

Resolution No. _____
_____, 2004

ARCHITECT'S CONTRACT
FOR

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF DALLAS §

THIS CONTRACT is made and entered into as of the _____ day of _____, 2004, by and between the CITY OF DALLAS, a municipal corporation of Dallas County, Texas acting by and through its PARK AND RECREATION BOARD, (hereinafter referred to as "City"), and _____ with offices located at _____ 75206 (hereinafter referred to as the " Architect").

WITNESSETH:

WHEREAS, City intends to provide _____, hereinafter called the "Project", at a total budgeted construction cost not to exceed \$ _____ for the completion of the Project, and total compensation for Architect's services not to exceed \$ __, which includes an allowance for Reimbursable Expenses; and

WHEREAS, City desires to contract with the Architect for complete architectural and engineering services in connection with design and construction of the Project, and for the administration of the Construction Contract during construction of the Project, all as stipulated in this Contract and within the budgeted limits set by City; and

WHEREAS, Architect has agreed to provide such professional services for the compensation provided in this Contract.

NOW, THEREFORE, City and Architect, in consideration of the mutual promises, terms, covenants and conditions contained in this Contract, agree as follows:

SCOPE OF SERVICES AND COMPENSATION

A. Architect, as an independent contractor and professional consultant in its relationship with the City, agrees to perform all professional services for the Project as set forth in this Contract and in Architect's Proposal Letter to City, dated _____, attached to and made a part of this Contract, as Exhibit "A"; provided, however, that in the event of any conflict between the terms of the Proposal Letter and this Contract, the terms of this Contract shall control.

B. City shall compensate Architect in accordance with the terms and conditions of this Contract as follows:

1. For Architect's Basic Services, including the services of any professional consultants engaged for complete architectural services and complete structural, mechanical, electrical and civil engineering services, a maximum Basic Fee not to exceed \$_____.
2. For Architect's additional services, including re-platting and survey, a fee not to exceed \$_____ *or*

For Architect's Additional Services, if any be authorized in advance by City as hereinafter provided, a supplemental fee to be computed as follows:

(a) Principals' time at a fixed rate of \$_____ per hour. For purposes of this Contract, the Principals are:

(b) Employees' time shall be paid at the following agreed rates:

Principal-Architecture	\$ _____ per hour
Principal	\$ _____ per hour
Civil Engineer	\$ _____ per hour
Project Manager	\$ _____ per hour
Clerical	\$ _____ per hour

(c) Additional Services of Basic Consultants (including structural, mechanical, electrical and civil engineering) shall be computed at 1.10 times the amounts billed to Architect. Additional Services of Special Consultants shall be computed at 1.10 times the amount billed Architect for such services.

3. Unless subsequently changed by Supplemental Agreement to this Contract, duly authorized by City Council Resolution (or by Administrative Action where delegated by City ordinance), Architect's total compensation under this Contract for Basic Services and *Additional Services* shall not exceed \$_____. This amount

represents the absolute limit of City's liability to Architect under this Contract, unless the limit is changed by Supplemental Agreement to this Contract.

4. The times and further conditions of payment shall be as described in Article 5 below.
5. This Contract shall be administered on behalf of City by its Director of Park and Recreation Department, or his designee (hereinafter called the "Director"), and by Architect through its duly designated and authorized representatives. Architect shall fully comply with any and all instructions from the Director. Any dispute between Architect and City or need for interpretation regarding what performance is required of Architect under this Contract shall be submitted to the Director, and the Director's decision in the matter shall be final and binding.

ARTICLE 1 ARCHITECT'S SERVICES

1.1. Basic Services

The Architect's Basic Services consist generally of the five phases described below, and include complete architectural services and complete structural, mechanical, electrical and civil engineering services, and such other services as may be necessary to assist the City in the design and construction of the Project, within the budgeted limits set by City, and in compliance with the Project Facility Program and the Design Standards for City Buildings, which is hereby made a part of this Contract for all purposes. All services set out in Architect's Proposal Letter are to be performed whether specifically set out in this Contract or not. Architect agrees that upon execution of this Contract, it will submit to City within ten (10) days a list of all additional consultants it intends to utilize, not previously identified in Architect's Proposal Letter, delineating their respective tasks. All Architect's consultants and sub-consultants shall be subject to the approval of the City through its Director of Park and Recreation Department, and the City reserves the right to reject any consultant or sub-consultant. Architect shall perform all work under this Contract in a manner satisfactory and acceptable to the City, represented by its Director of Park and Recreation Department. Architect's Final Plans and Specifications shall include plans and profiles necessary to tie all Project water, sewer and storm drainage lines into adjacent existing lines and facilities, as authorized and approved by Director. A Performance Schedule shall be agreed to by Architect and Director, and Architect agrees to use its best efforts to complete all services under this Contract in accordance with such Performance Schedule. All services shall be performed to the highest professional standard.

Schematic Design Phase

1.1.1. Architect shall consult with City to clarify the requirements of the Facility Program for the Project and shall the make the Schematic Design conform to the Facility Program requirements.

1.1.2. Architect shall survey and evaluate those environmental conditions in the immediate vicinity of the Project site which may influence the design of the Project. Architect shall, for consideration and approval by Director, prepare the Schematic Design Studies and submit to the Director a sufficient number (as determined by the Director) of copies of drawings and other documents which illustrate the scale and relationship of the Project components within the time allotted under the agreed Performance Schedule.

1.1.3. Architect shall submit to City a Statement of Probable Construction Cost based on current area, volume or other unit costs in a form acceptable to the Director.

1.1.4. The Architect will make recommendations to the City where a conflict may exist between the established Project Budget and the Facility Program. The recommendations will provide for adjustments to enable construction of the facility within the budget and during the forecast period that the Project will be bid.

1.1.5. Architect shall submit outline specifications for all major elements of construction including but not limited to structural, mechanical and electrical systems, and special equipment.

Design Development Phase

1.1.6. Architect shall prepare Design Development Documents based on the approved Schematic Design Documents to include adequate Specifications for elements of the Project for consideration and approval by the Director. A sufficient number of copies (as determined by the Director) of the Design Development Documents will be submitted to the Director for distribution, each copy consisting of drawings and other documents to fix and describe the size, cross sections and character of the Project as to architectural, materials, and such other essentials as may be necessary and appropriate. The Design Development Phase shall be completed within the agreed Performance Schedule.

1.1.7. Architect shall submit to City a Revised Statement of Probable Construction Cost in a form acceptable to the Director. Any variance in the estimated construction costs that will adversely affect the established Project Budget will be submitted to the Director with appropriate comments and recommendations prior to beginning the Construction Documents Phase.

Construction Documents Phase

1.1.8. Architect shall prepare from the approved Design Development Documents, for consideration and approval by the Director, complete Working Drawings and Specifications. The Working Drawings and Specifications shall set forth in complete detail the requirements of the entire Project, including the necessary bidding information prepared in such a way to allow City, if it so desires, to advertise for the award of one or more contracts for the construction and completion of the entire Project, or any phase of the Project. Architect shall also assist City in preparation of the Bidding Forms, utilizing, without modification, all of City's standard General and Supplementary General Conditions, and shall draft all special provisions or conditions of the Contract Documents subject to the approval of the Director. City's Supplementary General Conditions to AIA Document A201, "General Conditions of the Contract for Construction", shall be used by Architect without modification. City may, however, upon prior

consultation, approve of any changes to the Supplementary General Conditions that may be necessary for specific situations. Any special conditions pertaining to the Project that are approved by City will be included under the Special Conditions portion of the Construction Documents. City's standard form of construction contract between City and any Project construction contractor shall also be utilized without modification, along with City's forms of Bid Bond, Performance Bond and Payment Bond. Architect shall obtain the approval of the Texas Department of Licensing and Regulation prior to submittal of all Construction Documents to City for approval. Any fees charged by the Department for this approval shall be paid by Architect and billed to City as a reimbursable expense under Article 4 of this Contract.

1.1.9. Architect shall furnish City in writing a revised Statement of Probable Construction Cost, indicating cost changes resulting from changes in Project requirements or general market conditions, in a form acceptable to the Director.

1.1.10. Architect shall file proposed Construction Documents, per Exhibit "A", with the Director for review and official approval prior to the advertisement of bids for the construction of the Project, and within the agreed Performance Schedule following approval of the Design Development Documents. Following approval, Architect shall also file with the Director at said time, the following items:

- (a) Tracing of the Project Title Sheet, signed by Architect, with seal affixed. (This tracing shall be returned to Architect to print contract documents when the signatures of City officials have been properly affixed).
- (b) Two (2) copies of detailed cost estimates in a form acceptable to City.
- (c) One (1) unbound copy of the approved Project Construction Manual for subsequent binding with signed construction contracts. The Project Construction Manual shall include General and Supplementary General Conditions; Specifications and Special Provisions; Advertisement, Instructions to Bidders and Bid Proposal Form; City's Bid Bond, Contract, Performance and Payment Bond Forms; approved Wage Rates; Federal regulations if applicable to the Project; and other required documents for construction of the Project. Should additional bound copies of the Project Construction Manual be required or requested by the Director, Architect will be reimbursed for the actual cost of reproduction, upon approval in advance by City.

Bidding Phase

1.1.11. Following City's approval of the Construction Documents and of the latest Statement of Probable Construction Cost, Architect shall assist City in awarding a construction contract following legal public bid requirements. During the bid process, Architect shall assist City as follows:

- (a) Jointly conducting pre-bid conferences, including on-site visits as required, to endeavor to assure that bidders understand the Construction Documents, the various on-site conditions, and the coordination and scheduling requirements.
- (b) Preparation of required addenda to Contract Documents.
- (c) Tabulation and evaluation of bids received.
- (d) Jointly conducting pre-award conferences where necessary.

Architect's assistance to the City shall include submitting written reviews and recommendations for awards based upon the acceptability of bids; and, if required by City, more detailed analyses of specific bids. Reviews shall also consider the responsiveness of bids and their conformity with Bid Documents.

Construction Phase - Administration of the Construction Contract(s)

1.1.12. The Construction Phase will commence with the award of the first Construction Contract and will terminate following the final one-year warranty inspection of the completed Project, correction of all defects in Project materials and workmanship, and resolution of all Project-related claims and disputes.

1.1.13. Architect shall provide administration of the Construction Contract as set forth in the Construction Documents, specifically the General and Supplementary General Conditions. Architect's assigned authority under the General and Supplementary General Conditions will not be substantially modified without Architect's written consent.

1.1.14. Architect, as a representative of the City, shall advise and consult with the Director and will keep the Director informed in writing regarding the progress of the Project, including but not limited to percentage of construction work completed on a monthly basis, during the Construction Phase. After issuance of the work order to any and all construction Contractors on the Project, all of City's instructions to its construction Contractors will be issued through Architect.

1.1.15. Architect shall provide, during construction, adequate and competent on-site construction observation, periodically visiting the site to the extent necessary to personally familiarize itself with the progress and quality of the work, and to determine if the work is proceeding in accordance with the Contract Documents. Architect shall not, however, be required to make continuous on-site inspections to check the work. Field Reports of each visit shall be prepared by Architect and submitted to the Director. Architect shall employ all reasonable measures to safeguard City against defects and deficiencies in the work of the Contractor. Architect shall not be responsible for the construction means, methods, techniques, sequences of procedures, nor for the safety precautions and programs employed in connection with the Project work. However, Architect will immediately inform Director whenever

defects and deficiencies in the Project work are observed, or when any observed actions or omissions are undertaken by any Contractor or subcontractor which are not in the best interests of City or the Project.

1.1.16. Based on such observations at the site and on the Contractor's Application and Certificate for Payment, Architect shall determine, monthly, the amount owing to the Contractor and shall certify and forward the Contractor's Application and Certificate for Payment, to the Director for approval and payment. These certifications shall constitute a representation by Architect to City, based on observations at the site and other data comprising the application for payment, that the work has progressed to the point indicated; that to the best of Architect's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents, (subject to an evaluation of the work as a functioning whole upon substantial completion, to the results of any subsequent tests required by the Contract Documents, to minor deviations from the Contract Documents, correctable prior to Project completion, and to any specific qualifications stated in the Certificate); and that the Contractor is entitled to payment in the amount certified.

1.1.17. Architect shall have authority to reject work which does not conform to the Contract Documents. Architect shall make recommendations on all claims and disputes of City or Contractor relating to the execution and progress of the work or the interpretation of the Contract Documents, based upon such review and analysis by Architect as may reasonably be required. In the event of litigation, where Architect is named as an additional party with City, assistance will include the availability of knowledgeable witnesses in the employ of Architect for expert testimony.

1.1.18. Architect shall use its best efforts to promptly review and approve or reject shop drawings, samples and other submissions of the contractor for conformance only with the design concept of the Project and with the information given in the Contract Documents. Architect shall establish and implement precise procedures, to be approved by the Director, for expediting the processing and approval of these submissions without delay. Prompt review by Architect of submissions is of prime importance to City and an absolute necessity under the time restraints of the Project.

1.1.19. Architect shall prepare Change Orders to the construction contract, in six (6) copies, after review and approval by City. **Each Change Order shall be specific and final as to prices and extensions of time, with no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the Change Order.**

1.1.20. Architect shall conduct inspections to determine the dates of substantial completion and final completion, shall receive written guarantees and related documents assembled by the Contractor for submittal with the final Certificate of Payment, and shall prepare and present a final Certificate for Payment to the Director for City's approval and payment. In addition, Architect shall make an inspection of the Project at least thirty (30) days before the expiration of the one (1) year Warranty contained in the Contractor's Performance Bond.

1.1.21. Architect shall conduct regularly scheduled progress meetings with City, each Contractor and major subcontractors. Minutes of all progress meetings shall be prepared by Architect with copies submitted to the Director.

1.1.22. Architect shall have authority to order minor changes in the construction work, consistent with the Contract Documents, and not involving an adjustment in the Contractor's bid price or an extension of the Project Schedule. Minor changes shall be accomplished by Field Order. In addition, Architect may issue written Field Orders which interpret the Plans and Specifications, with copies submitted to the Director.

1.1.23. Architect shall assemble and deliver to City a set of reproducible Record Construction Drawings showing significant changes in the work during the construction process and final location of mechanical and electrical service lines and outlets, based upon marked-up prints of drawings and other data furnished by the Contractor to Architect. Architect shall provide Record Construction Specifications which will identify the changes in the specifications on a sheet, which sheet will be inserted at the beginning of each section to which they pertain.

1.2. Project Representation Beyond Basic Services

In the event that circumstances should develop whereby continuous, full-time representation at the Project site is required, the conditions under which the representation shall be furnished and the Project Representatives selected, employed and directed shall be governed by a written Supplemental Agreement between City and Architect.

1.3. Additional Services

Architect shall perform Additional Services, as requested by City, after a not-to-exceed amount has been mutually agreed upon in writing by Director and Architect. Where authorization is required, Architect shall not proceed until the appropriate City Council Resolution (or Administrative Action, where approval authority is delegated by City ordinance) for such Additional Services has been adopted. The following services are not covered under Article I, which defines and outlines Architect's Basic Services. If any of these Additional Services are authorized in writing by Director in advance of their performance, they shall be paid for in the manner agreed to at the time of authorization.

1.3.1. Preparing Change Orders and supporting data or revising previously approved plans when the changes in approved Plans and Specifications are required by the City. If changes are required to be made because of error, oversight, clarification, discrepancy, or budget overruns in the work of Architect, City shall not be liable to compensate Architect for Additional Services or expenses in such connection.

1.3.2. Providing consultation concerning replacement of any Project work damaged by fire or other cause during construction, and furnishing professional services as may be required in connection with the replacement of such work, unless damage was the result of Architect's error.

1.3.3. Providing other extraordinary professional services over and above the Contract requirements, where required and requested by City, including extraordinary professional services which might result if the City decides to "fast-track" the Project.

ARTICLE 2
CITY'S RESPONSIBILITIES

- 2.1. City shall have the following responsibilities under this Contract:
- 2.1.1. To provide full information regarding City's requirements for the Project.
- 2.1.2. To designate, when necessary, representatives authorized to act on City's behalf.
- 2.1.3. To examine documents submitted by Architect and render decisions pertaining thereto promptly, in order to avoid unreasonable delay in the orderly progress of Architect's work.
- 2.1.4. To observe the procedure of issuing orders to its Project Contractors only through Architect.
- 2.1.5. To furnish, or direct Architect to obtain at City's expense, a certified survey of the site, giving, as required, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, contours and other data pertaining to existing buildings or adjacent to the site, other improvements and trees, full information as to available service and utility lines, both public and private, and test borings, pits, reports and soil bearing values and other necessary operations for determining subsoil conditions.
- 2.1.6. To furnish, or pay for structural, mechanical, chemical, soil mechanics, and other laboratory tests, reports and inspections as required by law or the Contract Documents.
- 2.1.7. To furnish the building permit without charge (electrical, plumbing and other trade permits will be the responsibility of all Contractors on the Project; any charges which may be assessed for Dallas Water Utilities service connection fees will be paid by City and are not to be included by Architect in the Specifications for the Project).
- 2.1.8. City also agrees to provide Architect with items such as: the Project Facility Program and Design Standards for City Buildings; two (2) copies of the City of Dallas General and Supplementary General Conditions for Building Construction; Instructions to Bidders and Bid Proposal Forms; Prevailing Wage Rate Schedules; Contract and Bond Forms; Bid Advertisement Form; and other information and materials as may be necessary and practicable for the orderly and expeditious process of the Project work and the awarding of any and all Construction Contracts for the Project. To the extent practicable, these documents shall all be utilized in the preparation of the Construction Documents.
- 2.1.9. Architect shall be entitled to reasonably rely on the accuracy of the services, information, surveys, reports and other materials which City shall furnish at its expense.
- 2.1.10. If City observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, it shall give prompt written notice thereof to Architect.

ARTICLE 3
FIXED LIMIT OF TOTAL BUDGETED CONSTRUCTION COST

3.1. The fixed limit of total Budgeted Construction Cost for this Project is \$_____. **This amount is established as a condition of this Contract, and shall provide the basis for Architect's design decisions.** Architect, in consultation with City, shall determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, and will make reasonable adjustments in the scope of the Project to bring it within the fixed limit. With the Director's approval, Architect may also include in the Contract Documents alternate bids to adjust the construction cost to the fixed limit. If the lowest responsible bid is within the fixed limit of total Budgeted Construction Cost for the Project, **or** the Architect's latest detailed estimate of Probable Construction Cost is still less than the fixed limit of total Budgeted Construction Cost for the Project, established as a condition of this Contract, City shall pay the Architect fees for Basic Services in accordance with this Contract.

3.2. If the lowest responsible bid exceeds the fixed limit (or, in the case of multiple construction contracts bid, its portion of the fixed limit) of total Budgeted Construction Cost for the Project, and as a result thereof, or otherwise, the latest estimate of Probable Construction Cost exceeds the fixed limit of total Budgeted Construction Cost for the Project stated in Section 3.1, established as a condition of this Contract, City, at its sole option, may either: (1) give written approval of an increase in the fixed limit, with no obligation to increase Architect's fee; (2) authorize re-bidding within a reasonable time; or (3) cooperate in revising the Project scope and quality as required to reduce the Probable Construction Cost. In the case of (3), Architect, **without additional charge to City**, shall immediately modify the Drawings and Specifications as necessary to bring the Project cost within the fixed limit of total Budgeted Construction Cost, or within any higher fixed limit subsequently authorized by City. The providing of the service as described above shall be the limit of Architect's responsibility to bring the Project cost within the fixed limit of total Budgeted Construction Cost, and if Architect does so, Architect shall be entitled to its fees for Basic Services in accordance with this Contract.

ARTICLE 4
REIMBURSABLE EXPENSES

4.1 All Reimbursable Expenses are included in the fees for Basic Services.

ARTICLE 5
PAYMENTS TO THE ARCHITECT

5.1. Payments on account of Architect's Basic Services shall be made monthly in proportion to the degree of completion of each Phase, but not to exceed the following percentages of the Basic Fee at the completion and approval of each Phase of the work:

Survey	___%
Schematic Design	___%
Design Development	___%
Construction Documents	___%
Bidding	___%

Construction Administration _____%
Construction Phase (periodic payments based
on % of construction completed) 100%

5.2. Payments for authorized Reimbursable Expenses and Additional Services for Architect, as hereinbefore referred to, shall be made following presentation, review and approval of the Architect's detailed invoice in triplicate.

5.3. No **deduction** shall be made from Architect's compensation on account of penalty, liquidated damages, or other sums withheld from payments to Contractors.

5.4. No **addition** shall be made to Architect's compensation based upon Project construction claims, whether paid by City or denied.

5.5. If any work designed or specified by Architect during any Phase is abandoned or suspended, in whole or in part, Architect is to be paid for the services performed on account of it prior to receipt of written notice from the City through its Director of such abandonment or suspension.

5.6. Architect's invoices to City shall provide complete information and documentation to substantiate Architect's charges, and shall be in a form to be specified by Director. All payments to Architect shall be made on the basis of the invoices submitted by Architect and approved by Director. Such invoices shall conform to the schedule of services and costs in connection therewith set out hereinabove. All Reimbursable Expenses shall be clearly shown. Should additional backup material be requested by the Director, Architect shall comply promptly with the request.

5.7. City may review any and all of the services performed by Architect under this Contract. City is granted the right to audit, at City's election, all of Architect's records and billings relating to the performance of this Contract. Any payment, settlement, satisfaction, or release provided under this Contract shall be subject to City's rights as may be disclosed by such audit. Architect agrees to retain the records for a minimum of three (3) years following completion of this Contract.

5.8. City reserves the right to correct any error that may be discovered in any invoice that may have been paid to Architect and to adjust the same to meet the requirements of the Contract. Following approval of invoices, City will endeavor to pay Architect promptly, but not later than the time period required under the Texas Prompt Payment Act; however, under no circumstances shall Architect be entitled to receive interest on payments which are late because of a good faith dispute between Architect and City or because of amounts which City has a right to withhold under this Contract or state law.

5.9. City may, at its option, offset any amounts due and payable under this Contract against any debt (including taxes) lawfully due to City from Architect, regardless of whether the amount due arises pursuant to the terms of this Contract or otherwise and regardless of whether or not the debt due to City has been reduced to judgment by a court.

ARTICLE 6
ARCHITECT'S ACCOUNTING RECORDS

6.1. Records of Architect's Consultant and Reimbursable Expenses pertaining to the Project, and records of all other accounts between City and Architect shall be kept on the basis of generally accepted accounting principles and shall be available to City or its authorized representatives at mutually convenient times.

ARTICLE 7
TERMINATION, DEFAULT, TIME OF THE ESSENCE, AND FORCE MAJEURE

7.1. City, acting through the Director, may at its option and without prejudice to any other remedy at law, in equity, or elsewhere under this Contract be entitled to terminate further work under this Contract in whole or in part for cause or for the convenience of City by giving at least fifteen (15) days advance written notice of termination to Architect, with the understanding that all performance being terminated shall cease as of a date to be specified in the notice. City also has the right to request, at its option, that Architect assign and transfer to City all of Architect's rights and obligations under existing subconsulting contracts it has to perform Project work in the event of termination under this Section. City shall equitably compensate Architect in accordance with the terms of this Contract for Project work properly performed prior to the date of termination specified in the notice, following review and acceptance of same by the Director. Architect shall not, however, be entitled to lost or anticipated profits should City choose to exercise its option to terminate this Contract. All plans, field surveys, maps, cross sections and other data, designs and work related to the Project shall become the property of City upon termination of this Contract, and shall be promptly delivered to City in a reasonably organized form without restriction on future use. Should City subsequently contract with a new Architect for continuation of services on the Project, Architect shall cooperate in providing information.

7.2. Nothing contained in paragraph 7.1 above shall require City to pay for any work which is unsatisfactory as determined by the Director or which is not submitted in compliance with the terms of this Contract. City shall not be required to make any payments to Architect when Architect is in default under this Contract, nor shall this Article constitute a waiver of any right, at law and at equity, which City may have if Architect is in default, including the right to bring legal action for damages or to force specific performance of this Contract.

7.3. Architect understands and agrees that time is of the essence of this Contract. Any failure of Architect to complete the services for each phase of this Contract within the agreed Project Performance Schedule will constitute a material breach of this Contract. Architect shall be fully responsible for its delays or for failures to use its best efforts in accordance with the terms of this Contract. Where damage is caused to City due to Architect's failure to perform in these circumstances, City may withhold, to the extent of such damage, Architect's payments owed under this Contract without waiver of any of City's additional legal rights or remedies.

7.4. Neither City nor Architect shall be deemed in violation of this Contract if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible or

circumstances beyond its control. However, notice of such impediment or delay in performance must be timely given in writing, and all reasonable efforts undertaken to mitigate its effects.

ARTICLE 8
OWNERSHIP OF DOCUMENTS

8.1. All Plans and drawings will be prepared and submitted by Architect to City for approval on a minimum 24-inch by 36-inch or maximum 32-inch by 42-inch drafting sheets, with all lettering processed in ink or pencil and clearly legible when the sheets are reproduced and reduced to half size.

8.2. All Architect's designs and work product under this Contract including, but not limited to, Tracings, Drawings, Estimates, Specifications, Investigations, Studies and other documents, completed or partially completed, shall be the property of the City, to be used as City desires, without restriction on future use; by execution of this Contract and in consideration of the fee for services to be paid under the Contract, Architect hereby conveys, transfers and assigns to City all rights under the Federal Copyright Act of 1976 (or any successor copyright statute), as amended, all common law copyrights and all other intellectual property rights acknowledged by law in the Project designs and work product developed under this Contract. Copies may be retained by Architect. Architect shall be liable to City for any loss or damage to any such documents while they are in the possession of or while being worked upon by the Architect or anyone connected with Architect, including agents, employees, consultants or subcontractors. All documents so lost or damaged shall be replaced or restored by Architect without cost to City.

8.3. Upon completion of the construction of the Project, Architect shall, within thirty (30) calendar days following final inspection, deliver to City the reproducible Record Drawings and Record Specifications as previously described in Section 1.1.26 hereinabove. In addition, Architect shall submit originals of all documents listed under Section 8.2, modified to actual as-built conditions.

8.4. Architect shall have no liability for changes made to the drawings by other architects subsequent to the completion of the Project. Any such change shall be sealed by the architect making that change and shall be appropriately marked to reflect what was changed or modified.

ARTICLE 9
RESPONSIBILITY FOR WORK; INDEMNIFICATION; INSURANCE

9.1. Approval by the City shall not constitute nor be deemed a release of the responsibility and liability of Architect, its employees, subcontractors, agents and consultants for the accuracy and competency of their Designs, Working Drawings, Specifications or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by the City for any defect, error or omission in the Designs, Working Drawings, and Specifications or other documents prepared by Architect, its employees, subcontractors, agents and consultants.

9.2. **Architect agrees to defend, indemnify and hold City, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Architect's breach of**

any of the terms or provisions of this Contract, or by any negligent act or omission of Architect, its officers, agents, associates, employees or subconsultants, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of City, its officers, agents, employees or separate contractors, and in the event of joint and concurrent negligence of both the Architect and City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to the City under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties to this Contract and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

9.3 (a) Architect agrees to completely defend and indemnify City, its officers, agents and employees, against a claim that any of the Designs, Plans or Specifications prepared by Architect, its employees, associates or subconsultants, pursuant to this Contract infringe a U.S. patent or copyright directly, indirectly or contributorily, regardless of whether or not City is proven to have actively induced or contributed to the infringement. Architect will pay any and all resulting costs, damages and attorney's fees finally awarded, provided that:

- (1) City promptly notifies Architect in writing of the claim; and
- (2) Architect has sole control of the defense and all related settlement negotiations.

(b) If Architect defends City against such claims, the City Attorney of City shall be kept informed of settlement negotiations, and shall execute any settlement agreement reached by Architect on City's behalf.

(c) Architect's defense and indemnification under this Section is conditioned on City's agreement that if any of the designs, plans or specifications, become, or in Architect's opinion are likely to become, the subject of such a claim, City will permit Architect, at Architect's option and expense, either to procure the right for City to continue using the designs, plans or specifications or to replace or modify the same so that they become non-infringing; and if neither of the foregoing alternatives is available on terms which are reasonable in Architect's judgment, City, to the extent City is legally able to do so, will cease using the designs, plans or specifications on written request of Architect, in which instance City has the sole option to either require Architect to perform new design work at Architect's sole expense, or to terminate this Contract.

(d) Architect has no liability under this Section for any claim of infringement based upon the modification or alteration of the designs, plans or specifications prepared under this Contract subsequent to the Project by City, or by any engineering consultant subsequently employed by City.

(e) The foregoing states the entire obligation of Architect with respect to infringement of patents and copyrights.

9.4 Architect shall procure, pay for, and maintain during the term of this Contract, with a company authorized to do business in the State of Texas and otherwise acceptable to CITY, the minimum insurance coverage contained in Attachment 1, attached to and made a part of this Contract.

9.5 Approval, disapproval or failure to act by City regarding any insurance supplied by Architect or its subconsultants shall not relieve Architect of full responsibility or liability for damages, errors, omissions or accidents as set forth in this Contract. The bankruptcy or insolvency of Architect's insurer or any denial of liability by Architect's insurer shall not exonerate Architect from the liability or responsibility of Architect set forth in this Contract.

ARTICLE 10 ASSIGNMENT

10.1. This Contract provides for unique professional services. Architect, therefore, shall not assign, transfer, or convey its rights, obligations, or interest in this Contract, in whole or in part, without the prior written consent of the Director.

ARTICLE 11 COMPLIANCE WITH LAWS AND REGULATIONS

11.1. This Contract is entered into subject to and controlled by the Charter and ordinances of the City of Dallas, as amended, and all applicable laws, rules, and regulations of the State of Texas and the Government of the United States of America. Architect shall, during the course of performance of this Contract, comply with all applicable City codes and ordinances, as amended, all applicable State and Federal laws, as amended, and with all applicable rules and regulations promulgated by all local, State, and national boards, bureaus, and agencies.

11.2. Architect will pay all taxes, if any, required by law arising by virtue of the services performed under this Contract. City is qualified for exemption from sales and use taxation pursuant to the provisions of Section 151.309 of the Texas Limited Sales, Excise, and Use Tax Act.

ARTICLE 12 NONDISCRIMINATION

12.1. As a condition of this Contract, Architect hereby covenants that it will take all necessary action to insure that, in connection with any work under this Contract, it and its Consultants and subcontractors will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Architect shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Architect shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period, following Project completion, of three (3) years, with full access allowed to authorized representatives of the City upon request for purposes of evaluating compliance with this and other provisions of the Contract.

ARTICLE 13
NOTICE OF CONTRACT CLAIM

13.1. This Contract is subject to the provisions of Section 2-86 of the Dallas City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Section 2-86 of the Dallas City Code, as amended, is expressly incorporated by reference and made a part of this Contract as if written word for word in this Contract. Contractor shall comply with the requirements of this ordinance as a precondition of any claim relating to this Contract, in addition to all other requirements in this Contract related to claims and notice of claims.

ARTICLE 14
INDEPENDENT CONTRACTOR

14.1. Architect's status shall be that of an independent contractor. Except in the course and for the sole purpose of Project construction contract administration, Architect shall not be considered an agent or representative of City in the performance of services under this Contract. Architect shall exercise independent judgment in performing services under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the work flow and determining how the work is to be performed. Notwithstanding the above, no term or provision of this Contract or act of Architect in the performance of this Contract shall be construed as making Architect an employee of City, or making Architect or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which City provides its employees.

ARTICLE 15
VENUE AND GOVERNING LAW

15.1. The obligations of the parties to this Contract shall be performable in Dallas County, Texas, and if legal action is necessary in connection with or to enforce rights under this Contract, exclusive venue shall lie in Dallas County, Texas.

15.2. This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

ARTICLE 16
NOTICES

16.1. Except as otherwise provided in Article 13, any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

To City:

To Architect:

ARTICLE 17
TERM

17.1. Unless sooner terminated in accordance with the applicable provisions of this Contract, or extended by supplemental agreement approved by both parties, the term of this Contract shall be from the date of its execution until final completion of the Project and all architectural/engineering and construction administration services in connection therewith, including the final one (1) year warranty inspection and resolution of any outstanding Project-related claims or disputes.

17.2. Architect understands that the Project Performance Schedule is of critical importance, and agrees to undertake all necessary efforts to expedite the performance of services required under this Contract, so that construction of the Project will be commenced as scheduled. In this regard, Architect shall proceed with sufficient qualified personnel and consultants necessary to fully and timely accomplish all services required under this Contract in the highest professional manner.

ARTICLE 18
FINANCIAL INTEREST PROHIBITED; CONFIDENTIALITY

18.1. Architect covenants and represents that Architect, its officers, employees, agents, consultants and subcontractors will have no financial interest, direct or indirect, in the purchase or sale of any product, materials or equipment that will be recommended or required for the construction of the Project.

18.2. Architect understands that the Charter of the City of Dallas provides that no officer or employee of the City shall have any financial interest, direct or indirect, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or services, except on behalf of the City as an officer or employee. Any violation of this prohibition shall constitute malfeasance in office, and any officer or employee guilty thereof shall thereby forfeit his office or position with the City. Any violation of this prohibition with knowledge, express or implied, of the person or corporation contracting with the City shall render the contract involved voidable by the City Manager or the City Council.

18.3. Architect's reports, evaluations, designs, drawings, data, and all other documentation and work developed by Architect hereunder shall be kept confidential, and shall not be disclosed to any third parties without the prior written consent and approval of the City's Director.

ARTICLE 19
GIFT TO PUBLIC SERVANT

19.1 City may terminate this Contract immediately if Architect has offered, conferred or agreed to confer any benefit upon a City employee or official that the City employee or official is prohibited by law from accepting.

19.2 For purposes of this Article, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

19.3 Notwithstanding any other legal remedies, City may require Architect to remove any employee of Architect from the Project who has violated the restrictions of this Article or any similar state or federal law, and obtain reimbursement for any expenditures made to Architect as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 20
SEVERABILITY

20.1. In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Contract, and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

ARTICLE 21
COUNTERPARTS

21.1. This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Contract is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Contract to be executed.

ARTICLE 22
ENTIRE AGREEMENT; NO ORAL MODIFICATION

22.1. This Contract (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Contract. Except as otherwise provided elsewhere in this Contract, this Contract cannot be modified without written supplemental agreement executed by both parties.

IN WITNESS WHEREOF, the CITY OF DALLAS has caused this Contract to be signed in its name by its City Manager, duly authorized to execute the same in its behalf by Resolution No. _____, approved by the City Council on _____, 20____, and has been signed by _____, signing by and through its duly authorized representatives, thereby binding both parties, their successors, assigns and representatives for the faithful and full performance of the terms and provisions of this Contract.

APPROVED AS TO FORM:
THOMAS P. PERKINS, JR.
City Attorney

CITY OF DALLAS
MARY K. SUHM
City Manager

BY _____
Assistant City Attorney

BY _____
Assistant City Manager

ATTEST:

ARCHITECT:

BY _____
Architect's Corporate Secretary

BY _____
President

THE TEXAS BOARD OF ARCHITECTURAL EXAMINERS, P.O. BOX 12337, AUSTIN, TEXAS 78711-2337, OR 333 GUADALUPE, SUITE 2-350, AUSTIN, TEXAS 78701-3942, (512) 305-9000, HAS JURISDICTION OVER COMPLAINTS REGARDING THE PROFESSIONAL PRACTICES OF PERSONS REGISTERED AS ARCHITECTS IN TEXAS.

[P. 13: Rev. 11-2-94]

[P.20: Rev. 9-1-94]

[P. 21: Rev. 3-26-96, 4-5-96]

[P. 16-18, 20: Rev. 3-13-97]

[P.22: Rev. 4-21-97]

[P. 17: Rev. 12-22-97]

[P. 17-18: Rev. 1-23-98]

[P.17-20: Rev. 2-5-98]

[P. 16-17: Rev. 10-5-99]

[P. 18: Rev. 7-17-00]

[P. 4-5: Rev. 8-14-00]

[P. 13: Rev. 8-29-00]

[P. 1 – 19: Rev. 1-26-06]



Memorandum

DATE

TO Paul Dyer, Director
Park and Recreation Department

SUBJECT Architects Contract – _____ authorized by
Resolution No. _____ dated _____

Attached please find a copy of the subject contract for your review and subsequent forwarding to the Contractor for execution. The contract should be carefully reviewed before it is sent to the Contractor for signing. Your staff will need to photocopy the necessary number of copies of the contract for signing by the Contractor (at least a total of four) prior to forwarding for signature. If there are any questions concerning this contract, do not hesitate to contact me at extension 3474.

CHRISTINE LANNERS
Assistant City Attorney

Attachment