AND CARTER, P.C., AND ROBERT J. WILLIAMS, CPA, TO PROVIDE THE CITY INDEPENDENT AUDIT SERVICES FOR FISCAL YEARS 2002, 2003, AND 2004 AT A TOTAL FEE FOR AUDIT SERVICES RANGING FROM \$315,288.00 FOR YEAR ONE, \$315,288.00 FOR YEAR TWO AND \$330,740.00 FOR YEAR THREE WITH 1,500 HOURS OF AUDIT ASSISTANCE PROVIDED BY THE CITY'S OFFICE OF INTERNAL AUDIT TO A MAXIMUM FEE OF \$446,267.00 FOR YEAR ONE, \$446,267.00 FOR YEAR TWO AND \$468,134.00 FOR YEAR THREE WITH ZERO HOURS OF AUDIT ASSISTANCE PROVIDED BY THE CITY'S OFFICE OF INTERNAL AUDIT WITH TWO ONE-YEAR OPTIONS TO EXTEND THE CONTRACT, WITH CITY COUNCIL APPROVAL, FOR FISCAL YEARS 2005 AND 2006.

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Funding for the fiscal years of 2003 and 2004 and two additional one-year options is contingent upon annual budget appropriations.

SECTION 5. The financial allocations in the Ordinance are subject to the 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 allocations to specific Index Codes and Fund Numbers as necessary to carry out the purpose of this Ordinance.

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PASSED AND APPROVED this 26th day of September 2002.

M A Y O R

ATTEST:

City Clerk

APPROVED AS TO FORM: _____
City Attorney

CITY OF SAN ANTONIO

**Finance Department
Controller's Office**

RECEIVED
CITY OF SAN ANTONIO
CITY CLERK

2003 JAN 24 PM 4: 00

TO: Yolanda Ledesma, Acting City Clerk
FROM: Susan Rios, CPA, Assistant Controller
COPIES: Milo Nitschke, Director, Finance Department; Lisa Todd, CPA, Acting
Controller; file
SUBJECT: Engagement Letters for Independent Audit Services Contracts

DATE: January 24, 2003

Attached, please find original signed independent audit engagement letters, which should be attached to the original contracts authorized by Ordinance 96458 passed and approved on September 26, 2002. The audit firms of KPMG LLP; Leal and Carter P.C.; and Robert J. Williams, CPA, comprise the City's audit team for fiscal years 2002, 2003, 2004 with options to extend the contracts for fiscal years 2005 and 2006.

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



Susan Rios
Assistant Controller



Mr. Milo Nitschke
Director, Finance Department
City of San Antonio
November 21, 2002
Page 2

The management of the City has responsibility for the financial statements and all representations contained therein. Management also has responsibility for preventing and detecting fraud, for adopting sound accounting policies and establishing and maintaining effective internal control to maintain the reliability of the financial statements and to provide reasonable assurance against the possibility of misstatements that are material to the financial statements.

Our audit is planned and performed to obtain reasonable, but not absolute assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud. Absolute assurance is not attainable because of the nature of audit evidence and the characteristics of fraud. Therefore, there is a risk that material errors, fraud (including fraud that may be an illegal act), and other illegal acts may exist and not be detected by an audit performed in accordance with auditing standards generally accepted in the United States of America. Also, an audit is not designed to detect matters that are immaterial to the financial statements.

To the extent that they come to our attention, we will inform management about any material errors and any instances of fraud or illegal acts. Further, to the extent that they come to our attention, we will inform the City Council about fraud and illegal acts that involve senior management, fraud that in our judgment causes a material misstatement of the financial statements of the City, and illegal acts, unless clearly inconsequential, that have not otherwise been communicated to the City Council. In accordance with *Government Auditing Standards*, we are also required in certain circumstances to report fraud or illegal acts directly to parties outside the auditee.

In planning and performing our audit, we will consider the City's internal control in order to determine the nature, timing and extent of our auditing procedures for the purpose of expressing an opinion on the financial statements and not to provide assurance on internal control. This consideration contributes to the evidence supporting our opinion on the financial statements; however, it does not provide a basis for opining on internal control. The limited purpose of this consideration may not meet the needs of some users who require additional information about internal control. We can provide other services to provide you with additional information on internal control which we would be happy to discuss with you at your convenience.

Management is responsible for identifying and ensuring compliance with laws, regulations, contracts and grants applicable to the City. As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the City's compliance with certain provisions of laws, regulations, contracts and grants. However, our objective is not to provide an opinion on overall compliance with such provisions.

In accordance with *Government Auditing Standards*, we will prepare a written report on our consideration of internal control and tests of compliance made as part of our audit of the financial statements. This report will include any reportable conditions to the extent they come to our attention. Reportable conditions are significant deficiencies in the design or operation of internal control which could adversely affect the City's ability to record, process, summarize and report financial data consistent with the assertions of management in the financial statements under audit.



Mr. Milo Nitschke
Director, Finance Department
City of San Antonio
November 21, 2002
Page 3

OMB Circular A-133 and State of Texas Single Audit Circular

We will also perform audit procedures with respect to the City's major federal and state programs in accordance with the provisions of OMB Circular A-133 and the State of Texas Single Audit Circular. OMB Circular A-133 and the State of Texas Single Audit Circular include specific audit requirements, mainly in the areas of internal control and compliance with laws, regulations, contracts and grants, that exceed those required by *Government Auditing Standards*.

As part of our audit procedures performed in accordance with the provisions of OMB Circular A-133 and the State of Texas Single Audit Circular, we will perform tests to evaluate the effectiveness of the design and operation of internal controls that we consider relevant to preventing or detecting material noncompliance with laws, regulations, contracts and grants applicable to each of the City's major federal or state programs. The tests of internal control performed in accordance with OMB Circular A-133 and the State of Texas Single Audit Circular are less in scope than would be necessary to render an opinion on internal control.

Compliance with laws, regulations, contracts and grants applicable to federal programs is the responsibility of management. We will perform tests of the City's compliance with certain provisions of laws, regulations, contracts and grants we determine to be necessary based on the *OMB Circular A-133 Compliance Supplement (Compliance Supplement)* and the Texas Uniform Grant Management Standards. The procedures outlined in the *Compliance Supplement* are those suggested by each federal agency and do not cover all areas of regulations governing each program. Program reviews by federal agencies may identify additional instances of noncompliance.

As required by OMB Circular A-133 and the State of Texas Single Audit Circular, we will prepare a written report which (1) provides our opinions on the schedules of expenditures of federal and state awards in relation to the City's financial statements taken as a whole, (2) provides our opinion on compliance with laws, regulations, contracts and grant that could have a direct and material effect on a major federal or state program and (3) communicates our consideration of internal control over major federal and state programs.

In addition to the OMB Circular A-133 requirements to maintain internal control and comply with provisions of laws, regulations, contracts and grants applicable to federal programs as discussed above, OMB Circular A-133 also requires the City to prepare a:

- Schedule of expenditures of federal awards;
- Summary schedule of prior audit findings;
- Corrective action plan; and
- Data collection form (Part I).

While we may be separately engaged to assist you in the preparation of these items, preparation is the responsibility of the City.



Mr. Milo Nitschke
Director, Finance Department
City of San Antonio
November 21, 2002
Page 4

Certain provisions of OMB Circular A-133 allow a granting agency to request that a specific program be selected as a major program provided that the federal granting agency is willing to pay the incremental audit cost arising from such selection. The City agrees to notify KPMG of any such request by a granting agency and to work with KPMG to modify the terms of this letter as necessary to accommodate such a request.

Other Engagement Issues

Our reports on internal control and on compliance with laws, regulations, contracts and grants will indicate that they are intended solely for the information and use of the City Council and management of the City and federal and state awarding agencies and pass-through entities and are not intended to be and should not be used by anyone other than these specified parties.

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

Management is responsible for adjusting the financial statements to correct material misstatements and for affirming to us in the representation letter that the effects of any unrecorded misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements being reported upon taken as a whole. Because of the importance of management's representations to the effective performance of our services, the City agrees to release KPMG and its personnel from any claims, liabilities, costs and expenses relating to our services under this letter attributable to any misrepresentations in the representation letter referred to above.

The work papers for this engagement are the property of KPMG LLP. Pursuant to *Government Auditing Standards*, we are required to make certain work papers available to regulatory agencies upon request for their reviews of audit quality and for use by their auditors. In addition, we may be requested to make certain work papers available to regulators pursuant to authority given to it by law or regulation. Access to the requested work papers will be provided under supervision of KPMG personnel. Costs incurred to comply with any such requests to review our workpapers for audit quality will not be reimbursed by the City. To the extent that such workpapers are used by regulators for purposes other than reviews of audit quality and/or to the extent that regulators or grantors require additional procedures beyond the requirements of the Single Audit Act, costs incurred to comply with such requests will be discussed with the City, prior to being billed to you. Furthermore, upon request, we may provide photocopies of selected work papers to regulatory agencies. These regulatory agencies may intend, or decide, to distribute the photocopies or information contained therein to others, including other government agencies.



Mr. Milo Nitschke
 Director, Finance Department
 City of San Antonio
 November 21, 2002
 Page 5

Our fees for audits are based on the amount of time required to perform the agreed scope of work, plus reimbursement for expenses (report reproduction, postage, computer charges, overhead charges, supplies, travel, etc.). This estimate is based on the assumption that workpapers requested by us will be prepared on a timely basis by your personnel and that we will be provided with at least 1,500 hours of direct assistance from internal audit. Should unexpected problems arise which will cause the time to materially exceed our estimate, we will discuss such matters with you and obtain your approval before incurring additional time. Based upon this, except for the additional compliance requirements noted above, we estimate that the total fee for the above described services will be \$315,288, including expenses, of which 52% (\$163,950) will be paid to KPMG LLP, 38% (\$119,810) will be paid to the firm of Leal & Carter, P.C., and 10% (\$31,528) will be paid to the firm of Robert J. Williams, CPA.

In the event KPMG is requested pursuant to subpoena or other legal process to produce its documents relating to this engagement in judicial or administrative proceedings to which KPMG is not a party, the City shall reimburse KPMG at standard billing rates for its professional time and expenses, including reasonable attorney's fees, incurred in responding to such request.

As required by *Government Auditing Standards*, we have attached a copy of KPMG LLP's most recent peer review report.

* * * * *

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

Sincerely,

KPMG LLP

Michael W. O'Brien
 Partner

MWO:bh
 Enclosure

ACCEPTED

City of San Antonio

Authorized Signature

Title

Date

December 16, 1999

To the Partners of KPMG LLP:

We have reviewed the system of quality control for the accounting and auditing practice of KPMG LLP (the "firm") in effect for the year ended March 31, 1999. A system of quality control encompasses the firm's organizational structure and the policies adopted and procedures established to provide it with reasonable assurance of complying with professional standards. The elements of quality control are described in the Statements on Quality Control Standards issued by the American Institute of Certified Public Accountants (the "AICPA"). The design of the system, and compliance with it, are the responsibilities of the firm. In addition, the firm has agreed to comply with the membership requirements of the SEC Practice Section of the AICPA Division for CPA Firms (the "Section"). Our responsibility is to express an opinion on the design of the system, and the firm's compliance with that system and the Section's membership requirements based on our review.

Our review was conducted in accordance with the standards established by the Peer Review Committee of the Section. In performing our review, we obtained an understanding of the system of quality control for the firm's accounting and auditing practice. In addition, we tested compliance with the firm's quality control policies and procedures and with the membership requirements of the Section to the extent we considered appropriate. These tests covered the application of the firm's policies and procedures on selected engagements. We also tested the supervision and control of portions of engagements performed outside the United States. Because our review was based on selective tests, it would not necessarily disclose all weaknesses in the system of quality control or all instances of lack of compliance with it or with the membership requirements of the Section. As is customary in a peer review, we are issuing a letter under this date that sets forth comments relating to certain policies and procedures or compliance with them. These matters were not considered to be of sufficient significance to affect the opinion expressed in this report.

Because there are inherent limitations in the effectiveness of any system of quality control, departures from the system may occur and not be detected. Also, projection of any evaluation of a system of quality control to future periods is subject to the risk that the system of quality control may become inadequate because of changes in conditions; or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the system of quality control for the accounting and auditing practice of KPMG LLP in effect for the year ended March 31, 1999, has been designed to meet the requirements of the quality control standards for an accounting and auditing practice established by the AICPA, and was complied with during the year then ended to provide the firm with reasonable assurance of complying with professional standards. Also, in our opinion, the firm has complied with the membership requirements of the Section in all material respects.

PricewaterhouseCoopers LLP



Robert J. Williams

Certified Public Accountant
P.O. Box 34058
San Antonio, TX 78265-4058
(210) 366-8733
Fax (210) 366-0198

November 21, 2002

PRIVATE

Mr. Milo Nitschke
Director, Finance Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

Dear Milo:

This letter will confirm Robert J. Williams, CPA's (RJW) understanding of our engagement to report upon our audit of the financial statements of the City of San Antonio, Texas (the City) as of and for the year ended September 30, 2002, and the nature and scope of the services we will provide to enable the City to comply with the Single Audit requirements of OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations* (OMB Circular A-133).

KPMG, Leal & Carter, P.C. and Robert J. Williams, CPA (collectively "CPA Contractors") are being engaged by the City in accordance with the audit services contract dated November 21, 2002 to report upon the financial statements and schedules of federal and state awards as described in this letter. As required by the audit services contract, each CPA contractor will execute an annual engagement letter with the City establishing the scope of the CPA Contractor's 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 audit that each CPA contractor will be paid, consistent with the provisions contained in Article VII, subsections 7.1 through 7.4 of the Audit Services Contract. This is RJW's annual engagement letter to confirm our understanding of the engagement.

Financial Statement Audit

We will conduct the audit of the financial statements in accordance with auditing standards generally accepted in the United States of America and the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. The objective of an audit carried out in accordance with such standards is the expression of an opinion as to whether the presentation of the financial statements, taken as a whole, conforms with accounting principles generally accepted in the United States of America. In conducting the audit, we will perform tests of the accounting records and such other procedures as we consider necessary in the circumstances to provide a reasonable basis for our opinion on the financial statements. We also will assess the accounting principles used and significant estimates made by management, as well as evaluate the overall financial statement presentation.

Our report will be addressed to the City Council of the City. We cannot provide assurance that an unqualified opinion will be rendered. Circumstances may arise in which it is necessary for us to modify our report or withdraw from the engagement. In such circumstances, our findings or reasons for withdrawal will be communicated to the City Council.

Mr. Milo Nitschke
Director, Finance Department
City of San Antonio
November 21, 2002
Page 2

Should the City wish to include these financial statements in a document offering securities and request that we agree to include our report on these financial statements in the offering document, we would consider agreeing to the inclusion of our report at that time.

The management of the City has responsibility for the financial statements and all representations contained therein. Management also has responsibility for preventing and detecting fraud, for adopting sound accounting policies and establishing and maintaining effective internal control to maintain the reliability of the financial statements and to provide reasonable assurance against the possibility of misstatements that are material to the financial statements.

Our audit is planned and performed to obtain reasonable, but not absolute assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud. Absolute assurance is not attainable because of the nature of audit evidence and the characteristics of fraud. Therefore, there is a risk that material errors, fraud (including fraud that may be an illegal act), and other illegal acts may exist and not be detected by an audit performed in accordance with auditing standards generally accepted in the United States of America. Also, an audit is not designed to detect matters that are immaterial to the financial statements.

To the extent that they come to our attention, we will inform management about any material errors and any instances of fraud or illegal acts. Further, to the extent that they come to our attention, we will inform the City Council about fraud and illegal acts that involve senior management, fraud that in our judgment causes a material misstatement of the financial statements of the City, and illegal acts, unless clearly inconsequential, that have not otherwise been communicated to the City Council. In accordance with *Government Auditing Standards*, we are also required in certain circumstances to report fraud or illegal acts directly to parties outside the auditee.

In planning and performing our audit, we will consider the City's internal control in order to determine the nature, timing and extent of our auditing procedures for the purpose of expressing an opinion on the financial statements and not to provide assurance on internal control. This consideration contributes to the evidence supporting our opinion on the financial statements; however, it does not provide a basis for opining on internal control. The limited purpose of this consideration may not meet the needs of some users who require additional information about internal control. We can provide other services to provide you with additional information on internal control, which we would be happy to discuss with you at your convenience.

Management is responsible for identifying and ensuring compliance with laws, regulations, contracts and grants applicable to the City. As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the City's compliance with certain provisions of laws, regulations, contracts and grants. However, our objective is not to provide an opinion on overall compliance with such provisions.

In accordance with *Government Auditing Standards*, we will prepare a written report on our consideration of internal control and tests of compliance made as part of our audit of the financial statements. This report will include any reportable conditions to the extent they come to our attention. Reportable conditions are significant deficiencies in the design or operation of internal control that could adversely affect the City's ability to record, process, summarize and report financial data consistent with the assertions of management in the financial statements under audit.

Mr. Milo Nitschke
Director, Finance Department
City of San Antonio
November 21, 2002
Page 3

OMB Circular A-133 and State of Texas Single Audit Circular

We will also perform audit procedures with respect to the City's major federal and state programs in accordance with the provisions of OMB Circular A-133 and the State of Texas Single Audit Circular. OMB Circular A-133 and the State of Texas Single Audit Circular include specific audit requirements, mainly in the areas of internal control and compliance with laws, regulations, contracts and grants, that exceed those required by *Government Auditing Standards*.

As part of our audit procedures performed in accordance with the provisions of OMB Circular A-133 and the State of Texas Single Audit Circular, we will perform tests to evaluate the effectiveness of the design and operation of internal controls that we consider relevant to preventing or detecting material noncompliance with laws, regulations, contracts and grants applicable to each of the City's major federal or state programs. The tests of internal control performed in accordance with OMB Circular A-133 and the State of Texas Single Audit Circular are less in scope than would be necessary to render an opinion on internal control.

Compliance with laws, regulations, contracts and grants applicable to federal programs is the responsibility of management. We will perform tests of the City's compliance with certain provisions of laws, regulations, contracts and grants we determine to be necessary based on the *OMB Circular A-133 Compliance Supplement (Compliance Supplement)* and the Texas Uniform Grant Management Standards. The procedures outlined in the *Compliance Supplement* are those suggested by each federal agency and do not cover all areas of regulations governing each program. Program reviews by federal agencies may identify additional instances of noncompliance.

As required by OMB Circular A-133 and the State of Texas Single Audit Circular, we will prepare a written report which (1) provides our opinions on the schedules of expenditures of federal and state awards in relation to the City's financial statements taken as a whole, (2) provides our opinion on compliance with laws, regulations, contracts and grant that could have a direct and material effect on a major federal or state program and (3) communicates our consideration of internal control over major federal and state programs.

In addition to the OMB Circular A-133 requirements to maintain internal control and comply with provisions of laws, regulations, contracts and grants applicable to federal programs as discussed above, OMB Circular A-133 also requires the City to prepare a:

- Schedule of expenditures of federal awards;
- Summary schedule of prior audit findings;
- Corrective action plan; and
- Data collection form (Part I).

While we may be separately engaged to assist you in the preparation of these items, preparation is the responsibility of the City.

Mr. Milo Nitschke
Director, Finance Department
City of San Antonio
November 21, 2002
Page 4

Certain provisions of OMB Circular A-133 allow a granting agency to request that a specific program be selected as a major program provided that the federal granting agency is willing to pay the incremental audit cost arising from such selection. The City agrees to notify RJW of any such request by a granting agency and to work with RJW to modify the terms of this letter as necessary to accommodate such a request.

Other Engagement Issues

Our reports on internal control and on compliance with laws, regulations, contracts and grants will indicate that they are intended solely for the information and use of the City Council and management of the City and federal and state awarding agencies and pass-through entities and are not intended to be and should not be used by anyone other than these specified parties.

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

Management is responsible for adjusting the financial statements to correct material misstatements and for affirming to us in the representation letter that the effects of any unrecorded misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements being reported upon taken as a whole. Because of the importance of management's representations to the effective performance of our services, the City agrees to release RJW and its personnel from any claims, liabilities, costs and expenses relating to our services under this letter attributable to any misrepresentations in the representation letter referred to above.

The work papers for this engagement are the property of RJW. Pursuant to *Government Auditing Standards*, we are required to make certain work papers available to regulatory agencies upon request for their reviews of audit quality and for use by their auditors. In addition, we may be requested to make certain work papers available to regulators pursuant to authority given to it by law or regulation. Access to the requested work papers will be provided under supervision of RJW personnel. Costs incurred to comply with any such requests to review our workpapers for audit quality will not be reimbursed by the City. To the extent that such workpapers are used by regulators for purposes other than reviews of audit quality and/or to the extent that regulators or grantors require additional procedures beyond the requirements of the Single Audit Act, costs incurred to comply with such requests will be discussed with the City, prior to being billed to you. Furthermore, upon request, we may provide photocopies of selected work papers to regulatory agencies. These regulatory agencies may intend, or decide, to distribute the photocopies or information contained therein to others, including other government agencies.

Mr. Milo Nitschke
Director, Finance Department
City of San Antonio
November 21, 2002
Page 5

Our fees for audits are based on the amount of time required to perform the agreed scope of work, plus reimbursement for expenses (report reproduction, postage, computer charges, overhead charges, supplies, travel, etc.). This estimate is based on the assumption that workpapers requested by us will be prepared on a timely basis by your personnel and that we will be provided with at least 1,500 hours of direct assistance from internal audit. Should unexpected problems arise which will cause the time to materially exceed our estimate, we will discuss such matters with you and obtain your approval before incurring additional time. Based upon this, except for the additional compliance requirements noted above, we estimate that the total fee for the above described services will be \$315,288, including expenses, of which 52% (\$163,950) will be paid to KPMG LLP, 38% (\$119,810) will be paid to the firm of Leal & Carter, P.C., and 10% (\$31,528) will be paid to the firm of Robert J. Williams, CPA.

In the event RJW is requested pursuant to subpoena or other legal process to produce its documents relating to this engagement in judicial or administrative proceedings to which RJW is not a party, the City shall reimburse RJW at standard billing rates for its professional time and expenses, including reasonable attorney's fees, incurred in responding to such request.

As required by *Government Auditing Standards*, we have attached a copy of RJW's most recent peer review report.

* * * * *

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

Sincerely,

Robert J. Williams, CPA

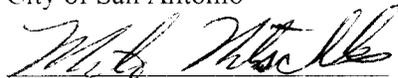


Robert J Williams
Principal

RJW:ccw
Enclosure

ACCEPTED

City of San Antonio



Authorized Signature

Director, Finance Department

Title

1/13/03

Date

Peer Review Program

American Institute of Certified Public Accountants

Administered by the

Texas Society of CPAs

FINAL ACCEPTANCE LETTER

January 28, 2000

Robert J. Williams, CPA
Robert J. Williams
1100 NW Loop 410 # 700
San Antonio, TX 78213-2269

Dear Mr. Williams:

It is my pleasure to notify you that on January 24, 2000 the Texas Society of CPAs 1999-00 Peer Review Committee accepted the report on the most recent peer review of your firm. The due date for your next review is May 31, 2002. This is the date by which all review documents should be completed and submitted to the administering entity.

As you know, the reviewer's opinion was unmodified. The Committee asked me to convey its congratulations to the firm.

Sincerely,



Jerry L. Cross, CPA
Director,
Peer Review

cc: Thomas Allen Akin, CPA

Firm Number: 10108962

Review Number: 133546

LEAL & CARTER, P.C.
CERTIFIED PUBLIC ACCOUNTANTS

FRANK J. LEAL, C.P.A.
ROBERTO CARTER, C.P.A.

ROBERT V. HERRERA

11122 WURZBACH RD. / SUITE 200
SAN ANTONIO, TEXAS 78230-2573
TELEPHONE: (210) 696-6206
FAX: (210) 696-6209

January 10, 2003

PRIVATE

Mr. Milo Nitschke
Director, Finance Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

Dear Milo:

This letter will confirm Leal & Carter, P.C.'s (Leal & Carter) understanding of our engagement to report upon our audit of the financial statements of the City of San Antonio, Texas (the City) as of and for the year ended September 30, 2002, and the nature and scope of the services we will provide to enable the City to comply with the Single Audit requirements of OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations* (OMB Circular A-133).

Leal & Carter, P.C. is being engaged by the City in accordance with the audit services contract dated November 21, 2002 to report upon the financial statements and schedules of federal and state awards as described in this letter. As required by the audit services contract, we will execute an annual engagement letter with the City establishing the scope of our responsibility for each year's audit, the allocation of work to be performed as part of each audit, and the compensation for such audit that we will be paid, consistent with the provisions contained in Article VII, subsections 7.1 through 7.4 of the Audit Services Contract. This is our annual engagement letter to confirm our understanding of the engagement.

Financial Statement Audit

We will conduct the audit of the financial statements in accordance with auditing standards generally accepted in the United States of America and the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. The objective of an audit carried out in accordance with such standards is the expression of an opinion as to whether the presentation of the financial statements, taken as a whole, conforms with accounting principles generally accepted in the United States of America. In conducting the audit, we will perform tests of the accounting records and such other procedures as we consider necessary in the circumstances to provide a reasonable basis for our opinion on the financial statements. We also will assess the accounting principles used and significant estimates made by management, as well as evaluate the overall financial statement presentation.

Mr. Milo Nitschke
Director, Finance Department
City of San Antonio
November 21, 2002
Page 2

Our report will be addressed to the City Council of the City. We can not provide assurance that an unqualified opinion will be rendered. Circumstances may arise in which it is necessary for us to modify our report or withdraw from the engagement. In such circumstances, our findings or reasons for withdrawal will be communicated to the City Council.

Should the City wish to include these financial statements in a document offering securities and request that we agree to include our report on these financial statements in the offering document, we would consider agreeing to the inclusion of our report at that time.

The management of the City has responsibility for the financial statements and all representations contained therein. Management also has responsibility for preventing and detecting fraud, for adopting sound accounting policies and establishing and maintaining effective internal control to maintain the reliability of the financial statements and to provide reasonable assurance against the possibility of misstatements that are material to the financial statements.

Our audit is planned and performed to obtain reasonable, but not absolute assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud. Absolute assurance is not attainable because of the nature of audit evidence and the characteristics of fraud. Therefore, there is a risk that material errors, fraud (including fraud that may be an illegal act), and other illegal acts may exist and not be detected by an audit performed in accordance with auditing standards generally accepted in the United States of America. Also, an audit is not designed to detect matters that are immaterial to the financial statements.

To the extent that they come to our attention, we will inform management about any material errors and any instances of fraud or illegal acts. Further, to the extent that they come to our attention, we will inform the City Council about fraud and illegal acts that involve senior management, fraud that in our judgment causes a material misstatement of the financial statements of the City, and illegal acts, unless clearly inconsequential, that have not otherwise been communicated to the City Council. In accordance with *Government Auditing Standards*, we are also required in certain circumstances to report fraud or illegal acts directly to parties outside the auditee.

In planning and performing our audit, we will consider the City's internal control in order to determine the nature, timing and extent of our auditing procedures for the purpose of expressing an opinion on the financial statements and not to provide assurance on internal control. This consideration contributes to the evidence supporting our opinion on the financial statements; however, it does not provide a basis for opining on internal control. The limited purpose of this consideration may not meet the needs of some users who require additional information about internal control. We can provide other services to provide you with additional information on internal control which we would be happy to discuss with you at your convenience.

Mr. Milo Nitschke
Director, Finance Department
City of San Antonio
November 21, 2002
Page 3

Management is responsible for identifying and ensuring compliance with laws, regulations, contracts and grants applicable to the City. As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the City's compliance with certain provisions of laws, regulations, contracts and grants. However, our objective is not to provide an opinion on overall compliance with such provisions.

In accordance with *Government Auditing Standards*, we will prepare a written report on our consideration of internal control and tests of compliance made as part of our audit of the financial statements. This report will include any reportable conditions to the extent they come to our attention. Reportable conditions are significant deficiencies in the design or operation of internal control which could adversely affect the City's ability to record, process, summarize and report financial data consistent with the assertions of management in the financial statements under audit.

OMB Circular A-133 and State of Texas Single Audit Circular

We will also perform audit procedures with respect to the City's major federal and state programs in accordance with the provisions of OMB Circular A-133 and the State of Texas Single Audit Circular. OMB Circular A-133 and the State of Texas Single Audit Circular include specific audit requirements, mainly in the areas of internal control and compliance with laws, regulations, contracts and grants, that exceed those required by *Government Auditing Standards*.

As part of our audit procedures performed in accordance with the provisions of OMB Circular A-133 and the State of Texas Single Audit Circular, we will perform tests to evaluate the effectiveness of the design and operation of internal controls that we consider relevant to preventing or detecting material noncompliance with laws, regulations, contracts and grants applicable to each of the City's major federal or state programs. The tests of internal control performed in accordance with OMB Circular A-133 and the State of Texas Single Audit Circular are less in scope than would be necessary to render an opinion on internal control.

Compliance with laws, regulations, contracts and grants applicable to federal programs is the responsibility of management. We will perform tests of the City's compliance with certain provisions of laws, regulations, contracts and grants we determine to be necessary based on the *OMB Circular A-133 Compliance Supplement (Compliance Supplement)* and the Texas Uniform Grant Management Standards. The procedures outlined in the *Compliance Supplement* are those suggested by each federal agency and do not cover all areas of regulations governing each program. Program reviews by federal agencies may identify additional instances of noncompliance.

As required by OMB Circular A-133 and the State of Texas Single Audit Circular, we will prepare a written report which (1) provides our opinions on the schedules of expenditures of federal and state awards in relation to the City's financial statements taken as a whole, (2) provides our opinion on compliance with laws, regulations, contracts and grant that could have a direct and material effect on a major federal or state program and (3) communicates our consideration of internal control over major federal and state programs.

Mr. Milo Nitschke
Director, Finance Department
City of San Antonio
November 21, 2002
Page 4

In addition to the OMB Circular A-133 requirements to maintain internal control and comply with provisions of laws, regulations, contracts and grants applicable to federal programs as discussed above, OMB Circular A-133 also requires the City to prepare a:

- Schedule of expenditures of federal awards;
- Summary schedule of prior audit findings;
- Corrective action plan; and
- Data collection form (Part I).

While we may be separately engaged to assist you in the preparation of these items, preparation is the responsibility of the City.

Certain provisions of OMB Circular A-133 allow a granting agency to request that a specific program be selected as a major program provided that the federal granting agency is willing to pay the incremental audit cost arising from such selection. The City agrees to notify Leal & Carter of any such request by a granting agency and to work with Leal & Carter to modify the terms of this letter as necessary to accommodate such a request.

Other Engagement Issues

Our reports on internal control and on compliance with laws, regulations, contracts and grants will indicate that they are intended solely for the information and use of the City Council and management of the City and federal and state awarding agencies and pass-through entities and are not intended to be and should not be used by anyone other than these specified parties.

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

Management is responsible for adjusting the financial statements to correct material misstatements and for affirming to us in the representation letter that the effects of any unrecorded misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements being reported upon taken as a whole. Because of the importance of management's representations to the effective performance of our services, the City agrees to release Leal & Carter, P.C. and its personnel from any claims, liabilities, costs and expenses relating to our services under this letter attributable to any misrepresentations in the representation letter referred to above.

Mr. Milo Nitschke
Director, Finance Department
City of San Antonio
November 21, 2002
Page 5

The work papers for this engagement are the property of Leal & Carter, P.C. Pursuant to *Government Auditing Standards*, we are required to make certain work papers available to regulatory agencies upon request for their reviews of audit quality and for use by their auditors. In addition, we may be requested to make certain work papers available to regulators pursuant to authority given to it by law or regulation. Access to the requested work papers will be provided under supervision of Leal & Carter personnel. Costs incurred to comply with any such requests to review our workpapers for audit quality will not be reimbursed by the City. To the extent that such workpapers are used by regulators for purposes other than reviews of audit quality and/or to the extent that regulators or grantors require additional procedures beyond the requirements of the Single Audit Act, costs incurred to comply with such requests will be discussed with the City, prior to being billed to you. Furthermore, upon request, we may provide photocopies of selected work papers to regulatory agencies. These regulatory agencies may intend, or decide, to distribute the photocopies or information contained therein to others, including other government agencies.

Our fees for audits are based on the amount of time required to perform the agreed scope of work, plus reimbursement for expenses (report reproduction, postage, computer charges, overhead charges, supplies, travel, etc.). This estimate is based on the assumption that workpapers requested by us will be prepared on a timely basis by your personnel and that we will be provided with at least 1,500 hours of direct assistance from internal audit. Should unexpected problems arise which will cause the time to materially exceed our estimate, we will discuss such matters with you and obtain your approval before incurring additional time. Based upon this, except for the additional compliance requirements noted above, we estimate that our fee for the above described services will be \$119,810, including expenses.

In the event Leal & Carter is requested pursuant to subpoena or other legal process to produce its documents relating to this engagement in judicial or administrative proceedings to which Leal & Carter is not a party, the City shall reimburse Leal & Carter at standard billing rates for its professional time and expenses, including reasonable attorney's fees, incurred in responding to such request.

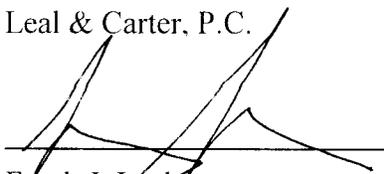
As required by *Government Auditing Standards*, we have attached a copy of Leal & Carter, P.C.'s most recent peer review report.

* * * * *

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

Sincerely,

Leal & Carter, P.C.



Frank J. Leal
Managing Director

Mr. Milo Nitschke
Director, Finance Department
City of San Antonio
November 21, 2002
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ACCEPTED

City of San Antonio

Milo Nitschke

Authorized Signature

Director, Finance Department

Title

1/13/03

Date

KEN ROGERS & ASSOCIATES, LTD.

CERTIFIED PUBLIC ACCOUNTANTS

A LIMITED LIABILITY COMPANY

1329 N. University Drive, Nacogdoches, Texas 75961
936-564-8186 Fax: 936-564-3811 Email: kra@netdot.com

Ken Rogers, CPA (Retired)
Gary Johnson, CPA
Michael Halls, CPA
Terre McLemore, CPA
Kenneth Rodrigues, CPA
Carla Foshee, CPA

September 7, 2000

Leal & Carter, P.C.

We have reviewed the system of quality control for the auditing practice of Leal & Carter, P.C. (the firm) in effect for the year ended March 31, 2000. A system of quality control encompasses the firm's organizational structure and the policies adopted and procedures established to provide it with reasonable assurance of conforming with professional standards. The elements of quality control are described in the Statements on Quality Control Standards issued by the American Institute of Certified Public Accountants (AICPA). The design of the system and compliance with it are the responsibility of the firm. Our responsibility is to express an opinion on the design of the system, and the firm's compliance with the system based on our review.

Our review was conducted in accordance with standards established by the Peer Review Board of the AICPA. In performing our review, we obtained an understanding of the system of quality control for the firm's auditing practice. In addition, we tested compliance with the firm's quality control policies and procedures to the extent we considered appropriate. These tests covered the application of the firm's policies and procedures on selected engagements. Because our review was based on selective tests, it would not necessarily disclose all weaknesses in the system of quality control or all instances of lack of compliance with it.

Because there are inherent limitations in the effectiveness of any system of quality control, departures from the system may occur and not be detected. Also, projection of any evaluation of a system of quality control to future periods is subject to the risk that the system of quality control may become inadequate because of changes in conditions, or because the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the system of quality control for the auditing practice of Leal & Carter, P.C. in effect for the year ended March 31, 2000, has been designed to meet the requirements of the quality control standards for an auditing practice established by the AICPA and was complied with during the year then ended to provide the firm with reasonable assurance of conforming with professional standards.

Ken Rogers & Associates, Ltd.

KEN ROGERS & ASSOCIATES, LTD.

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. 96458 passed and approved on September 25, 2002,~~ and **KPMG LLP**, acting by and through its engagement partner, Michael O'Brien (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 three year period to include the required audits for the fiscal years ending September 30, 2002, 2003 and 2004, with two one-year options to extend Contract, with City Council approval, for fiscal years 2005 and 2006;

WHEREAS, the **CITY** will execute Contracts containing substantially 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 **KPMG LLP**.
- 1.2 For purposes of this Contract, the term "**CPA Contractors**" as used herein shall refer to **KPMG LLP; LEAL AND CARTER, P.C.; 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 **KPMG 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**, **KPMG 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. **KPMG 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. **CPA Contractors** are to also perform auditing procedures in accordance with the Single Audit Act Amendments of 1996 and related OMB Circular A-133 and the State of Texas Single Audit Circular. **CONTRACTOR** agrees to meet with the other **CPA Contractors** selected by **CITY**, to agree with such other **CPA Contractors**, on a cooperative audit plan 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 Government Auditing Standards and generally accepted auditing standards, which will include a review of the system of internal controls and tests of transactions to the extent necessary, as determined by **CPA Contractors**. 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 Fire and Police 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 Statement No. 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, 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 basic 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 financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall 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 General Accounting Office, 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. In addition, this Contract is based on the number of major funds to be presented in the fiscal year 2002 CAFR and any substantial increase in major funds to be presented in future CAFRs may be negotiated as to cost for additional audit work and is to be mutually agreed to by **CONTRACTOR** and **CITY** in accordance with Article XVIII. **CITY** agrees that a complete set of basic financial statements along with required supplementary information (RSI) 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 basic financial statements and schedules as required by and in accordance with all applicable GASB Statements 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 financial statements as required and in accordance with all applicable GASB Statements 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 10.6, that **CONTRACTOR** is unable to issue an opinion.

IV. CONTINGENT ADDITIONAL SERVICES

- 4.1 **CONTRACTOR** acknowledges that the services listed below were identified in the Request for Qualifications 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 **KPMG LLP** as the designated coordinating entity at its respective address provided herein. Within said request, the Director of Finance shall state the scope of services to be provided; 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. **KPMG LLP**, as 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 a **CPA Contractor(s)** to provide said contingent additional services, the request for the provision of contingent additional services shall be forwarded directly to that designated **CPA Contractor(s)**.

4.3 The **CPA Contractor(s)** selected agree to provide the following services at the request of the **CITY** in accordance with Section 3.26 of the GAO Amendment No. 3 and any other applicable standards:

4.3.1 Providing advisory 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 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.

4.3.5 In the event the **CITY** requests contingent additional services which, after review by the **CONTRACTOR** or **CPA Contractor(s)**, are determined to impair independence or be in conflict with applicable standards, the **CONTRACTOR** or **CPA Contractor(s)** is required to notify the Director of Finance or his designee, in writing, as noted in Article XXII, within ten (10) business days of receipt of said request. This written notice is to include a detailed description of the impairment or conflict.

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 Single Audit Act Amendments of 1996, the OMB Circular A-133 and 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 commencement of work through completion of the audits of the CITY'S records and accounts for the fiscal years ending September 30, 2002, 2003 and 2004. 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 Article IV, the commencement and termination dates shall be established in the written request from the Director of Finance and as agreed to by the **CONTRACTOR** or **CPA Contractors** selected to perform the work.
- 6.3 This Contract may be renewed and extended for two (2) additional one (1) year periods, under the same terms and conditions, save and except compensation and fees and scope of services. This option to renew and extend shall be at the CITY's sole discretion. Any decision to renew this contract for either such period shall be evidenced by a writing establishing the new term and the compensation and fees for that period, signed by both parties and approved by City Council, as evidenced by passage of an ordinance.

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 audit services provided for in Article III for fiscal year 2002 shall not exceed the amount of \$315,288; for fiscal year 2003 shall not exceed the amount of \$315,288; and for fiscal year 2004 shall not exceed the amount of \$330,740. 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 Audit will provide 1,500 hours of assistance to the annual audit process.
- 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 under this Contract for the audit of fiscal year 2002 shall not exceed \$315,288, it is understood that this sum will be paid individually as follows:

		<u>Audit Participation</u>
KPMG LLP	\$163,950	(52%)
LEAL & CARTER, P.C.	\$119,810	(38%)
ROBERT J. WILLIAMS, CPA	\$ 31,528	(10%)

- 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 under this Contract for the audit of fiscal year 2003 shall not exceed \$315,288, it is understood that this sum will be paid individually as follows:

		<u>Audit Participation</u>
KPMG LLP	\$160,798	(51%)
LEAL & CARTER, P.C.	\$122,962	(39%)
ROBERT J. WILLIAMS, CPA	\$ 31,528	(10%)

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 under this Contract for the audit of fiscal year 2004 shall not exceed \$330,740, it is understood that this sum will be paid individually as follows:

		<u>Audit Participation</u>
KPMG LLP	\$165,370	(50%)
LEAL & CARTER, P.C.	\$132,296	(40%)
ROBERT J. WILLIAMS, CPA	\$ 33,074	(10%)

7.5 In the event that the **CITY'S** Office of Internal Audit is unable to provide 1,500 hours of assistance, on which the above fees are based, the total amounts to be paid to the **CPA Contractors** collectively, shall be as follows based on the number of internal audit hours provided, and shall be paid to each **CPA Contractor** based on the pro-rata share of audit participation by each **CPA CONTRACTOR** as identified in subsections 7.2 through 7.4:

<u>Internal Audit Hours</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
-0- hours	\$446,267	\$446,267	\$468,134
500 hours	\$402,607	\$402,607	\$422,336
750 hours	\$380,778	\$380,778	\$399,437
1000 hours	\$358,948	\$358,948	\$376,538
1250 hours	\$337,118	\$337,118	\$353,639
1500 hours	\$315,288	\$315,288	\$330,740

7.6 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.

7.7 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.

7.8 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.

- 7.9 It is further understood and agreed by the parties hereto that the total fees for the provision of services in Article III for the audit of fiscal years 2005 and 2006 shall be negotiated, upon the CITY's decision to renew this contract for said respective additional period(s), and shall be subject to the requirement established at subsection 6.3.
- 7.10 Payments for contingent additional services provided in accordance with Article IV, and payments for any costs to be reimbursed by CITY in accordance with Article V, will be based on fees negotiated on an individual engagement basis. **KPMG LLP; LEAL AND CARTER, P.C.**; 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 negotiated fee, shall pay the amount specified due on such statement to the appropriate **CPA Contractor**.

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 and 2004 audits, herein required, and 2005 and 2006 audits, if either of the two one-year options are exercised, 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 written 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 and be executed in accordance with Article XVIII. 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 subsection 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 be executed in accordance with Article XVIII. 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** certifies and warrants that neither **CONTRACTOR** nor any of its agents, representatives or employees has paid or offered to pay any bribe, kickback or similar payment or other consideration to be selected for the award of this contract or to influence the selection of its proposal.
- 13.2 **CONTRACTOR** certifies and warrants that after reasonable investigation to the best of its knowledge, no person which will in any way either directly participate in or directly supervise any agent, representative or employee who directly participates in the performance of the obligations hereunder has or will have any conflict of interest, direct or indirect, with **CITY**. For purposes of this subsection, "conflict of interest" shall mean that

the entity or person has an interest that is materially and directly adverse to the interest of the **CITY** other than the vendor/customer relationship existing pursuant to this contract.

- 13.3 **CONTRACTOR** acknowledges that it is informed that the City of San Antonio City Charter and its Ethics Code prohibit a City officer or employee, from having a financial interest in any contract with the **CITY** or any **CITY** agency, such as **CITY**-owned utilities. A City “employee” is any employee of the City who is required to file a financial disclosure statement pursuant to Section 1(a) of Part G (Financial Disclosure Report). A City “officer” includes the Mayor or any Council member; a Municipal Court Judge or Magistrate; or a member of any board or commission which is more than advisory in nature. The term does not include members of the board of another governmental entity even if some or all of these members are appointed by the City. An officer or employee has a “prohibited financial interest” in a contract with the **CITY** or in the sale to the **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.

Pursuant to the subsection above, **CONTRACTOR** warrants and certifies, and this contract is made in reliance thereof, that it, its officers, employees and agents are neither officers nor employees of **CITY**. **CONTRACTOR** further warrants and certifies that it has tendered to the **CITY** a Discretionary Contacts Disclosure Statement in compliance with the **CITY**'s Ethics Code.

- 13.4 **CONTRACTOR** acknowledges that from time to time **CITY** releases Request for Proposals or other solicitations. **CONTRACTOR** agrees that to the best of the **CONTRACTOR**'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.
- 13.5 In the event that **CONTRACTOR** is involved in any other project or engagement with the **CITY**, **CONTRACTOR** shall confirm, in writing, that such work does not jeopardize **CONTRACTOR**'S independence in performing the work specified in this Contract.
- 13.6 **CONTRACTOR** warrants and certifies and this contract is made in reliance thereon, that it has tendered to **CITY** and accurate Litigation Disclosure Statement.

XIV. COMPLIANCE

- 14.1 **CONTRACTOR** shall comply with the applicable independence standards promulgated by the General Accounting Office (GAO), 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 General Accounting Office and 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 the exception of the professional liability cover, coverage shall be 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>
<u>Workers' Compensation and Employer's Liability</u>	
Workers' Compensation	Statutory
Employer's Liability	\$1,000,000/\$1,000,000/\$1,000,000
<u>Professional Liability</u>	
Professional Liability (Claims made from)	\$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.

Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of City.

- 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 for personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **CONTRACTOR'S** activities 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 liability resulting from the negligence of **CITY**, its officers or employees in instances where such negligence causes personal injury, death or property damage. **IN THE EVENT 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.

CONTRACTOR shall advise **CITY** in writing within 24 hours of any claim or demand against the **CITY** or **CONTRACTOR** known to **CONTRACTOR** related to or arising out of **CONTRACTOR'S** activities under this contract.

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 this Contract, including the respective Engagement Letter executed pursuant to it, constitutes the entire agreement of the parties hereto with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. It is also 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, the Engagement Letters 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** and 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. 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.

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, with the exceptions as stated in Section 10.4 and 10.5.

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

KPMG LLP
112 East Pecan, Suite 2400
San Antonio, Texas 78205-1585

LEAL & CARTER, P.C.
11122 Wurzbach Road, #200
San Antonio, Texas 78230-2573

ROBERT J. WILLIAMS, CPA
P. O. Box 34058
San Antonio, Texas 78265-4058

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.

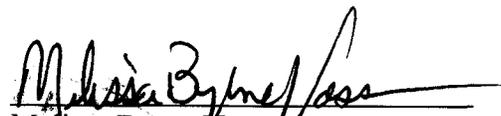
XXVII. CAPTIONS

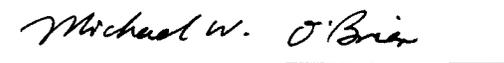
27.1 The captions contained in this Contract are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Contract.

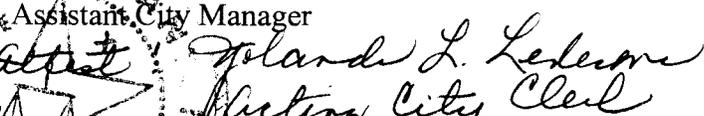
EXECUTED and AGREED to this the 21 day of November, 2002

**CITY:
CITY OF SAN ANTONIO**

KPMG LLP

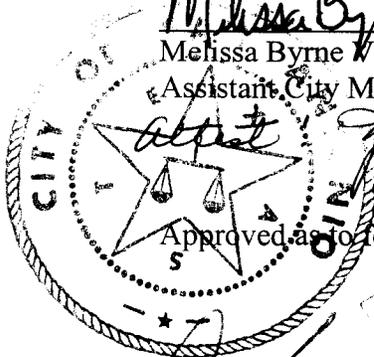

Melissa Byrne Wosrber
Assistant City Manager


Michael O'Brien, Engagement Partner


Yolanda L. Ledezone
Acting City Clerk

Approved as to form:


Andrew Martin
City Attorney



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. _____ passed and approved on September 26, 2002, and **LEAL & CARTER**, acting by and through its engagement partner, _____ 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 a selection process and chosen three entities (collectively referred to as "**CPA Contractors**") to collectively provide the services described herein for a three year period to include the required audits for the fiscal years ending September 30, 2002, 2003 and 2004, with two one-year options for fiscal 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 **KPMG**.
- 1.2 For purposes of this Contract, the term "**CPA Contractors**" as used herein shall refer to **KPMG LLP, LEAL AND CARTER, P.C., 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 **KPMG 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**, **KPMG 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. **KPMG 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 financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall 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 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. In addition, this Contract is based on the number of funds to be presented in the fiscal year 2002 CAFR and any substantial increase in funds to presented in future CAFRs will be negotiated as to cost for additional audit work and is to be mutually agreed to by **CONTRACTOR** and **CITY**. **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 as required and in accordance with all applicable GASB Statements 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 financial statements as required and in accordance with all applicable GASB Statements 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.

IV. CONTINGENT ADDITIONAL SERVICES

- 4.1 **CONTRACTOR** acknowledges that the services listed below were identified in the Request for Qualifications 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 7.9. 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** in accordance with Section 3.26 of the GAO Amendment No. 3:

4.3.1 Providing advisory 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 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 Single Audit Act Amendments of 1996, the OMB Circular A-133 and 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, 2004 and shall include the audits of the **CITY'S** records and accounts for the fiscal years ending September 30, 2002, 2003, and 2004, with two one-year options for fiscal years 2005, and 2006. 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 and IV for fiscal year 2002 shall not exceed the amount of \$315,288; for fiscal year 2003 shall not exceed the amount of \$315,288; and for fiscal year 2004 shall not exceed the amount of \$330,740. 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 the following increments:

<u>Internal Review Support Hours</u>	
500 hours (minimum)	10%
750 hours	5%
1000 hours	5.5%
1250 hours	5.5%
1500 hours	6%

7.1 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Article III and IV under this Contract for the audit of fiscal year 2002 shall not exceed \$315,288, it is understood that this sum will be paid individually as follows:

KPMG LLP	\$163,950
LEAL & CARTER, P.C.	\$119,810
ROBERT J. WILLIAMS, CPA	\$ 31,528

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 and IV under this Contract for the audit of fiscal year 2003 shall not exceed \$315,288, it is understood that this sum will be paid individually as follows:

KPMG LLP	\$160,798
LEAL & CARTER, P.C.	\$122,962
ROBERT J. WILLIAMS, CPA	\$ 31,528

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 and IV under this Contract for the audit of fiscal year 2004 shall not exceed \$330,740, it is understood that this sum will be paid individually as follows:

KPMG LLP	\$165,370
LEAL & CARTER, P.C.	\$132,296
ROBERT J. WILLIAMS, CPA	\$ 33,074

7.4 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 and IV under this Contract for the audit of

fiscal year 2005 and 2006 shall be negotiated contingent upon mutually agreed consideration and determination of the scope of audit for each such year and City Council approval.

- 7.5 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.
- 7.6 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.
- 7.7 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.
- 7.8 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. **KPMG LLP, LEAL AND CARTER, P.C.**, 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 and 2004 audits, and 2005, and 2006 audits, if either of the two one-year options are exercised, 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** warrants that neither **CONTRACTOR** nor any of its agents, representatives or employees has paid or offered to pay any bribe, kickback or similar payment or other consideration to be selected for the award of this contract or other than as represented in **CONTRACTOR'S** Discretionary Contracts Disclosure form dated August 23, 2002 to influence the selection of its proposal.
- 13.2 **CONTRACTOR** certifies and warrants that after reasonable investigation to the best of its knowledge, no person which will in any way either directly participate in or directly supervise any agent, representative or employee who directly participates in the performance of the obligations hereunder has or will have any conflict of interest, direct or indirect, with **CONTRACTOR**. For purposes of this section, "conflict of interest" shall mean that the entity or person has an interest that is materially and directly adverse to the interest of the City of San Antonio other than the vendor/customer relationship existing pursuant to this contract.
- 13.3 **CONTRACTOR** acknowledges that it is informed that the City of San Antonio **CITY** Charter prohibits Contracts between the **CONTRACTOR**, their agents, representatives or employees 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.
- 13.4 **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.
- 13.5 In the event that **CONTRACTOR** is involved in any other project or engagement with the **CITY**, **CONTRACTOR** shall confirm, in writing, that such work does not jeopardize **CONTRACTOR'S** independence in performing the work specified in this Contract.
- 13.6 **CONTRACTOR** acknowledges that it is informed that the **CITY** Charter and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the **CITY** or any agency of the **CITY** such as **CITY** owned utilities. An officer or employee of the **CITY** has a "prohibited financial interest" in a contract with the **CITY** or in the sale to the **CITY** of land, materials, supplies or services, if any of the following individual(s) or entities is a

party to the contract or sale: a **CITY** officer or employee; his/her parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.

13.7 CONTRACTOR warrants and certifies and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of **CITY** and further warrant and certify that it has tendered to **CITY** and accurate Discretionary Contracts Disclosure Statement in compliance with **CITY'S** Ethics Code and that it has neither received value from nor paid value to **CITY** directly or indirectly, to secure or influence in any way **CITY'S** selection of vendors for products or services.

13.8 CONTRACTOR warrants and certifies and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of **CITY** and further warrant and certify that it has tendered to **CITY** and accurate Litigation Disclosure Statement.

XIV. COMPLIANCE

14.1 CONTRACTOR shall comply with the applicable independence standards promulgated by the General Accounting Office (GAO), 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 General Accounting Office and 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 this Contract, including any Statement(s) of Work entered into pursuant to it, constitutes the entire agreement of the parties hereto with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. It is also 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, with the exceptions as stated in Section 10.4 and 10.5.

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 _____ day of _____, 2002

CITY:
CITY OF SAN ANTONIO

CONTRACTOR

J. Rolando Bono
Deputy City Manager

Approved as to form:

Andrew Martin
City Attorney

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. _____ passed and approved on September 26, 2002, and **ROBERT WILLIAMS**, acting by and through its engagement partner, Robert Williams.

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 a selection process and chosen three entities (collectively referred to as "**CPA Contractors**") to collectively provide the services described herein for a three year period to include the required audits for the fiscal years ending September 30, 2002, 2003 and 2004, with two one-year options for fiscal 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 **KPMG**.
- 1.2 For purposes of this Contract, the term "**CPA Contractors**" as used herein shall refer to **KPMG LLP, LEAL AND CARTER, P.C., 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 **KPMG 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**, **KPMG 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. **KPMG 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 financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall 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 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. In addition, this Contract is based on the number of funds to be presented in the fiscal year 2002 CAFR and any substantial increase in funds to presented in future CAFRs will be negotiated as to cost for additional audit work and is to be mutually agreed to by **CONTRACTOR** and **CITY**. **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 as required and in accordance with all applicable GASB Statements 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 financial statements as required and in accordance with all applicable GASB Statements 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.

IV. CONTINGENT ADDITIONAL SERVICES

- 4.1 **CONTRACTOR** acknowledges that the services listed below were identified in the Request for Qualifications 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 7.9. 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** in accordance with Section 3.26 of the GAO Amendment No. 3:
- 4.3.1 Providing advisory 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 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 Single Audit Act Amendments of 1996, the OMB Circular A-133 and 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, 2004 and shall include the audits of the **CITY'S** records and accounts for the fiscal years ending September 30, 2002, 2003, and 2004, with two one-year options for fiscal years 2005, and 2006. 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 and IV for fiscal year 2002 shall not exceed the amount of \$315,288; for fiscal year 2003 shall not exceed the amount of \$315,288; and for fiscal year 2004 shall not exceed the amount of \$330,740. 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 the following increments:

<u>Internal Review Support Hours</u>	
500 hours (minimum)	10%
750 hours	5%
1000 hours	5.5%
1250 hours	5.5%
1500 hours	6%

7.1 It is understood and agreed by the parties hereto that the work performed and the total fee for the services related to Article III and IV under this Contract for the audit of fiscal year 2002 shall not exceed \$315,288, it is understood that this sum will be paid individually as follows:

KPMG LLP	\$163,950
LEAL & CARTER, P.C.	\$119,810
ROBERT J. WILLIAMS, CPA	\$ 31,528

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 and IV under this Contract for the audit of fiscal year 2003 shall not exceed \$315,288, it is understood that this sum will be paid individually as follows:

KPMG LLP	\$160,798
LEAL & CARTER, P.C.	\$122,962
ROBERT J. WILLIAMS, CPA	\$ 31,528

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 and IV under this Contract for the audit of fiscal year 2004 shall not exceed \$330,740, it is understood that this sum will be paid individually as follows:

KPMG LLP	\$165,370
LEAL & CARTER, P.C.	\$132,296
ROBERT J. WILLIAMS, CPA	\$ 33,074

7.4 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 and IV under this Contract for the audit of

fiscal year 2005 and 2006 shall be negotiated contingent upon mutually agreed consideration and determination of the scope of audit for each such year and City Council approval.

- 7.5 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.
- 7.6 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.
- 7.7 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.
- 7.8 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. **KPMG LLP, LEAL AND CARTER, P.C.**, 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 and 2004 audits, and 2005, and 2006 audits, if either of the two one-year options are exercised, 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** warrants that neither **CONTRACTOR** nor any of its agents, representatives or employees has paid or offered to pay any bribe, kickback or similar payment or other consideration to be selected for the award of this contract or other than as represented in **CONTRACTOR'S** Discretionary Contracts Disclosure form dated August 23, 2002 to influence the selection of its proposal.
- 13.2 **CONTRACTOR** certifies and warrants that after reasonable investigation to the best of its knowledge, no person which will in any way either directly participate in or directly supervise any agent, representative or employee who directly participates in the performance of the obligations hereunder has or will have any conflict of interest, direct or indirect, with **CONTRACTOR**. For purposes of this section, "conflict of interest" shall mean that the entity or person has an interest that is materially and directly adverse to the interest of the City of San Antonio other than the vendor/customer relationship existing pursuant to this contract.
- 13.3 **CONTRACTOR** acknowledges that it is informed that the City of San Antonio **CITY** Charter prohibits Contracts between the **CONTRACTOR**, their agents, representatives or employees 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.
- 13.4 **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.
- 13.5 In the event that **CONTRACTOR** is involved in any other project or engagement with the **CITY**, **CONTRACTOR** shall confirm, in writing, that such work does not jeopardize **CONTRACTOR'S** independence in performing the work specified in this Contract.
- 13.6 **CONTRACTOR** acknowledges that it is informed that the **CITY** Charter and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the **CITY** or any agency of the **CITY** such as **CITY** owned utilities. An officer or employee of the **CITY** has a "prohibited financial interest" in a contract with the **CITY** or in the sale to the **CITY** of land, materials, supplies or services, if any of the following individual(s) or entities is a

party to the contract or sale: a **CITY** officer or employee; his/her parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.

13.7 CONTRACTOR warrants and certifies and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of **CITY** and further warrant and certify that it has tendered to **CITY** and accurate Discretionary Contracts Disclosure Statement in compliance with **CITY'S** Ethics Code and that it has neither received value from nor paid value to **CITY** directly or indirectly, to secure or influence in any way **CITY'S** selection of vendors for products or services.

13.8 CONTRACTOR warrants and certifies and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of **CITY** and further warrant and certify that it has tendered to **CITY** and accurate Litigation Disclosure Statement.

XIV. COMPLIANCE

14.1 CONTRACTOR shall comply with the applicable independence standards promulgated by the General Accounting Office (GAO), 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 General Accounting Office and 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 this Contract, including any Statement(s) of Work entered into pursuant to it, constitutes the entire agreement of the parties hereto with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. It is also 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, with the exceptions as stated in Section 10.4 and 10.5.

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 _____ day of _____, 2002

CITY:
CITY OF SAN ANTONIO

CONTRACTOR

J. Rolando Bono
Deputy City Manager

Approved as to form:

Andrew Martin
City Attorney

**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; Office of Internal Audit, City Clerk; Office of Management and Budget; file
SUBJECT: Approval of Independent Audit Services Contracts
DATE: September 26, 2002

SUMMARY AND RECOMMENDATION

An ordinance authorizing the execution of contracts and approving the firms of KPMG LLP, Leal and Carter P.C., and Robert J. Williams, CPA, to provide the City independent audit services for fiscal years 2002, 2003, and 2004 at a total fee for audit services ranging from \$315,288 for year one, \$315,288 for year two and \$330,740 for year three with 1,500 hours of audit assistance provided by the City's Office of Internal Audit to a maximum fee of \$446,267 for year one, \$446,267 for year two and \$468,134 for year three with zero hours of audit assistance provided by the City's Office of Internal Audit, with two one-year options to extend the contract, with City Council approval, for fiscal years 2005 and 2006.

Staff recommends approval of this Ordinance.

BACKGROUND

State Statute and the City Charter require 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. 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.

On August 7, 2002 a briefing was made to the City Council Governance Committee pertaining to firms that provide consulting services and audit services to the same entity. The firms of Deloitte and Garza/Gonzalez were serving the City in the capacity as auditors, and consultants on the implementation of the enterprise resource management system. Staff recommended termination of either the consulting contracts or audit contracts for those firms that were providing consultant and audit services. Subsequent to the Governance Committee briefing, the audit contracts for

Deloitte and Touche, Garza/Gonzalez and Associates, and Robert J. Williams, CPA were terminated.

On August 9, 2002 Requests for Qualifications were sent to seven (7) firms who originally responded to the August 2001 Request for Proposals to Provide GASB Statement No. 34 Implementation Assistance and Independent Audit Services. The Request for Qualifications requested that each firm update the information previously submitted. Responses were received from six firms to include KPMG LLP, Garza/Gonzalez and Associates, Leal and Carter P.C., Padgett, Stratemann and Company LLP, Martinez, Garcia and Company, and Robert J. Williams, CPA. Arthur Andersen LLP did not submit a response.

The selection process included a review and evaluation of the information submitted, and a scoring of each firm. On August 30, 2002, the six (6) responses received were evaluated by an "Audit Selection Committee," consisting of Councilman from City Council District 2, and representatives from the Office of Internal Audit, City Attorney's Office, and the departments of Finance, Economic Development, Community Initiatives, Aviation and Public Works. The Audit Selection Committee evaluated and scored, by consensus, the responses 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 written responses. 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. Based on the process described, the Audit Selection Committee selected the firm of KPMG LLP, to serve as the Senior Audit firm, with the firms of Leal and Carter, P.C., and Robert J. Williams, CPA, to serve as Co-Audit firms.

On September 4, 2002, a presentation of the proposed audit team was made to the Audit and Contract Review sub-committee of the City Council Governance Committee. The Governance Committee directed staff to proceed with negotiations and present to City Council the proposed audit team. 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 firm, KPMG brings a national presence, resources dedicated to the public sector, diverse technical experience and prior audit experience with the City. The Co-Audit firms bring a local presence, prior audit experience with the City and its processes, and extensive Single Audit experience. Participation levels for each firm are shown in the table below.

Audit Team Participation Levels			
Firm	FY2002	FY2003	FY 2004
KPMG LLP	52%	51%	50%
Leal and Carter, P.C.	38%	39%	40%
Robert J. Williams, CPA	10%	10%	10%

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 and Single Audits. 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 Audit 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 the Office of Internal Audit staff were included with a contingency for audit fees based on a level of support less than 1,500 hours. City Council will have the option to annually adjust the number of hours of assistance to be provided by the Office of Internal Audit from zero (0) hours up to 1,500 hours. It is anticipated that the Office of Internal Audit will provide 1,500 hours of assistance for fiscal year 2002. The firm of KPMG 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, for the fiscal year ending September 30, 2002 the City has implemented GASB Statement No. 34, *Basic Financial Statements and Management Discussion and Analysis for State and Local Governments*.

FINANCIAL IMPACT

Total annual audit fees range from \$315,288 for year one, \$315,288 for year two and \$330,740 for year three with 1,500 hours of audit assistance provided by the City's Office of Internal Audit to a maximum fee of \$446,267 for year one, \$446,267 for year two and \$468,134 for year three with zero hours of audit assistance provided by the City's Office of Internal Audit.

COORDINATION

Coordination of this item has included the following committee and departments: Audit and Contract Review sub-committee of the City Council Governance Committee, City Council District 2, Office of Internal Audit, City Attorney's Office, and the departments of Finance, Economic Development, Community Initiatives, Aviation and Public Works.

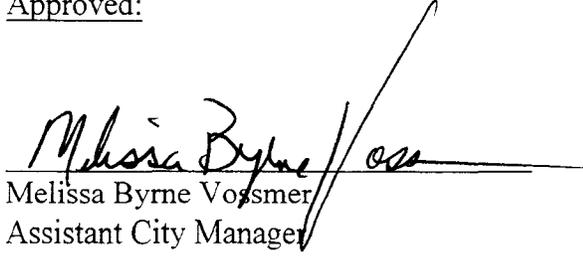
SUPPLEMENTAL COMMENTS

The ethics disclosure forms required by Ordinance are attached.



Milo Nitschke
Finance Director

Approved:



Melissa Byrne Vosmer
Assistant City Manager



Terry M. Brechtel
City Manager

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;

The partners of the South Texas Business Unit would be parties to the discretionary contract and are as follows:

San Antonio – Park Pearson, Walter Belt, Warren Zaccaro, and Fred Bartz

Austin – Stan Sewell, Mike O’Brien, Fred Tedesco, Kelly Logan, and Dan Slattery

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

N/A

and the name of:

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

N/A

(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;

N/A

(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.

N/A

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:
Tim Bannwolf	\$1,750	November 2000 — March 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.

None		
Signature: <i>Michael W. O'Brien</i>	Title: <i>Partner</i> Company: <i>KPMG LLP</i>	Date: <i>8/23/02</i>

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.*

14.

** 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:

_____ 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

15.

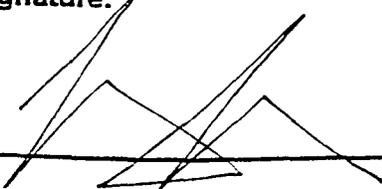
Political Contributions

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.

NONE		
Signature: 	Title: Managing Director Company: Leal & Carter, P.C.	Date: 08/23/02

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;

Robert J Williams

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

Robert J Williams CPA

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:
<i>NONE</i>	<i>N/A</i>	<i>N/A</i>

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.

<i>NONE</i>		
<p>Signature:</p> <p><i>Robert Williams</i></p>	<p>Title: <i>Principal</i></p> <p>Company:</p> <p><i>Robert J Williams CPA</i></p>	<p>Date:</p> <p><i>9/19/02</i></p>

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.

DO NOT TYPE IN THIS SPACE		CITY OF SAN ANTONIO	For CMO use only
Approval		Request For Ordinance/Resolution	Date Considered
Finance	Budget		Consent <input type="checkbox"/> Individual <input type="checkbox"/>
Legal	Coordinator		Item No. 31
			Ord. No.

Date: Thursday, September 26,	Department: Finance	Contact Person/Phone #: Milo Nitschke 207-8620
Date Council Consideration Requested: Thursday, September 26, 2002	Deadline for Action: September 26, 2002	Dept. Head Signature <i>Milo Nitschke</i>

SUMMARY OF ORDINANCE

An ordinance authorizing the execution of contracts and approving the firms of KPMG LLP, Leal and Carter P.C., and Robert J. Williams, CPA, to provide the City independent audit services for fiscal years 2002, 2003, and 2004 at a total fee for audit services ranging from \$315,288 for year one, \$315,288 for year two and \$330,740 for year three with 1,500 hours of audit assistance provided by the City's Office of Internal ^{Audit} Review to a maximum fee of \$446,267 for year one, \$446,267 for year two and \$468,134 for year three with zero hours of audit assistance provided by the City's Office of Internal ^{Audit} Review, with two one-year options to extend the contract, with City Council approval, for fiscal years 2005 and 2006.

Staff recommends approval of this Ordinance.

Council Memorandum Must be Attached To Original

Other Depts., Boards, Committees Involved (please specify):
Audit and Contract Review Sub-Committee of the City Council Governance Committee, City Attorney's Office, Office of Internal Review, Economic Development, Public Works, Aviation, Department of Community Initiatives.

Contract signed by other party
Yes No

FISCAL DATA (If Applicable)

Fund No. <u>11-000</u>	Amt. Expended <u>283,000</u>	Funds/Staffing Budgeted	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Activity No. <u>800206</u>	SID No. _____	Positions Currently Authorized		
Index Code _____	Project No. _____	Impact of future O & M		
Object Code _____	02160			

Comments:

If positions added, specify class and no.

Coordinator - White
Legal - Green
Budget - Canary

CITY OF SAN ANTONIO

**INDEPENDENT AUDIT SERVICES
CONTRACTS**

Agenda Item #37

September 26, 2002

SELECTION PROCESS

Services to be Provided:

- **City's Financial Audits**
- **Federal and State Single Audits**
- **Guidance on Tax, Compliance, Other Non-Audit Matters**
- **Services Required for Bond Offerings**
- **Analysis of New Accounting Standards and Pronouncements**

SELECTION PROCESS

Selection Committee Members

- ⇒ **Council District 2**
- ⇒ **Finance**
- ⇒ **Office of Internal Audit**
- ⇒ **Economic 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 Response**
- **Qualifications of Assigned Staff**
- **SBEDA Goals**

SELECTION PROCESS

Evaluation Process

- **Six Firms Submitted Responses to August 9, 2002 Request for Qualifications**
- **Step 1 - Selection Committee Evaluated and Scored Written Responses Submitted by Independent Audit Firms**
- **Step 2 - Based on the Written 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 Applications**
- **Focus on Public Sector**
- **Extensive Experience in GASB Statement No. 34 Implementation and Assistance**
- **National GASB No. 34 Resources in Texas**

SELECTION PROCESS

Co-Audit Firms Attributes:

- **Single Audit Experience**
- **Experience with City Processes**
- **Local Presence**
- **SBEDA Goals**

SELECTION PROCESS

- **August 9, 2002: Seven Requests For Qualifications Mailed**
- **August 26, 2002: Six Responses Submitted to City Clerk's Office**

SELECTION PROCESS

- **August 30, 2002 - Selection Committee Evaluation and Scoring, by Consensus, of Written Responses From:**
 - ⇒ **Garza/Gonzalez and Associates**
 - ⇒ **KPMG LLP**
 - ⇒ **Leal and Carter P.C.**
 - ⇒ **Martinez, Garcia and Company LLP**
 - ⇒ **Padgett & Stratemann and Co. LLP**
 - ⇒ **Robert J. Williams, CPA**

SELECTION PROCESS

- **KPMG LLP Recommended as Senior Audit Firm**
- **Leal and Carter, P.C. and Robert J. Williams, CPA, Recommended as Co-Audit Firms**

PROPOSED AUDIT TEAM

Firm	Classification	Role	Percent		
			2002	2003	2004
KPMG LLP	N, R, L	Senior Auditor	52%	51%	50%
Leal & Carter	L, DBE, MBE, SBE	Co-Auditors	38%	39%	40%
Robert J. Williams	L, MBE, SBE, AABE	Co-Auditors	10%	10%	10%

N = National
R = Regional
L = Local

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

FEEES FOR SERVICES

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

- **Year One-FY 2002** **\$315,288**
- **Year Two-FY 2003** **\$315,288**
- **Year Three-FY 2004** **\$330,740**
- **Two One-Year Options for 2005 and 2006 to be Approved by City Council**

***Increase in Annual Audit Fees with Decrease in Internal Audit Support**

FEEES FOR SERVICES

Audit Services with Levels of Internal Auditor Support

Internal Audit

<u>Hours</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
-0- hours	\$446,267	\$446,267	\$468,134
500 hours	\$402,607	\$402,607	\$422,336
750 hours	\$380,778	\$380,778	\$399,437
1000 hours	\$358,948	\$358,948	\$376,538
1250 hours	\$337,118	\$337,118	\$353,639
1500 hours	\$315,288	\$315,288	\$330,740

CITY OF SAN ANTONIO

**STAFF RECOMMENDS APPROVAL
OF THIS ORDINANCE**