



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: September 8, 2010

REPORT NO: 10-117

ATTENTION: Land Use and Housing Committee Chairman and Committee Members

SUBJECT: Brown Field Airport, Airfield Electrical System Upgrade Project

REQUESTED ACTION:

Introducing and adopting an ordinance ratifying the consultant agreement, and amendments thereto, between HNTB Corporation and the City of San Diego, for the Construction Administration of CIP S-00772, and authorizing the Chief Financial Officer to transfer and expend \$75,000 from A-AA.00002, Airport Capital Improvement Program Annual allocation, Fund No. 70028, Brown Field Special, to CIP#S-00772, Brown Field Airport Airfield Electrical System Upgrade - Phase II & III, for the purpose of funding additional project requirements and related expenditures.

STAFF RECOMMENDATION:

Introduce and adopt the ordinance and pass the resolution.

SUMMARY:

In October 2004 HNTB Corporation was selected to design the new Brown Field Airfield Electrical System Upgrade project at Brown Field Airport. Over the years, the consultant agreement was amended to include additional scope of work, primarily requested by the FAA, for the various project phases. The requested ordinance is necessary to ratify the consultant agreement and subsequent amendments, the term of which has, through its amendments, extended for a period of just over five (5) years. The only work remaining to be performed under the agreement is for HNTB Corporation to provide the final as-built documentation, and for City staff to complete project closeout functions necessary to finalize the project.

Brown Field Airfield Electrical System Upgrade - Phases II and III are the last phases of the overall electrical system overhaul that includes new signs, edge lights, and electrical vault,

transformers and a backup generator. Phase II and III of the upgrade are almost complete and need a budget increase to close out the project.

The proposed fund transfer will cover extra cost for additional project requirements such as realignment of lights, additional signage required to bring the electrical system up to current Federal Aviation Administration (FAA) standards, and related expenditures

FISCAL CONSIDERATIONS:

Approval of \$75,000.00 is being requested for additional project requirements and related expenditures. Funds for this request are available in the Airport Capital Improvement Program Annual Allocation A-AA.00002

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Original Consultant Agreement with HNTB was approved by Council per C-12990 on October 28, 2004
Amendment Number 1 with HNTB was approved by 1544 per C-13262 on May 3, 2005
Amendment Number 2 with HNTB was approved by Council per RR-302176
Amendment Number 3 with HNTB was approved by Council per RR-303293
The Construction of this project was approved by Council per RR-304171 on October 9, 2008

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Airport Advisory Committee (AAC) members, are briefed monthly by the Deputy Director of the Airports Division about this project.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

HNTB (Design Consultant)
Select Electric, Inc. (Contractor)
Brown Field users and businesses
FAA Brown Field Air Traffic Control Tower
FAA Runway Safety Action Team, Western Pacific Region



Afshin Oskoui P.E., Assistant Director
Engineering & Capital Projects Department
Originating Department



David Jarrell P.E.
Deputy Chief Operating Officer, Public Works

COPY DUPLICATE ORIGINAL

CITY OF SAN DIEGO

AGREEMENT BETWEEN

THE CITY OF SAN DIEGO

AND

HNTB CORPORATION

FOR AIRFIELD ELECTRICAL DESIGN

at BROWN FIELD AIRPORT

AMENDMENT NO. 3

DOCUMENT NO. <u>303293</u>
FILED <u>JAN 08 2008</u>
OFFICE OF THE CITY CLERK SAN DIEGO, CALIFORNIA

AMENDMENT NO. 3

To the Agreement between the

CITY OF SAN DIEGO

AND

HNTB CORPORATION

FOR

AIRFILED ELECTRICAL DESIGN of

BROWN FIELD AIRPORT

WHEREAS, the CITY, on October 28, 2004, entered into an AGREEMENT with HNTB Corporation (CONSULTANT), the original of which is on file in the Office of the City Clerk as City Manager Action C-12990; and subsequently issued Amendment No. 1, May 02, 2005, via Document C-13262; and Amendment No. 2, December 5, 2006, via Document RR-302176; and

WHEREAS, the CITY and CONSULTANT mutually desire to amend the AGREEMENT to increase the Not-to-Exceed Total Agreement value by \$138,279.00, and add new Scope of Services tasks;

NOW THEREFORE, the CITY and CONSULTANT agree to amend the AGREEMENT as follows:

1.0 Article III COMPENSATION

Paragraph 3.1 Amount of Compensation:

Delete in its entirety and replace with the following:

The City shall pay the Consultant for performance of all Professional Services rendered in accordance with this Agreement, including reasonably related expenses, in an amount Not-to-Exceed (NTE) \$485,343.00.

Paragraph 3.1.1.1

Delete in its entirety and replace with the following:

Scope of Services tasks with a NTE amount of \$485,143.00 as full compensation for all work described in this Agreement and its Exhibits except for Additional Services that may be authorized at the City's sole discretion under Paragraph 3.3 of this Agreement; and

2.0 EXHIBIT A – SCOPE OF SERVICES

ADD: Task 3.3, Phase II and Phase III Improvements;

as delineated in Attachment A to this Amendment No. 3.

THIS AMENDMENT NO. 3 to the AGREEMENT and AMENDMENT NO. 1, and AMENDMENT NO. 2 thereto, shall affect only the page(s), paragraph(s), and/or terms and conditions referred to herein. All other pages, paragraphs, and/or terms and conditions of this AGREEMENT shall remain in full force and effect.

IN WITNESS WHEREOF, this AMENDMENT NO. 3 to the Airfield Electrical System Design at Brown Field Airport is executed by the City of San Diego acting by and through its Mayor, or his designee, pursuant to San Diego Municipal Code section 22.3223, authorizing such execution, and by Consultant.

HNTB CORPORATION

THE CITY OF SAN DIEGO

By: [Signature]
Name: Michael A. Kraman
Title: Vice President

By: [Signature]
W. Downs Prior
Principal Contract Specialist

Date: 9-17-2007

Date: 2/8/08

I HEREBY APPROVE the form and legality of the foregoing Amendment on this 31st day of January, 2007.

MICHAEL AGUIRRE, City Attorney
By: [Signature]
Deputy City Attorney

AMENDMENT NO. 3

SCOPE OF SERVICES

Task 3.3 PHASE II, and PHASE III Improvements:

The original Bid Documents for the referenced project were completed and prepared based on the assumption that the City would receive the anticipated funding requirements for the project estimated at \$3.4 Million. This funding included the participation of the FAA through an Airport Improvement Program (AIP) grant. Unfortunately, as the City has learned, the FAA was not able to commit the needed level of funding. HNTB was asked to revise the bid documents for the project to reduce the scope consistent with the current funding level of approximately \$1M for fiscal year 2006. The project was then repackaged and bid to allow for the construction of the new airfield electrical vault.

On May 14, 2007, HNTB has been asked to prepare Phase II bid documents for remaining electrical improvements for the project consistent with the current anticipated funding level for 2008. It is anticipated that this will require splitting the Scope of the Project into two smaller bid packages that can be bid concurrently later this year. Consequently, for fiscal year 2008, the Bid Documents will be developed to include a base bid and one alternative that correspond with the committed FAA funding. There is the possibility that the City may not receive the necessary funding to award the alternative. If this is the case, then a third bid package will be prepared and re-bid the following year.

The compensation for these services shall be on a time-and material basis (billing rates plus direct expenses). Based on discussions with the FAA, the City could apply for funding reimbursements for these services via the grant process.

Phase II - Design Phase Services

As part of the Phase II design effort, it is anticipated that HNTB will make one interim submittal to City and the FAA to review prior to preparing 100% Bid Documents. After review, HNTB will incorporate

comments from all review agencies and will prepare final Plans, Specifications and Estimates. 100% Plans and Specs will be submitted to the City of San Diego Developmental Services. After review, HNTB will incorporate comments to allow for permitting.

HNTB will submit one set of final Adobe PDF files of the plans and one set of specifications.

Schedule of Services

The aforementioned scope of services will be provided in accordance with the following schedule:

Prepare 100% PS&E	8 weeks after approval of NTP
Final PS&E	2 weeks after approval of 100%PS&E
Bidding	4 weeks after approval advertise

Phase II -Construction Phase Services

HNTB will provide construction phase services and are described in the following paragraphs

A.1 General Administration and Construction Meetings

Consultant shall attend a Pre-Bid Conference as scheduled by the City, shall also assist the City in reviewing the bid results.

Consultant shall, as requested by the City, assist in responding to questions from prospective bidders and in the preparation and issuance of addenda during the bidding process. Consultant will prepare needed briefing material and attend the Pre-construction Conference. Consultant will attend five weekly progress meetings with representative from the City and the Contractor. Consultant will review and provide input on Meeting Minutes.

A.2 Design Support and Observation of Construction

Consultant shall provide observation of the Work during construction in order to observe the progress and quality of the various aspects of Contractor's work and to provide timely design input during construction. These visits will be limited, unless requested by the City of San Diego, to weekly visits after the progress meetings:

Consultant's primary role during the construction is to provide design input to City of San Diego and its representatives in order to minimize delays to construction; however, during the course of the observation, Consultant will advise The City or its field representative, in writing of any observations of defective work, work not in conformance with drawings and specifications, and lack of progress of work. Consultant will not, during visits or as a result of continuous observations of Contractor's work in progress, supervise, direct or have control over Contractor's work.

Interpretations, Clarifications and Corrections. Consultant shall issue necessary interpretations, clarifications and Requests for Information, "RFI," replies regarding the Contract Documents and in

connection therewith assist the City of San Diego with supplemental instructions and Change Orders as required, with reasonable promptness so as to cause no delay to Contractor or the Project.

Review of Submittals and Requests for Information. Consultant will review, note exceptions or make other appropriate recommendations in respect of Shop Drawings, Samples and other data which Contractor is required to submit as required by the Contract Specifications (collectively referred to herein as "Submittals"), and review and reply to RFI's, for conformance with the design concept of the Project and the intent of and compliance with the Contract Documents, with reasonable promptness so as to cause no delay to Contractor or the Project.

A.3 Post-Construction Services

Record Drawings. Prepare electronic record sets and sets of reproducible record prints showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by Contractor to Consultant.

Final Inspection. Together with the City of San Diego, visit the Project to observe any apparent defects in the completed construction, assist City in consultations and discussions with Contractor concerning correction of such deficiencies, and make recommendations as to replacement, correction, or diminished value of defective work.

Phase III - Design Services

In the event, that funding is not available for the phase II alternative during the 2008 fiscal year. The alternative plans and specs from phase II shall be re packaged, re advertised and bid as Phase III. No modifications to the plans shall be required. HNTB shall prepare necessary revisions to the specifications and prepare a separate engineer's cost estimate.

Phase III -Construction Phase Services

B.1 General Administration and Construction Meetings

Consultant shall attend a Pre-Bid Conference as scheduled by the City, shall also assist the City in reviewing the bid results.

Consultant shall, as requested by the City, assist in responding to questions from prospective bidders and in the preparation and issuance of addenda during the bidding process. Consultant will prepare needed briefing material and attend the Pre-construction Conference. Consultant will attend five weekly progress meetings with representative from the City and the Contractor. Consultant will review and provide input on Meeting Minutes.

B.2 Design Support and Observation of Construction

Consultant shall provide observation of the Work during construction in order to observe the progress and quality of the various aspects of Contractor's work and to provide timely design input during construction. These visits will be limited, unless requested by the City of San Diego, to weekly visits after the progress meetings:

Consultant's primary role during the construction is to provide design input to City of San Diego and its representatives in order to minimize delays to construction; however, during the course of the observation, Consultant will advise The City or its field representative, in writing of any observations of defective work, work not in conformance with drawings and specifications, and lack of progress of work. Consultant will not, during visits or as a result of continuous observations of Contractor's work in progress, supervise, direct or have control over Contractor's work.

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B.3 Post-Construction Services

Record Drawings. Prepare electronic record sets and sets of reproducible record prints showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by Contractor to Consultant.

Final Inspection. Together with the City of San Diego, visit the Project to observe any apparent defects in the completed construction, assist City in consultations and discussions with Contractor concerning correction of such deficiencies, and make recommendations as to replacement, correction, or diminished value of defective work.

ENGINEERING SERVICES FEE ESTIMATE

City of San Diego - Brown Field
Brown Field Airfield Electrical System Upgrade

Phase II and Phase III

LABOR

Scope Item	Description	Principal \$225.00	Project Manager \$160.00	Sr. Elec Engineer \$157.00	Electrical Engr. \$125.00	CAD Technician \$90.00	Clerical Support \$70.00	Total Hours	Total
Phase II	Revise Contract Documents								
	Sheet #								
	G000		0	0	2	2		4	\$430
	G001		0	0	0	0		0	\$0
	G002		4	0	2	2		8	\$1,070
	G003		0	0	0	0		0	\$0
	G004		0	0	2	2		4	\$430
	G005		0	0	2	2		4	\$430
	G006		0	0	2	2		4	\$430
	G007		0	0	0	0		0	\$0
	G008		0	0	0	0		0	\$0
	G009		0	0	0	0		0	\$0
	G010		0	0	0	0		0	\$0
	G011		0	0	0	0		0	\$0
	G012		0	0	0	0		0	\$0
	E001		0	0	0	0		0	\$0
	E002		0	0	0	0		0	\$0
	E003		0	0	0	0		0	\$0
	E004		0	0	2	2		4	\$430
	E005		0	0	2	2		4	\$430
	E006		0	0	2	2		4	\$430
	E007		0	0	0	0		0	\$0
	E008		0	0	2	2		4	\$430
	E009		0	0	0	0		0	\$0
	E010		0	0	0	0		0	\$0
	E011		0	0	0	0		0	\$0

ENGINEERING SERVICES FEE ESTIMATE

City of San Diego - Brown Field
Brown Field Airfield Electrical System Upgrade

Phase II and Phase III

LABOR

Scope Item	Description	Principal \$225.00	Project Manager \$160.00	Sr. Elec Engineer \$157.00	Electrical Engr. \$125.00	CAD Technician \$90.00	Clerical Support \$70.00	Total Hours	Total
E012	New Circuit Overview		0	0	0	0		0	\$0
E013	Existing Vault Demolition Plan		0	0	0	2		2	\$180
E015	Create new plan single line diagram		2	2	6	8		18	\$2,104
E016	Create new plan for detail to connect into new vault		2	4	8	8		22	\$2,668
E101	Airfield Demo Plan		0	1	2	2		5	\$587
E102	Airfield Demo Plan		0	1	2	2		5	\$587
E103	Airfield Demo Plan		0	1	2	2		5	\$587
E104	Airfield Demo Plan		0	1	2	2		5	\$587
E105	Airfield Demo Plan		0	1	2	2		5	\$587
E106	Airfield Demo Plan		0	1	2	2		5	\$587
E107	Airfield Demo Plan		0	1	2	2		5	\$587
E108	Airfield Demo Plan		0	1	2	2		5	\$587
E109	Airfield Demo Plan		0	1	2	2		5	\$587
E110	Airfield Demo Plan		0	1	2	2		5	\$587
E201	Airfield New lighting and Signage Plan		1	0	2	4		7	\$770
E202	Airfield New lighting and Signage Plan		1	0	2	4		7	\$770
E203	Airfield New lighting and Signage Plan		1	0	2	4		7	\$770
E204	Airfield New lighting and Signage Plan		1	0	2	4		7	\$770
E205	Airfield New lighting and Signage Plan		1	0	2	4		7	\$770
E206	Airfield New lighting and Signage Plan		1	0	2	4		7	\$770
E207	Airfield New lighting and Signage Plan		1	0	2	4		7	\$770
E208	Airfield New lighting and Signage Plan		1	0	2	4		7	\$770
E209	Airfield New lighting and Signage Plan		1	0	2	4		7	\$770
E210	Airfield Signage Plan		0	0	0	0		0	\$0
E211	Runway and Taxiway Light Fixture Schedule		1	0	2	4		7	\$770

ENGINEERING SERVICES FEE ESTIMATE

**City of San Diego - Brown Field
Brown Field Airfield Electrical System Upgrade
Phase II and Phase III**

LABOR

Scope Item	Description	Principal \$225.00	Project Manager \$160.00	Sr. Elec Engineer \$157.00	Electrical Engr. \$125.00	CAD Technician \$90.00	Clerical Support \$70.00	Total Hours	Total
	Redevelop Specification		6	0	16	0	0	22	\$2,960
	Develop Engineers Estimate		0	0	16	0	0	16	\$2,000
	Construction Support Services Phase III								
	Construction Phase								
	Pre-Construction Conference (1)		6	0	6	0	0	12	\$1,710
	Weekly progress meetings (5)		40	0	40	0	0	80	\$11,400
	Reviews, submittals, shop drawings, and substitution requests		24	0	60	0	18	102	\$12,600
	Provide clarifications, interpretations, and RFIs.		8	0	30	0	8	46	\$5,590
	Participate in final walk through and Punch List		6	0	6	0	0	12	\$1,710
	Provide final record drawings		8	0	20	40	0	68	\$7,380
	Subtotal Phase III	0	98	0	194	40	26	358	\$45,350
	Subtotal Phase II and Phase III		229	41	548	138	136	1,092	\$135,929

ENGINEERING SERVICES FEE ESTIMATE

City of San Diego - Brown Field
Brown Field Airfield Electrical System Upgrade
Phase II and Phase III

LABOR

Scope Item	Description	Principal \$225.00	Project Manager \$160.00	Sr. Elec Engineer \$157.00	Electrical Engr. \$125.00	CAD Technician \$90.00	Clerical Support \$70.00	Total Hours	Total
Item					Quantity	Unit	Unit Cost		Total
	Mileage from LAX				3000		\$0.50		\$1,500
	Drawing Reproduction for Interim Submittal								\$250
	Drawing Reproduction for Final Submittal								\$500
	Miscellaneous Supplies								\$100
	Subtotal Expenses								\$2,350
TOTAL EXPENSES									\$2,350
Total Phase II and Phase III EXPENSES									\$135,929
TOTAL									\$138,279

CO/ DUPLICATE
ORIGINAL

CITY OF SAN DIEGO

AGREEMENT BETWEEN

THE CITY OF SAN DIEGO

AND

HNTB CORPORATION

FOR AIRFIELD ELECTRICAL DESIGN

at BROWN FIELD AIRPORT

AMENDMENT NO. 2

RR-302176
DOCUMENT NO. RR-302176
FILED DEC 05 2006
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

AMENDMENT NO. 2

To the Agreement between the

CITY OF SAN DIEGO

AND

HNTB CORPORATION

FOR

AIRFILED ELECTRICAL DESIGN of

BROWN FIELD AIRPORT

WHEREAS, the CITY, on October 28, 2004, entered into an AGREEMENT with HNTB Corporation (CONSULTANT), the original of which is on file in the Office of the City Clerk as City Manager Action C-12990; and subsequently issued Amendment No. 1, May 02, 2005, via Document C-13262; and

WHEREAS, the CITY and CONSULTANT mutually desire to amend the AGREEMENT to increase the Not-to-Exceed Total Agreement value by \$73,725.00, and add new Scope of Services tasks;

NOW THEREFORE, the CITY and CONSULTANT agree to amend the AGREEMENT as follows:

1.0 Article III COMPENSATION

Paragraph 3.1 Amount of Compensation:

Delete in its entirety and replace with the following:

The City shall pay the Consultant for performance of all Professional Services rendered in accordance with this Agreement, including reasonably related expenses, in an amount Not-to-Exceed (NTE) \$347,064.00.

ADD: Paragraph 3.1.1

The NTE amount stated in Paragraph 3.1 above includes the following two specific elements:

3.1.1.1 Scope of Services tasks with a NTE amount of \$346,864.00 as full compensation for all work described in this Agreement and its Exhibits except for Additional Services that may be authorized at the City's sole discretion under Paragraph 3.3 of this Agreement;
and

3.1.1.2 Additional Services with a NTE amount of \$200.00 that may be authorized under Paragraph 3.3 of this Agreement.

Paragraph 3.3 Additional Services:

Delete "NONE"

ADD: Additional Services include services which may be required for the completion of the Project, but which at the time of entering into this AGREEMENT, could not be identified with precision. Because the need for these Additional Services is not absolutely established, such Additional Service shall not be undertaken by the CONSULTANT without specific definition and written authorization from the CITY via specific authorizations (aka Task Authorization), which shall include the scope of services, deliverable(s), schedule, and compensation for said TA.

The issuance of Additional Services Task Authorizations is at the City's sole discretion.

2.0 EXHIBIT A – SCOPE OF SERVICES

DELETE: "Extra Services" and "Not Included" which follows Task 2.5 Bidding Assistance

DELETE: TASK 3.1 Permits Delete the original paragraph in its entirety and replace with the following:

ADD: TASK 3.1 Construction Phase Services:

General Administration and Construction Meetings

Consultant will prepare needed briefing material and attend the Pre-construction Conference. Consultant will attend weekly progress meeting with representative from the City and the Contractor. Consultant will review and provide input of Meeting Minutes.

Design Support and Observation of Construction

Consultant shall provide observation of the Work during construction in order to observe the progress and quality of the various aspects of Contractor's work and to provide timely design input during construction. These visits will be limited, unless requested by the City of San Diego, to weekly visits after the progress meetings:

Consultant's primary role during the construction is to provide design input to City of San Diego and its representatives in order to minimize delays to construction; however, during the course of the observation, Consultant will advise the City or its field representative, in writing of any observations of defective work, work not in conformance with drawings and specifications, and lack of progress of work. Consultant will not, during visits or as a result of continuous observations of Contractor's work in progress, supervise, direct or have control over Contractor's work.

Interpretations, Clarifications and Corrections. Consultant shall issue necessary interpretations, clarifications and Requests for Information, "RFI," replies

regarding the Contract Documents and in connection therewith assist the City of San Diego with supplemental instructions and Change Orders as required, with reasonable promptness so as to cause no delay to Contractor or the Project.

Review of Submittals and Request for Information. Consultant will review, note exceptions or make other appropriate recommendations in respect of Shop Drawings, Samples and other data which Contractor is required to submit as required by the Contract Specifications (collectively referred to herein as "Submittals"), and review and reply to RFI's, for conformance with the design concept of the Project and intent of and compliance with the Contract Documents, with reasonable promptness so as to cause no delay to Contractor or the Project.

Design Support and Coordination with SDG&E. Consultant will meet with SDG&E representative and coordinate area power and equipment availability, location and space requirements for the service to the new electrical vault. Provide one-line diagrams, prepare layout plans and arrangements for switchgear, panel boards, conduit routing and details a necessary for electrical service.

Reviews, approvals and other actions taken shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto, unless same has been expressly specified by Consultant.

DELETE: Task 3.2 Construction Phase Services:

Delete original paragraph and its entirety and replace with the following:

ADD: Task 3.2 Post Construction Services:

Record Drawings. Prepare electronic record sets and sets of reproducible record prints showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by Contractor to Consultant.

Final Inspection. Together with the City of San Diego, visit the Project to observe any apparent defects in the completed construction, assist City in consultations and discussions with Contractor concerning correction of such deficiencies, and make recommendations as to replacement, correction, or diminished value of defective work.

DELETE: Task 3.3 Post Construction Services:

Delete the original paragraph in its entirety.

This section left intentionally blank.

IN WITNESS WHEREOF, this Second Amendment to the Airfield Electrical System Design at Brown Field Airport is executed by the City of San Diego acting by and through its Mayor, or his designee, pursuant to Resolution No. R-302176, authorizing such execution, and by Consultant.

THE CITY OF SAN DIEGO

By [Signature]
W. Downs Prior
Principle Contract Specialist

Date: 6/15/07

HNTB CORPORATION

By: [Signature]
Name: Michael A. Kramer
Title: Vice President

Date: JUNE 14, 2007

I HEREBY APPROVE the form and legality of the foregoing Amendment on this

15th day of June, 2007.

MICHAEL AGUIRRE, City Attorney
By: [Signature]
Deputy City Attorney

CITY OF SAN DIEGO
REQUEST FOR
CITY MANAGER ACTION

TO: CITY MANAGER	FROM: READ/Airports	DATE: 3/1/05
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SUBJECT:
Airfield Electrical and Lighting Project at Brown Field Airport

ACTION REQUESTED:
Approve Additional Services Contract with HNTB Corporation

SUPPORTING INFORMATION:

On October 28, 2004, by way of Document No C-12990, HNTB Corporation was approved to design an airfield electrical and lighting project at Brown Field Airport for an amount not to exceed \$250,000. Fees for additional services contemplated under this request will increase the HNTB Contract by an additional \$23,339.

Upon project review of the 30% plans and specifications, FAA is requiring additional design work. This work is outside the scope of work under the original contract with HNTB. The additional design work includes runway end identifier lights, precision approach path indicators, and a new airport beacon.

This project is eligible for Federal Aviation Administration (FAA) Airport Improvement Program (AIP) grant reimbursement funds up to 90% of the total cost.

C-13262
DOCUMENT NO. _____
MAY 02 2005
FILED _____
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

PLEASE ROUTE TO THE APPROPRIATE AUTHORITY - REF: A.R. 25.60 OR 25.70

ACCOUNTING INFORMATION	BUDGETED	UNBUDGETED	ROUTING AND APPROVAL		
FUND	30244		APPROVING AGENCY	APPROVAL SIGNATURE	DATE
DEPARTMENT	30244		DEPARTMENT DIRECTOR	William T. Griffith <i>[Signature]</i>	3-4-05
ORGANIZATION	114		CLEARING AUTHORITY	Alicia Boden <i>[Signature]</i>	3-8-05
OBJECT ACCOUNT	4151		FINANCIAL MANAGEMENT (CIP)	Jaime Jacinto Irina Kumits <i>[Signature]</i>	3/7/05
JOB ORDER NUMBER	31-300.0		DEPUTY CITY MANAGER	Bruce Herring <i>[Signature]</i>	3-12-05
C.I.P. NO.	31-300.0		AUDITOR	Victoria DeLoza <i>[Signature]</i>	3/29/05
FACILITY			ORIGINATING DEPARTMENT	Tracy L. Means <i>[Signature]</i>	3-29-05
AMOUNT	\$23,339		CITY MANAGER	P. Lamont Ewell <i>[Signature]</i>	4-5-05
ESTIMATED COST: \$23,339			CITY ATTORNEY	Debra Bevier <i>[Signature]</i>	4/11/05
AUDITOR'S CERTIFICATE NUMBER: (FOR AUDITOR'S USE ONLY) AC 2500857			CITY CLERK	Allen <i>[Signature]</i>	5-2-05
FOR INFORMATION CONTACT:					
NAME: Tracy L. Means, Airports Director					
MAIL STATION: 14	TELEPHONE NUMBER: (858) 573-1430				

**The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER**

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING

AC 2500857
DEPT. _____
NO. 10510

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____

ACCOUNTING DATA

ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE

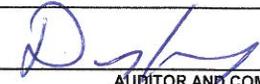
CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$23,339.00

Vendor: hntb Corporation

Purpose: Authorizing the expenditure of funds for addition services for contract related to airfield electrical and lighting project CIP 31-300.0

Date: March 23, 2005 By: 

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA

ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
1	0	30244	30244	114	4278	313000				\$23,339.00
TOTAL AMOUNT										\$23,339.00

FUND OVERRIDE

ORIGINAL

HNTB Companies
Engineers Architects Planners

6151 W. Century Blvd
Suite 1200
Los Angeles, CA 90045

Telephone (310) 417-8777
Facsimile (310) 417-5369
www.hntb.com

HNTB

Tracy L Mean A.A.E
Airport Director
City of Diego
3750 John J Montgomery Drive, MS 14
San Diego, Ca 92123

RE: BROWN FIELD ELECTRICAL UPGRADE PROJECT

Dear Tracy,

On Jan 28, 2005, HNTB received review comments from the FAA on our 30% Plans and Specification for the Electrical Upgrade Project at Brown Field. Along with these comments came the request to incorporate additional lighting and NAVAIDs facilities into this project.

Listed below are the requested facilities:

- Runway End Identifier Lights (REIL) and Precision Approach Path Indicators (PAPI) at the approach end of Runway 8R/26L
- Runway End Identifier Lights (REIL) and Precision Approach Path Indicators (PAPI) at the approach end of Runway 8L/26R
- Relocate Airport Beacon and install on a new tower, if required.

Furthermore, the City has also requested that HNTB upgrade the illumination near the U.S Customs Inspection Area. This task will require the review the existing photometric conditions. The existing lighting will need likely need to be supplemented with new floodlighting fixtures, poles and new conduit runs as necessary.

To include these facilities in the Contract Documents for the Brown Field Lighting Upgrade Project additional design and calculations will be required as well as modifications to the Plans, Specifications and Estimate. These work items are not part of our original scope of services. Therefore we are respectfully requesting the additional fees in the amount of \$23,339 for the work.

We have attached a spreadsheet that lists a breakdown of the effort required.

Your signature below confirms the City's acceptance of theses tasks and fee.

Please sign and return this to our office. Should you have any questions or clarification regarding our proposal, please do not hesitate to call us at (310) 846-1810. Thank you for your assistance in this matter.

DOCUMENT NO. C-13262
FILED MAY 02 2005
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

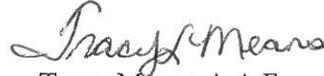
Sincerely,

HNTB Corporation

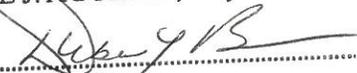


Tony Fermelia P.E.
Project Manager

City of San Diego



Tracy Means A.A.E.
Airport Director

Approved as to form and legality
this.....^{28th} day of.....^{April}..... 20⁰⁵
MICHAEL J. AGUIRRE, City Attorney
By.....
Deputy City Attorney

ENGINEERING SERVICES FEE ESTIMATE

CLIENT: City of San Diego - Brown Field
 PROJECT: Brown Field Airfield Electrical System Upgrade

HNTB PROJECT NO.: 39478

LABOR

Scope Item	Description	Principal \$196.00	Project Manager \$145.00	Sr. Elec Engineer \$125.00	Electrical Engr. \$96.00	CAD Technician \$85.00	Clerical Support \$65.00	Total Hours	Total
Task 1	Add PAPIs and REILs								
	Electrical Plan Sheet Modifications (4 sheets)		4	10	12	12		38	\$4,002
	Develop Details			4	12	8		24	\$2,332
	Develop Specification		2	2	4		4	12	\$1,184
	Subtotal PAPIs & REILs Development	0	6	16	28	20	4	74	\$7,518
Task 2	Prepare Ramp Lighting								
	Develop Electrical Plan Sheet			2	8	8		18	\$1,698
	Develop Pole, Foundation and Fixture Detail			4	8	8		20	\$1,948
	Calculate Photometrics			2	2			4	\$442
	Develop Load Calculations			2	4			6	\$634
	Develop Specifications			2	4		4	10	\$894
	Subtotal Ramp Lighting		0	12	26	16	4	58	\$5,616
Task 3	Beacon Tower Design								
	Develop Electrical Plan Sheet			4	6	12		22	\$2,096
	Develop Beacon Tower Structural Details				6	8		14	\$1,256
	Specifications			8	4		2	14	\$1,514
	Subtotal Design Services	0	0	12	16	20	2	50	\$4,866
Task 4	US Customs Flood Lighting								
	Develop Electrical Plan Sheet			2	8	4		14	\$1,358
	Develop Fixture and Pole Details				6	8		14	\$1,256
	Load Calculations and Photometrics			4	2	2			\$862
	Specifications			2	4	8	2	16	\$1,444
	Subtotal Design of Flood Lighting	0	0	8	20	22	2	44	\$4,920
Note: All plans are one sheet unless otherwise noted.									
TOTAL DESIGN SERVICES LABOR		0	6	40	70	56	10	182	\$22,920

EXPENSES

Item	Quantity	Unit	Unit Cost	Total
Miscellaneous Expenses				
Mileage from OC	400		\$0.36	\$144
Drawing Reproduction	35 Sheets		\$5.00	\$175
Miscellaneous Supplies	1		\$100.00	\$100
Subtotal Misc. Expenses				\$419

TOTAL EXPENSES **\$419**

SUMMARY

DESIGN LABOR	\$22,920
EXPENSES	\$419
TOTAL - Brown Field Airfield Electrical System Upgrade	\$23,339

COPY

AGREEMENT

FOR

Airfield Electrical System Design at Brown Field Airport

THE CITY OF SAN DIEGO

AND

HNTB Corporation

DOCUMENT NO.	C-12990
FILED	OCT 28 2004
OFFICE OF THE CITY CLERK SAN DIEGO, CALIFORNIA	

**AGREEMENT BETWEEN THE CITY
OF SAN DIEGO AND HNTB Corporation
FOR CONSULTING SERVICES**

THIS Agreement is made and entered into between the City of San Diego, a municipal corporation [City], and HNTB Corporation, [Consultant] for the Consultant to provide Professional Services to the City on Airfield Electrical System Design at Brown Field Airport [Project].

RECITALS

The City wants to retain the services of a professional engineering firm to provide airfield electrical system design services [Professional Services].

The Consultant has the expertise, experience and personnel necessary to provide the Professional Services for the Project.

The City and the Consultant [Parties] want to enter into an Agreement whereby the City will retain the Consultant to provide, and the Consultant shall provide, the Professional Services for the Project [Agreement].

In consideration of the above recitals and the mutual covenants and conditions set forth, herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

ARTICLE I

PROFESSIONAL SERVICES

The above-listed recitals are true and correct and are hereby incorporated by reference.

1.1 Scope of Services.

The Consultant shall perform Professional Services as set forth in the written Scope of Services at the direction of the City.

1.2 Contract Administrator.

The Real Estate Assets Department/Airports Division is the contract administrator for this Agreement. The Consultant shall provide Professional Services under the direction of a designated representative of the Real Estates Assets Department/Airports Division. The City's designated representative will communicate with the Consultant on all matters related to the administration of this Agreement and the Consultants performance of the Professional Services rendered hereunder. When this Agreement refers to communications to or with the City, those communications will be with the designated representative, unless the designated representative or the Agreement specifies otherwise. Further, when this Agreement refers to an act or approval to be performed by City, that act or approval shall be performed by the City Manager, Real Estate Assets Director, or designee, unless the Agreement specifies otherwise.

1.3 City Modification of Scope of Services.

The City may, without invalidating this Agreement, order changes in the Scope of Services by altering, adding to, or deducting from the Professional Services to be performed. All such changes shall be in writing and shall be performed in accordance with the provisions of this Agreement. If any such changes cause an increase or decrease in the Consultant's cost of, or the time required for, the performance of any of the Professional Services, the Consultant's shall immediately notify the City, and any such increase or decrease must be approved in writing by the City. If the City deems it appropriate, an equitable adjustment to the Consultants compensation may be made, provided that any adjustment must be approved by both Parties in writing.

1.4 Written Authorization.

Prior to performing any Professional Services in connection with the Project, the Consultant shall obtain from the City a written authorization to proceed. Further, throughout the term of this Agreement, the Consultant shall advise the City in writing immediately of any anticipated change in the Scope of Services, or Time Schedule, and shall obtain the City's written consent to the change prior to making any changes. Compensation and Fee Schedule. In no event shall the City's consent be construed to relieve the Consultant from its duty to render all Professional Services in accordance with applicable laws and accepted industry standards.

1.5 Confidentiality of Services.

All Professional Services performed by the Consultant, including but not limited to all drafts, data, correspondence, proposals, reports, and estimates compiled or composed by the Consultant, pursuant to this Agreement, are for the sole use of the City, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the City. This provision does not apply to information that (a) was publicly known, or otherwise known to the Consultant, at the time that it was disclosed to the Consultant by the City, (b) subsequently becomes publicly known through no act or omission of the Consultant, or (c) otherwise becomes known to the Consultant other than through disclosure by the City except for Subconsultants, covered by Section 4.4, neither the documents nor their contents shall be released to any third party without the prior written consent of the City.

1.6 Competitive Bidding.

The Consultant shall ensure that any plans and specifications prepared, required, or recommended under this Agreement allow for competitive bidding. The Consultant shall design such plans or specifications so that procurement of services, labor or materials are not available from only one source, and shall not design plans and specifications around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by the City. The Consultant shall submit this written justification to the City prior to beginning work on such plans or specifications. Whenever the Consultant recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.

ARTICLE II

DURATION OF AGREEMENT

2.1 Term of Agreement.

This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and it shall be effective for one year or until completion of the Scope of Services or whichever is earlier.

2.2 Time of Essence.

Time is of the essence for this Agreement. The time for performance of the Scope of Services is set forth in the Time Schedule.

2.3 Notification of Delay.

The Consultant shall immediately notify the City in writing if the Consultant experiences or anticipates experiencing a delay in performing the Professional Services within the time frames set forth in the Time Schedule. The written notice shall include an explanation of the cause for, and a reasonable estimate of the length of the delay. If in the opinion of the City, the delay affects a material part of the Project, the City may exercise its rights under Sections 2.5-2.8 of this Agreement.

2.4 Delay.

If delays in the performance of the Professional Services are caused by unforeseen events beyond the control of the Parties, such delay may entitle the Consultant to a reasonable extension of time, but such delay shall not entitle the Consultant to damages or additional compensation. Any such extension of time must be approved in writing by the City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the Consultant's work; inability to obtain materials, equipment or labor; required additional Professional Services; or other specific reasons agreed to between the City and the Consultant; provided, however, that: (a) this provision shall not apply to, and the Consultant shall not be entitled to an extension of time for, a delay caused by the acts or omissions of the Consultant; and (b) a delay caused by the inability to obtain materials, equipment, or labor shall not entitle the Consultant to an extension of time unless the Consultant furnishes the City, in a timely manner, documentary proof satisfactory to City of the Consultant's inability to obtain materials, equipment, or labor.

2.5 City's Right to Suspend for Convenience

The City may, at its sole option and for its convenience, suspend all or any portion of the Consultants performance of the Professional Services, for a reasonable period of time not to exceed six months. In accordance with the provisions of this Agreement, the City will give written notice to the Consultant of such suspension. In the event of such a suspension, in accordance with the provisions of Article III of this Agreement, the City shall pay to the Consultant a sum equivalent to the reasonable value of the Professional Services the Consultant has performed up to the date of suspension. Thereafter, the City may rescind such suspension by giving written notice of rescission to the Consultant. The City may then require the Consultant to resume performance of the Professional Services in compliance with the terms and conditions of this Agreement; provided, however, that the Consultant shall be entitled to an extension of time equal to the length of the suspension, unless otherwise agreed to in writing by the Parties.

2.6 City's Right to Terminate for Convenience.

The City may, at its sole option and for its convenience, terminate all or any portion of the Professional Services agreed to pursuant to this Agreement by giving written notice of such termination to the Consultant. Such notice shall be delivered by certified mail with return receipt for delivery to the City. The termination of the Professional Services shall be effective upon receipt of the notice by the Consultant. After termination of this Agreement, the Consultant shall complete any and all additional work necessary for the orderly filing of documents and closing of the Consultant's Professional Services under this Agreement. For services rendered in completing the work, the Consultant shall be entitled to reasonable compensation for the Professional Services performed by the Consultant before the effective date of termination. After filing of documents and completion of performance, the Consultant shall deliver to the City all drawings, plans, calculations, specifications and other documents or records related to both the Project and to the Consultant's Professional Services on the Project. By accepting payment for completion, filing and delivering documents as called for in this paragraph, the Consultant discharges the City of all of the City's payment obligations and liabilities under this Agreement.

2.7 City's Right to Terminate for Default.

If the Consultant fails to perform or adequately perform any obligation required by this Agreement, the Consultant's failure constitutes a Default. A Default includes the Consultant's failure to adhere to the Time Schedule. If the Consultant fails to satisfactorily cure a Default within ten calendar days of receiving written notice from the City specifying the nature of the Default, the City may immediately cancel and/or terminate this Agreement, and terminate each and every right of the Consultant, and any person claiming any rights by or through the Consultant under this Agreement. The rights and remedies of the City enumerated in this Section are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against the Consultant.

2.8 City's Right to Terminate for Bankruptcy or Assignment for the Benefit of Creditors.

If the Consultant files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to or demand upon the Consultant, immediately cancel and/or terminate this Agreement, and terminate each and every right of the Consultant, and any person claiming any rights by or through the Consultant. The rights and remedies of the City enumerated in this Section are cumulative and shall not limit, waive, or deny any of the City's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against the Consultant.

ARTICLE III

COMPENSATION

3.1 Amount of Compensation.

The City shall pay the Consultant for performance of all Professional Services rendered in accordance with this Agreement, including reasonably related expenses, in an amount not to exceed \$249,800.

3.2 Manner of Payment.

The City shall pay the Consultant in accordance with the Compensation and Fee Schedule. For the duration of this Agreement, the Consultant shall not be entitled to fees, including fees for expenses, that exceed the amounts specified in the Compensation and Fee Schedule. The Consultant shall submit one invoice per calendar month in a form acceptable to City in accordance with the Compensation and Fee Schedule. The Consultant shall include with each invoice a description of completed Professional Services, reasonably related expenses, if any, and all other information, including but not limited to: the progress percentage of the Scope of Services and/or deliverables completed prior to the invoice date, as required by the City. The City will pay undisputed portions of invoices within thirty calendar days of receipt.

3.3 Additional Services.

None.

3.4 Additional Costs.

Additional Costs are those costs that can be reasonably determined to be related to the Consultants errors or omissions, and may include Consultant, City, or Subconsultant overhead, construction, materials, demolition, and related costs. The Consultant shall not be paid for Professional Services required due to the Consultants errors or omissions, and the Consultant shall be responsible for any Additional Costs associated with such errors or omissions. These Additional Costs may be deducted from monies due, or that become due, the Consultant. Whether or not there are any monies due, or becoming due, Consultant shall reimburse the City for Additional Costs due to the Consultants errors or omissions.

3.5 Eighty Percent Notification.

The Consultant shall promptly notify the City in writing of any potential cost overruns. Cost overruns include, but are not limited to the following: (1) where anticipated costs to be incurred in the next sixty calendar days, when added to all costs previously incurred, will exceed eighty percent of the maximum compensation for this Agreement; or (2) where the total cost for performance of the Scope of Services appears that it may be greater or less than the maximum compensation for this Agreement.

ARTICLE IV

CONSULTANT'S OBLIGATIONS

4.1 Industry Standards.

The Consultant agrees that the Professional Services rendered under this Agreement shall be performed in accordance with the standards customarily adhered to by an experienced and competent professional engineering firm using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California. Where approval by the City, the City Manager, or other representatives of the City is required, it is understood to be general approval only and does not relieve the Consultant of responsibility for complying with all applicable laws, codes, and good consulting practices.

4.2 Right to Audit.

4.2.1 Access.

The City retains the right to review and audit, and the reasonable right of access to Consultants and any Subconsultants premises to review and audit Consultants compliance with the provisions of this Agreement [City's Right]. The City's Right includes the right to inspect and photocopy same, and to retain copies, outside of Consultant's premises, of any and all Project-related records with appropriate safeguards, if such retention is deemed necessary by the City in its sole discretion. This information shall be kept by the City in the strictest confidence allowed by law.

4.2.2 Audit.

The City's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the City determines is necessary to discover and verify that the Consultant is in compliance with all requirements under this Agreement.

4.2.2.1 Cost Audit.

If there is a claim for additional compensation or for Additional Services, the City's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the City determines is necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

4.2.2.1.1 Accounting Records.

The Consultant shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. The Consultant shall make available to the City for review and audit, all project related accounting records and documents, and any other financial data. Upon the City's request, the Consultant shall submit exact duplicates of originals of all requested records to the City.

4.2.3 City's Right Binding on Subconsultants.

The Consultant shall include the City's Right as described in Section 4.2, in any and all of their subcontracts, and shall ensure that these sections are binding upon all Subconsultants.

4.2.4 Compliance Required before Mediation or Litigation.

A condition precedent to proceeding with mandatory mediation provided for in Article VII is the Consultants full compliance with the provisions of this Section 4.2 within sixty days of the date on which the City mailed a written request to review and audit compliance.

4.3 Insurance.

The Consultant shall not begin Professional Services under this Agreement until it has: a) obtained, and upon the City's request provided to the City, insurance certificates reflecting evidence of all insurance required in Section 4.3.1; however, the City reserves the right to request, and the Consultant shall submit, copies of any policy upon reasonable request by the City; b) obtained City approval of each company or companies as required by Article IV, Section 4.3.2; and c) confirmed that all policies contain the specific provisions required in Article IV, Section 4.3.4.

Further, the Consultant shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.

4.3.1 Types of Insurance.

At all times during the term of this Agreement, the Consultant shall maintain insurance coverage's as follows:

4.3.1.1 Commercial General Liability.

For all of the Consultants operations, including contractual, property damage, completed operations, and independent Consultants liability, the Consultant shall keep in full force and effect, during any and all work on this Project, all applicable insurance to cover personal injury, bodily injury and property damage, providing coverage to a combined single limit of \$1 million (one million dollars) per occurrence, subject to an annual aggregate of \$2 million (two millions dollars) for general liability, completed operations, and personal injury other than bodily injury. Contractual liability shall include coverage of tort liability to another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable.

4.3.1.2 Commercial Automobile Liability.

For all of the Consultants automobiles including owned, hired and non-owned automobiles, the Consultant shall keep in full force and effect, automobile insurance for bodily injury and property damage providing coverage to a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile [any auto]. The City shall be named as an additional insured, but only for liability arising out of use of Consultants automobiles and only arising out of Professional Services performed under this Agreement.

4.3.1.3 Architects & Engineers Professional Liability.

For all of the Consultants employees who are subject to this Agreement, the Consultant shall keep in full force and effect, errors and omissions insurance providing coverage for professional liability with a combined single limit of \$1 million (one million dollars) per claim and \$2 million (two million dollars) annual aggregate. The Consultant shall ensure both that (1) this policy retroactive date is on or before the date of commencement of the Project; and (2) this policy has a reporting period of three years after the date of completion or termination of this Agreement. The Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City's exposure to loss.

4.3.1.4 Workers Compensation.

For all of the Consultants employees who are subject to this Agreement and to the extent required by the State of California, the Consultant shall keep in full force and effect, a Workers Compensation policy. That policy shall provide a minimum of \$1million of employers liability coverage and the Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

4.3.2 Rating Requirements.

All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have been given at least an "A", or "A-" and "V" rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by the City.

4.3.3 Deductibles.

All deductibles on any policy shall be the responsibility of the Consultant.

4.3.4 Specific Provisions Required.

Each policy required under Article IV, Sections 4.3.1.1. through 4.3.1.4 shall expressly provide, and an endorsement shall be submitted to the City, that:

4.3.4.1 Except as to Architects and/or Engineers professional liability insurance and Workers Compensation, The City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insured's. The City's Additional Insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent, which shall be submitted to the City.

4.3.4.2 The policies are primary and non-contributory to any insurance that may be carried by the City, as reflected in an endorsement which shall be submitted to the City.

4.3.4.3 The policies cannot be canceled, non-renewed, or materially changed except after thirty calendar days prior written notice by the Consultant to the City by certified mail, as reflected in an endorsement which shall be submitted to the City, except for non-payment of premium, in which case ten days notice will be provided.

4.3.4.4 Before performing any Professional Services, the Consultant shall provide the City with all Certificates of Insurance accompanied with all endorsements.

4.3.4.5 The Consultant may obtain additional insurance not required by this Agreement.

4.4 Subconsultants.

The Consultants hiring or retaining of any third parties [Subconsultants] to perform services related to the Project [Subconsultant Services] is subject to prior approval by the City. The Consultant shall list on the Subconsultants List [Exhibit D Attachment BB] all Subconsultants known to the Consultant at the time this Agreement is entered. If at any time after this Agreement is entered into the Consultant identifies a need for additional Subconsultant Services, the Consultant shall give written notice to the City of the need, at least forty-five days before entering into a contract for such Subconsultant Services. The Consultants notice shall include a justification, a description of the scope of work, and an estimate of all costs for the Subconsultant Services. The Consultant may request that the City reduce the forty-five day notice period. The City agrees to consider such requests in good faith.

4.4.1 Subconsultant Contract.

All contracts entered into between the Consultant and any Subconsultant shall contain the information as described in Sections 4.6, 4.7, 4.10.2, and 4.18, and shall also provide as follows:

4.4.1.1 Each Subconsultant shall obtain insurance policies which shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. Each Subconsultant shall obtain, and the Consultant shall require the Subconsultant to obtain, all policies described in Section 4.3.1 in the amounts required by the City, which shall not be greater than the amounts required of the Consultant.

4.4.1.2 The Consultant is obligated to pay the Subconsultant, for Consultant- and City-approved invoice amounts, out of amounts paid by the City to the Consultant, not later than fourteen working days from the Consultants receipt of payment from the City. Nothing in this paragraph shall be construed to impair the right of the Consultant and any Subconsultant to negotiate fair and reasonable pricing and payment provisions among themselves

4.4.1.3 In the case of a deficiency in the performance of Subconsultant Services, the Consultant shall notify the City in writing of any withholding of payment to the Subconsultant, specifying: (a) the amount withheld; (b) the specific cause under the terms of the subcontract for withholding payment; (c) the connection between the cause for withholding payment and the amount withheld; and (d) the remedial action the Subconsultant must take in order to receive the amount withheld. Once the Subconsultant corrects the deficiency, the Consultant shall pay the Subconsultant the amount withheld within fourteen working days of the Consultants receipt of the City's next payment.

4.4.1.4 In any dispute between the Consultant and Subconsultant, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The Consultant agrees to defend and indemnify the City as described in Article VI of this Agreement in any dispute between the Consultant and Subconsultant should the City be made a party to any judicial or administrative proceeding to resolve the dispute in violation of this position.

4.4.1.5 The Subconsultant is bound to the City's Equal Opportunity Contracting Program covenants set forth in Article IV, Section 4.6 and Exhibit D of this Agreement.

4.5 Contract Activity Report.

The Consultant shall submit statistical information to the City as requested in the City's Contract Activity Report [Exhibit D Attachment CC]. The statistical information shall include the amount of subcontracting provided by firms during the period covered by the Contract Activity Report. With the Contract Activity Report, the Consultant shall provide an invoice from each Subconsultant listed in the report. The Consultant agrees to issue payment to each firm listed in the Report within fourteen working days of receiving payment from the City for Subconsultant Services as described in Section 4.4.1.

4.6 Non-Discrimination Requirements.

4.6.1 Compliance with the City's Equal Opportunity Contracting Program.

The Consultant shall comply with the City's Equal Opportunity Contracting Program Consultant Requirements [Exhibit D]. The Consultant shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Consultant shall provide equal opportunity in all employment practices. The Consultant shall ensure that its Subconsultants comply with the City's Equal Opportunity Contracting Program Consultant Requirements. Nothing in this Section shall be interpreted to hold the Consultant liable for any discriminatory practice of its Subconsultants.

4.6.2 Non-Discrimination Ordinance.

The Consultant shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of Subconsultants, vendors or suppliers. The Consultant shall provide equal opportunity for Subconsultants to participate in subconsulting opportunities. The Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. This language shall be in contracts between the Consultant and any Subconsultants, vendors and suppliers.

4.6.3 Compliance Investigations.

Upon the City's request, the Consultant agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all Subconsultants, vendors, and suppliers that the Consultant has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Consultant for each subcontract or supply contract. The Consultant further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517]. The Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Consultant up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. The Consultant further understands and agrees that the procedures, remedies, and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

4.7 Drug-Free Workplace.

The Consultant agrees to comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by Council Resolution No. R-277952 and incorporated into this Agreement by this reference. The Consultant shall certify to the City that it will provide a drug-free workplace by submitting a Consultant Certification for a Drug-Free Workplace form [Exhibit E].

4.7.1 Consultants Notice to Employees.

The Consultant shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.

4.7.2 Drug-Free Awareness Program.

The Consultant shall establish a drug-free awareness program to inform employees about all of the following:

4.7.2.1 The dangers of drug abuse in the work place.

4.7.2.2 The policy of maintaining a drug-free work place.

4.7.2.3 Available drug counseling, rehabilitation, and employee assistance programs.

4.7.2.4 The penalties that may be imposed upon employees for drug abuse violations.

4.7.3 Posting the Statement.

In addition to Section 4.7.1 above, the Consultant shall post the drug-free policy in a prominent place.

4.7.4 Subconsultants Agreements.

The Consultant further certifies that each contract for Subconsultant Services for this Project shall contain language that binds the Subconsultant to comply with the provisions of Article IV, Section 4.7 of this Agreement, as required by Sections 2.A.(1) through (3) of Council Policy 100-17. Consultants and Subconsultants shall be individually responsible for their own drug-free work place program.

4.8 Title 24/Americans with Disabilities Act Requirements.

The Consultant shall warrant and certify that any Project plans and specifications prepared in accordance with this Agreement meet all current California Building Standards Code, California Code of Regulations, Title 24 [Title 24], and Americans with Disabilities Act Accessibility Guidelines [ADAAG] requirements, and are in compliance with The Americans with Disabilities Act of 1990. When a conflict exists between Title 24 and ADAAG, the most restrictive requirement shall be followed. Prior to execution of this Agreement, the Consultant shall complete and submit to the City the Consultant Certification for Title 24/ADA Compliance [Exhibit F].

4.8.1 Consultant has sole responsibility and obligation for designing the project to comply with the ADA and Title 24 as described in this Section; however, as owner of the facility, the City is exposed to liability for projects on which designers fail to meet this obligation. Consequently, the City is implementing an evaluation of certain design aspects to ensure a compliant facility. The Consultant shall complete and submit an ADA Compliance Review Checklist. This Checklist is designed to assist consultants in meeting their ADA

obligations under the contract (Consultant also must meet Title 24 which these checklists do not cover). These checklists are not comprehensive. The checklists merely reflect the specific problematic areas of compliance with ADA commonly seen by the City. As a result, the City will be checking only these areas of ADA prior to acceptance of a Consultants design. The Consultant is obligated to meet all additional laws which are not included on the City's ADA Design Review Checklist, and/or to advise the City at any time if they feel components on the checklist misrepresent the current state of the law. These ADA checklists and the City's access review process in no way limits the Consultants obligation under the agreement.

4.9 Product Endorsement.

The Consultant acknowledges and agrees to comply with the provisions of City of San Diego Administrative Regulation 95-65, concerning product endorsement. Any advertisement identifying or referring to the City as the user of a product or service requires the prior written approval of the City.

4.10 Conflict of Interest.

The Consultant is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595.

4.10.1 If, in performing the Professional Services set forth in this Agreement, the Consultant makes, or participates in, a Governmental decision as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the Consultant shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Consultant's relevant financial interests.

4.10.1.1 Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The Consultant shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that the Consultant is subject to a conflict of interest code. The Consultant shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the Consultant was subject to a conflict of interest code.

4.10.1.2 If the City requires the Consultant to file a statement of economic interests as a result of the Professional Services performed, the Consultant shall be considered a City Official subject to the provisions of the City of San Diego Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.

4.10.2 The Consultant shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships.

4.10.3 The Consultant and its Subconsultants having subcontracts amounting to 1% or more of the value of the Professional Services agreed to under this Agreement are precluded from participating in design services on behalf of the contractor, construction management, and any other construction services related in any way to these Professional Services without the prior written consent of the City.

4.10.4 The Consultant's personnel employed on the Project shall not accept gratuities or any other favors from any Subconsultants or potential Subconsultants. The Consultant shall not recommend or specify any product, supplier, or contractor with whom the Consultant has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

4.10.5 If the Consultant violates any conflict of interest law or any of the provisions in this Section 4.10, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the Consultant to liability to the City for attorney's fees and all damages sustained as a result of the violation.

4.11 Mandatory Assistance.

If a third party dispute or litigation, or both, arises out of, or relates in any way to the Professional Services provided under this Agreement, upon the City's request, the Consultant, its agents, officers, and employees agree to assist in resolving the dispute or litigation. Consultant's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

4.12 Compensation for Mandatory Assistance.

The City will compensate the Consultant for fees incurred for providing Mandatory Assistance as Additional Services under Section 3.3. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of the Consultant, its agents, officers, and employees, the Consultant shall reimburse the City. The City is then entitled to reimbursement of all fees paid to the Consultant, its agents, officers, and employees for Mandatory Assistance.

4.13 Attorney's Fees related to Mandatory Assistance.

In providing the City with dispute or litigation assistance, the Consultant or its agents, officers, and employees may incur expenses and/or costs. The Consultant agrees that any attorney fees it may incur as a result of assistance provided under Section 4.11 are not reimbursable. The Parties agree this provision does not in any way affect their rights to seek attorney fees under Article VIII, Section 8.8 of this Agreement.

ARTICLE V
CITY'S OBLIGATIONS

5.1 Ownership of Documents.

Once the Consultant has received any compensation for the Professional Services performed, all documents, including but not limited to, original plans, studies, sketches, drawings, computer printouts and disk files, and specifications prepared in connection with or related to the Scope of Services or Professional Services, shall be the property of the City. The City's ownership of these documents includes use of, reproduction or reuse of and all incidental rights, whether or not the work for which they were prepared has been performed. The City's ownership entitlement arises upon payment or any partial payment for work performed and includes ownership of any and all work product completed. This Section shall apply whether the Consultants Professional Services is terminated: (a) by the completion of the Project, or (b) in accordance with other provisions of this Agreement. Notwithstanding any other provision of this paragraph or Agreement, the Consultant shall have the right to make copies of all such plans, studies, sketches, drawings, computer printouts and disk files, and specifications.

The Consultant shall not be responsible for damage caused by subsequent changes to or uses of the plans or specifications, where the subsequent changes or uses are not authorized or approved by the Consultant, provided that the service rendered by the Consultant was not a proximate cause of the damage.

5.2 Additional Consultants or Contractors.

The City reserves the right to employ, at its own expense, such additional consultants or contractors as the City deems necessary to perform work or to provide Professional Services on the Project.

5.3 Employment of City Staff.

This Agreement may be unilaterally and immediately terminated by the City, at its sole discretion, if the Consultant employs an individual who, within the last twelve months immediately preceding such employment did, in the individuals capacity as an officer or employee of the City, participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council or City Manager in connection with the selection of the Consultant.

ARTICLE VI
INDEMNIFICATION

1 Indemnification and Hold Harmless Agreement.

With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of the Consultant, or the Consultants employees, agents, and officers, arising out of any services performed involving this project, except liability for Professional Services covered under Section 6.2, the Consultant agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, or employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party. The Consultants duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, its agents, officers or employees. This Section in no way alters, affects or modifies the Consultants obligations and duties under Section 4.3.4.1 herein.

6.2 Indemnification for Professional Services.

As to the Consultants professional obligations, work or services involving this Project, the Consultant agrees to indemnify and hold harmless the City, its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorneys fees, and losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of the Consultant or the Consultants employees, agents or officers.

6.3 Enforcement Costs. The Consultant agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Section 6.1 and the indemnity provision in Section 6.2.

ARTICLE VIII
MEDIATION

7.1 Mandatory Non-binding Mediation.

With the exception of Sections 2.5-2.8 of this Agreement, if a dispute arises out of, or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the Parties agree to first endeavor to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association [AAA] or any other neutral organization agreed upon before having recourse in a court of law.

7.2 Mandatory Mediation Costs.

The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and expenses of the mediator [Mediator], and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the Parties, unless they agree otherwise.

7.3 Selection of Mediator.

A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with AAA an ARequest for Mediation@ along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.

7.3.1 If AAA is selected to coordinate the mediation [Administrator], within ten working days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.

7.3.2 The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred Mediator from the individual Parties lists who is available to serve within the designated time frames.

7.3.3 If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be agreed upon.

7.4 Conduct of Mediation Sessions.

Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

7.4.1 Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

7.4.2 Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be Anon-binding@ and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

ARTICLE IX
MISCELLANEOUS

8.1 Notices.

In all cases where written notice is required under this Agreement, service shall be deemed sufficient if the notice is deposited in the United States mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in this Agreement. For the purpose of this Agreement, unless otherwise agreed in writing, notice to the City shall be addressed to:

City of San Diego, Airports Division
3750 John J. Montgomery Drive
San Diego, CA 92123
Attn: Tracy L. Means, A.A.E.

and notice to the Consultant shall be addressed to:

HNTB Corporation
200 E. Sandpointe Ave., Suite 200
Santa Ana, CA 92707
Attn: Tony Fermelia

8.2 Headings.

All article headings are for convenience only and shall not affect the interpretation of this Agreement.

8.3 Non-Assignment.

The Consultant shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without the City's prior written approval. Any assignment in violation of this paragraph shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee.

8.4 Independent Contractors.

The Consultant and any Subconsultant employed by the Consultant shall be independent contractors and not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Consultant concerning the details of performing the Professional Services, or to exercise any control over such performance, shall mean only that the Consultant shall follow the direction of the City concerning the results of the performance.

8.5 Consultant and Subconsultant Principals for Professional Services.

It is understood that this Agreement is for unique Professional Services. Retention of the Consultants Professional Services is based on the particular professional expertise of the following members of the Consultants organization: Tony Fermelia, P.E. and Gene Barnes, P.E. Accordingly, performance of Professional Services on the Project may not be delegated to other members of the Consultants organization or to Subconsultants without the prior written consent of the City. It is mutually agreed that the members of the Project Team are the principal persons responsible for delivery of all Professional Services and may not be removed from the Project without the City's prior written approval. In the event any member of the Project Team becomes unavailable for any reason, the City must be consulted as to any replacement. Further, the City reserves the right, after consultation with the Consultant, to require any of the Consultants employees or agents to be removed from the Project.

8.6 Covenants and Conditions.

All provisions of this Agreement expressed as either covenants or conditions on the part of the City or the Consultant shall be deemed to be both covenants and conditions.

8.7 Compliance with Controlling Law.

The Consultant shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code section 1720 as amended in 2000 relating to the payment of prevailing wages during the design and pre-construction phases of a project, including inspection and land surveying work [Exhibit H]. In addition, the Consultant shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

8.8 Jurisdiction, Venue, and Attorneys Fees.

The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorneys fees in addition to any other award made in such suit or proceeding.

8.9 Successors in Interest.

This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.

8.10 Integration.

This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties and an amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.

8.11 Counterparts.

This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

8.12 No Waiver.

No failure of either the City or the Consultant to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach or of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

8.13 Severability.

The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

8.14 Municipal Powers.

Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

8.15 Drafting Ambiguities.

The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision, which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

8.16 Signing Authority.

The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

8.17 Conflicts Between Terms.

If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

8.18 Consultant Evaluation.

City will evaluate Consultants performance of Professional Services on the Project using the Consultant Evaluation Form [Exhibit I].

8.19 Exhibits Incorporated.

All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

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IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Real Estate Assets Director, pursuant to the City Managers delegation of authority in San Diego Municipal Code section 22.3223 authorizing such execution, and by the Consultant.

THE CITY OF SAN DIEGO

Dated: August 8, 2004

By: Theresa P. Means
Real Estate Assets Department Director

I HEREBY CERTIFY that I can legally bind HNTB Corp. and that I have read all of this Agreement this 8th day of August, 2004.

By: [Signature]
Authorized Representative
Steven B. Morris-Vice President
Print Name and Title

I HEREBY APPROVE the form and legality of the foregoing Agreement this 13th day of August, 2004.

CASEY GWINN, City Attorney

By: [Signature]
Deputy City Attorney