CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: **Engineering Department**

AGENDA DATE: **January 25, 2005**

CONTACT PERSON/PHONE: **Irene Ramirez, 541-4431**

DISTRICT(S) AFFECTED: **6**

SUBJECT:

That the Mayor be authorized to sign an Agreement for Landscape Architectural Services between the **CITY OF EL PASO** and **LANDSCAPE ARCHITECTURAL SERVICES, INC.** for a project known as **"Capistrano Park Improvements"** for an amount not to exceed FORTY-THREE THOUSAND ONE HUNDRED SIXTY-TW0 AND NO/100 DOLLARS ($40,162.00).

BACKGROUND / DISCUSSION:

Consultant shall prepare construction documents for park improvements at Capistrano Park. Work consists of installation of a new automated irrigation system, ADA accessible picnic units with shade canopies, benches, trash receptacles, a walk/jog path, chain link fence on the perimeter of the canal, shade trees, light poles, and park and rule signs. The following are the requirements the consultant must follow:

* Irrigation system
* Walk/jog trail with chat areas
* 50 trees
* Reconditioned trenches with Bermuda grass
* Minimum of 10 benches
* Minimum of 6 picnic units with shade canopy
* Minimum of 10 trash receptacles
* Minimum of 10 light poles
* ADA ramps and sidewalks
* 1 Park name sign
* 3 Park rule signs
* Chain link fence

PRIOR COUNCIL ACTION:

City Council has not previously considered this item.

AMOUNT AND SOURCE OF FUNDING:

This item will be funded by CBDG funds. The item has been funded. The funding information is G7130CD0016/508016. A budget transfer is not required.

BOARD / COMMISSION ACTION:

**********REQUIRED AUTHORIZATION**********

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign an Agreement for Landscape Architectural Services between the **CITY OF EL PASO** and **LANDSCAPE ARCHITECTURAL SERVICES, INC.** for a project known as **"Capistrano Park Improvements"** for an amount not to exceed FORTY THOUSAND ONE HUNDRED SIXTY-TW0 AND NO/100 DOLLARS ($40,162.00).

ADOPTED this _____ day of January 2005.

THE CITY OF EL PASO:

_____
Joe Wardy
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Theresa Cullen-Garney
Deputy City Attorney

APPROVED AS TO CONTENT:

Rick Conner, P.E.
City Engineer

ENG/Reso/Capistrano Park Improvements
Document #: 8136/TCUL

THE STATE OF TEXAS)
)
)
COUNTY OF EL PASO)

AGREEMENT FOR LANDSCAPE ARCHITECTURAL SERVICES

This Agreement is made this **_____ day of January, 2005**, by and between **THE CITY OF EL PASO**, a municipal corporation, organized and existing under the laws of the State of Texas, hereinafter called the **"Owner,"** and **LANDSCAPE ARCHITECTURAL SERVICES, INC.**, a sole proprietorship registered in the state of Texas, hereinafter called the **"Landscape Architect."**

WHEREAS, the Owner intends to engage the Landscape Architect to perform professional services for a project known as **"Capistrano Park Improvements"** hereinafter called the **"Project,"** and further described in Attachment "A," which is attached hereto and made a part hereof for all purposes;

NOW, THEREFORE, the Owner and Landscape Architect for the consideration hereinafter set forth agree as follows:

I. BASIC SERVICES OF THE LANDSCAPE ARCHITECT

A. General

1. The Landscape Architect agrees to perform professional services in connection with the Project as hereinafter stated.

2. The Landscape Architect shall comply with the City of El Paso Engineering Department Construction Document Guidelines, which are available in the City Engineering Department, in the performance of the services requested under the design phase of this Agreement.

3. The Landscape Architect shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies, and shall give consultation and advice to the Owner during the performance of services.

4. The Owner is relying upon the skill and expert knowledge of the Landscape Architect to furnish the Owner with an accurate work product within the allocated budget. The Owner's review of any documents prepared by the Landscape Architect is only general in nature and the Owner's obligation to approve and accept the work in no way relieves the Landscape Architect of responsibility for any specific deficiencies in the Landscape Architect's work product.

B. Report Phase

1. Upon receipt of the Owner's written authorization to proceed with the Report Phase, the Landscape Architect shall:

   a. Consult with the Owner to determine the requirements of the Project and together with the Owner develop a mutually acceptable program for the Project.

   b. Provide preliminary investigations, studies, topographic surveys including ties to known monuments of right-of-way lines, general supervision of any other services obtained as described in Part B.1.c. of this section and interpreting or incorporating results of any such services for inclusion in the preliminary Landscape Architectural study and report referred to in Part B.1.d. of this section.

   c. (1). Provide consultation and advice as to the necessity of providing or obtaining other services such as: (a). Property surveys, boundary surveys, right-of-way surveys, and utility surveys, (b). Core borings, probings, and hydrographic surveys, (c). Laboratory testing, and (d). Inspection or other special consultation; (2). Act as the Owner's representative in connection with such services; and (3). If concurred with and authorized by the Owner, provide, procure, or assist in procuring such additional services.

   d. Prepare a preliminary Landscape Architectural Study and Report on the Project based on the mutually accepted program in sufficient detail to indicate clearly the problems involved and the alternative solutions available to the Owner, to include schematic layouts, sketches, flow diagrams and reports of studies, and a general cost estimate for such of the above listed improvements to be included in the Project, and to set forth the Landscape Architect's recommendations.

   e. Furnish **ten (10) copies** of the preliminary Landscape Architectural Study and Report and general cost estimate to the Owner.

2. Upon receipt of the preliminary Landscape Architectural Study and Report and before the Landscape Architect is authorized to proceed with the Preliminary Design Phase, the Owner at its option may designate in writing various construction contracts into which the Project shall be divided, each of which may include one or more of the above listed improvements to be constructed. If the Owner designates various

construction contracts into which the Project is to be divided, the Landscape Architect shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Landscape Architect shall prepare separate preliminary design, pre-final design, and final design drawings, specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.

C. **Preliminary Design Phase**

Upon receipt of the Owner's written authorization to proceed with the **Preliminary Design Phase**, the Landscape Architect shall do the following separately for each construction contract:

1. Consult with the Owner to determine the Owner's requirements for the Project.

2. Provide at the Landscape Architect's sole expense right-of-way surveys, boundary surveys, topographic surveys, drainage surveys, and soil investigations as needed to design the Project and as required by the Scope of Work of this Agreement; obtain all available information from all utility companies and other affected agencies including, but not limited to, the Texas Department of Transportation and the U.S. Department of Interior, Bureau of Reclamation, as needed to complete the proper design. This does not, however, include property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.

3. Obtain all available horizontal and vertical locations of public utilities, and fully coordinate design of the Project with public utilities in an effort to minimize relocation of utilities as much as possible.

4. Make drawings from field measurements of existing construction when required for planning additions or alterations thereto.

5. Provide consultation and advice as to the necessity of providing or obtaining other services such as the types described herein, and act as the Owner's representative in connection with any such services, and if concurred with and authorized by the Owner, provide, procure, or assist in procuring such services.

6. Review with the Owner alternative approaches in regard to the construction of the Project.

7. Prepare for approval by the Owner preliminary design documents consisting of evaluation of existing structural report, design criteria,

drawings, and outline specifications to develop, and establish the scope of each construction contract.

8. Prepare a detailed cost estimate for each construction contract containing the main construction components, based on the information given in the preliminary design documents.

9. Furnish **ten (10) copies** of the above preliminary design documents and cost estimates for each construction contract. If the above preliminary design documents are not approved by the Owner, the Landscape Architect shall furnish **five (5) copies** of the resubmitted preliminary design documents at no additional cost to the Owner. Additional sets required for public utilities and other agencies must be provided by the Landscape Architect at no additional cost to the Owner.

D. **Final Design Phase**

Upon receipt of the Owner's written authorization to proceed with the Final Design Phase, the Landscape Architect shall do the following separately for each construction contract:

1. Prepare required documents and assist the Owner in obtaining approval of such governmental authorities as may have jurisdiction over the design criteria applicable to each construction contract. The Landscape Architect's assistance in obtaining such approvals shall include participation in submissions to and negotiations with the appropriate authorities. The Landscape Architect shall be fully responsible for coordination with all utility companies to resolve conflicts pertaining to location of utility lines and shall be fully responsible for obtaining utility clearances.

2. On the basis of the approved preliminary design documents and subject to approval of design criteria, prepare for incorporation in the construction contract documents detailed drawings and plans, hereinafter called the **"Drawings,"** to show the character and scope of the work to be performed by construction contractors on each construction contract, instructions to bidders, general conditions, special conditions, and technical provisions, hereinafter called **"Specifications."** These plans shall include the required cross sections from actual fieldwork for estimated earthwork quantities.

3. Prepare proposal forms.

4. Furnish to the Owner no less than **ten (10) copies** of the Drawings and as many as needed for review by the Owner, other governmental authorities, and the public utilities. If the Drawings are not approved by the Owner, the Landscape Architect shall furnish **five (5) copies** of the resubmitted

Drawings at no additional cost to the Owner. Furnish to the Owner **three (3) copies** of the Specifications and **three (3) copies** of the design analysis showing all engineering calculations for review by the Owner, other governmental authorities who may have jurisdiction over each construction contract, and the public utilities.

5. Incorporate changes requested by the Owner and other governmental authorities after review of preliminary design documents and perform redesign necessitated by public utility conflicts.

6. Coordinate closely with utility companies during the Preliminary Design Phase. The amount of redesign necessary to accommodate utility company comments on the preliminary design drawings is expected to be in proportion to the effectiveness of that coordination and is to be performed by the Landscape Architect as part of the Final Design Phase of this Agreement. The Landscape Architect shall obtain written utility clearance from all utility companies affected by the scope of this Project as part of the Final Design Phase of this Agreement.

7. Advise the Owner of any adjustment to the Landscape Architect's previous cost estimate for each construction contract caused by changes in scope, design requirements, general market conditions, or construction costs and furnish a revised cost estimate, based on the completed Drawings and Specifications. The Landscape Architect expressly authorizes any person designated by the Owner to review at any time prior to the Bidding Phase any cost estimates made by the Landscape Architect. The Landscape Architect agrees to cooperate fully in such review, and shall furnish the access to all pertinent information upon which the Landscape Architect's estimates were based. In addition, detailed estimates to include orderly presented takeoff sheets, summary and main summary sheets are to be provided to the Owner. Nothing in this provision shall be construed as limiting or waiving the right of the Owner to obtain such information at any other time, or as relieving the Landscape Architect of the full responsibility of preparing reliable estimates. By conducting such reviews, the Owner assumes no responsibility whatsoever.

8. Furnish to the Owner **thirty (30) copies** of the Drawings and Specifications in final approved form for bidding purposes for each construction contract. Additional sets required for public utilities and other agencies must be provided by the Landscape Architect at no additional cost to the Owner.

E. Bidding Phase

Upon receipt of the Owner's written authorization to proceed with the Bidding Phase on each construction contract, the Landscape Architect shall do the following separately for each construction contract:

1. Assist the Owner in the determination of the bidding period and bid date and provide necessary data for preparation of the notice to Bidders by the Owner as required for advertising purposes.

2. Assist the Owner in responding to all questions from prospective bidders concerning the Drawings and Specifications.

3. Attend a pre-bid conference, if any, to explain the Project and to answer questions regarding the Project.

4. Prepare addenda to the Drawings and Specifications as may be required during the advertising period. Any addenda issued shall be approved by all agencies having approval authority over the Drawings and Specifications. Deliver **three (3) copies** of all addenda to the Owner for appropriate action.

5. Assist the Owner in evaluating bids, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the three (3) lowest responsible bidders.

6. Advise the Owner concerning the acceptability of subcontractors and other persons and organizations proposed by the general construction contractor for those portions of the work for which such acceptability is required by the construction contract documents.

F. Construction Phase

The Construction Phase, for each construction contract, shall commence with the award of the construction contract and shall terminate upon written approval of final payment by the Owner, except that this phase may be extended, if required, by agreement between the Landscape Architect and the Owner. During the Construction Phase the Landscape Architect shall:

1. Attend the pre-construction conference to assist the Owner in responding to all questions from the construction contractor.

2. Advise and consult with the Owner and act as the Owner's representative as provided in the general conditions of the Agreement included in the construction contract. Such general conditions shall be the Owner's standard general conditions for construction projects, with such changes and modifications as may be made in such general conditions being agreed to by both the Landscape Architect and the Owner.

3. Visit each construction site and stake out centerline and right-of-way for utility relocations to assist the construction contractor and to guard against deficiencies in the permanent work constructed at the site.

4. Visit each construction site at least once each week or more frequently, if necessary, to observe the progress and quality of the executed work and to determine if such work meets the essential performance and design features and the technical and functional requirements of the construction contract documents. On the basis of these on-site observations, the Landscape Architect shall endeavor to guard the Owner against apparent defects and deficiencies in the permanent work constructed by the construction contractor. The Landscape Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, and shall not be responsible for the construction means, methods, techniques, sequences, or procedures, or the safety precautions incident thereto. The Landscape Architect's efforts shall be directed toward providing assurance for the Owner that each completed construction contract shall conform to the Landscape Architectural requirements of the construction contract documents. However, the Landscape Architect shall not be responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

   Nothing in this Agreement shall be construed as requiring the Landscape Architect to assume responsibility for or to guarantee the complete adherence of the construction contractor to the Drawings and Specifications and the construction contract documents.

5. Review shop drawings, diagrams, illustrations, brochures, catalog data, schedules, and samples, the results of tests and inspections and other data which the construction contractor is required to submit, for conformance with the design concept of each construction contract and compliance with the information given in the construction contract documents. **Such review must be complete within three (3) City working days following receipt of submittal documents.** The Landscape Architect shall also assemble maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, and other documents that the construction contractor is required to submit in accordance with the construction contract documents.

6. Issue the Owner's instructions to the construction contractor when required to do so, prepare routine change orders to include independent detailed cost estimate for the Owner's approval as required after securing approval of all agencies having approval authority over each construction

contract. The Landscape Architect shall require, as the Owner's representative and subject to the written concurrence by the Owner, special inspection or testing of the work, whether or not fabricated, installed, or completed and shall act as interpreter of the terms and conditions of the construction contract documents, subject to the Owner's interpretation of such terms and conditions.

7. Based on the on-site observations as an experienced and qualified design professional and on the Landscape Architect's review of the construction contractor's applications for payment and supporting data, determine the amount owing to the construction contractor and recommend in writing payment to the construction contractor in such amounts; such recommendation of payment to constitute a representation to the Owner, based on such observations and review, that the work has progressed to the point indicated and that, to the best of the Landscape Architect's knowledge, information and belief, the quality of the work is in accordance with the construction contract documents, subject to an evaluation of the work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the construction contract documents and to any qualifications stated in such approval. By recommending an application for payment, the Landscape Architect shall not be deemed to have represented that the Landscape Architect has made any examination to determine how or for what purposes the construction contractor has used the monies paid on account of each construction contract price.

8. Conduct with the Owner and construction contractor no more **than two (2) brief preliminary inspections**, at times requested by the construction contractor to determine if the Project is ready for final inspection.

9. Schedule and conduct with the Owner, including representative of the City Engineer and the using department and the construction contractor, a final inspection of the Project and prepare and publish a "punch list" of minor deficiencies to be corrected prior to final payment to the construction contractor. The **"punch list"** shall be furnished to the construction contractor and the Owner within **two (2) City working days** after the final inspection.

10. Issue a "Certificate of Substantial Completion" using AIA document G704 when the final inspection reveals that the Project is substantially complete and fully usable for its intended purpose with only minor deficiencies to be corrected. The certificate shall be issued within **two (2) City working days** after the final inspection.

11. Monitor and verify proper correction of all punch list deficiencies. Notify the Owner in writing when all deficiencies have been corrected, and when warranty, maintenance, and operating instructions and other documents have been submitted by the construction contractor. Act on and forward the construction contractor's final invoice for payment.

12. Furnish the Owner a set of reproducible **(24"X 36")** "as-built" original drawings **on Mylar** showing changes made during the construction process, based on the marked-up prints, drawings, and other data furnished by the construction contractor to the Landscape Architect. Also provide project documents in acceptable electronic media format.

13. Make written recommendations to the Owner on all claims relating to the execution and progress of the construction work.

14. Notify the Owner of all permanent work which does not conform to the result required in each construction contract; prepare a written report describing any apparent nonconforming permanent work, and make recommendations to the Owner for its correction and, at the Owner's request, have recommendations implemented by the construction contractor.

II. ADDITIONAL SERVICES OF THE LANDSCAPE ARCHITECT

A. General

If authorized in writing by the Owner, through written amendment approved by City Council, the Landscape Architect shall perform or obtain additional services of the following types which are not covered by Section I herein, which shall be paid for by the Owner as indicated in Article V, herein:

1. Furnish core borings, probings, and hydrographic surveys; laboratory testing; inspection of samples or materials; and other special consultations.

2. Furnish property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.

3. Provide additional services due to significant changes in the general scope of the Project or its design including, but not limited to, changes in size, complexity, or character of construction if the changes are made after approval of preliminary design documents except when the Landscape Architect's preliminary design, pre-final design, or final design estimates exceed the budgeted amount, or in the case where all responsible bids exceed the Landscape Architect's final design estimate by **ten percent (10%)** or more.

4. Revise previously approved studies, reports, design documents, drawings, or specifications, except when said revisions are required as a result of errors, negligence, or other fault on the part of the Landscape Architect.

5. Prepare documents for alternate bids requested by the Owner for construction work for which bids have not been awarded.

6. Prepare detailed renderings, exhibits, or scale models for the Project, except as otherwise required herein.

7. Furnish additional copies of studies, reports, and additional prints of Drawings and Specifications in excess of those required in Article I hereof.

8. Provide investigations involving detailed consideration of operation, maintenance, and overhead expenses; and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations, detailed quantity surveys of material or labor; and material audits or inventories required for certification of force account construction performed by the Owner.

9. Prepare change orders requiring additional significant design changes not provided for in the agreement, requested by the Owner.

10. Inspect each construction contract site prior to expiration of the guarantee period and report observed discrepancies under guarantees provided by the construction contractor.

11. Provide additional or extended services during construction made necessary by: **a.** Work damaged by fire or other cause during construction; **b.** prolongation of the construction contract time by more than **twenty-five percent (25%)**, provided that such prolongation is not caused by errors, negligence, or other fault on the part of the Landscape Architect; **c.** Acceleration of the work schedule involving services beyond normal city working hours; or **d.** Construction contractor's default under the construction contract due to delinquency or insolvency.

12. Provide extensive assistance in the initial start-up and test operation of equipment or devices and the preparation of manuals of operation and maintenance.

13. Serve as an expert witness for the Owner in any litigation or other proceeding involving the Project.

14. Provide additional services in connection with the Project not otherwise provided for in this Agreement, except where those services are required as a result of negligence or other fault on the part of the Landscape Architect.

No claim for additional services or cost shall be allowed unless the same was done pursuant to a written authorization dated prior to the additional services or cost and which was authorized pursuant to the policies and procedures of the Owner (i.e., Passage by City Council).

III. THE OWNER'S RESPONSIBILITIES

The Owner shall:

A. Provide available information as to its requirements for each construction contract.

B. Make known all information pertinent to the site of each construction contract, including previous reports and other data relative to design, such as "as-built" drawings or physical conditions now existing at the Project site available to the Landscape Architect.

C. Obtain access to and make provisions for the Landscape Architect to enter upon public and private lands as required for the Landscape Architect to perform work under this Agreement.

D. Review all studies, reports, sketches, estimates, drawings, specifications, proposals, and other documents presented by the Landscape Architect, and render in writing decisions pertaining thereto within a reasonable time so as not to unreasonably delay the work of the Landscape Architect.

E. Advertise for proposals from bidders, open the proposals at the appointed time and place, and pay for all costs incident thereto.

F. Designate the City Engineer of the City of El Paso as the Owner's representative with respect to the Landscape Architectural work to be performed under this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies and decisions with respect to materials, equipment, elements, and systems pertinent to the work covered by this Agreement.

G. Assist the Landscape Architect in obtaining approval of all governmental agencies having jurisdiction over the Project and such approvals and consents from such other individuals or bodies as may be necessary for completion of the Project.

IV. PERIOD OF SERVICE

A. The services called for in the **Report Phase** of this Agreement shall be completed and the preliminary Landscape Architectural study and report and general cost estimate submitted within **fourteen (14) consecutive calendar days** following written authorization from the Owner for the Landscape Architect to proceed.

B. The services called for in the **Preliminary Design Phase** of this Agreement shall be completed and the preliminary design documents and cost estimate shall be submitted within **forty-five (45) consecutive calendar days** following written authorization from the Owner for the Landscape Architect to proceed.

C. After the Owner's acceptance of the preliminary design documents and revised cost estimated for each construction contract, including any specific modifications or changes in scope desired by the Owner, and upon written authorization from the Owner, the Landscape Architect shall proceed with the performance of the services called for in the **Final Design Phase** of this Agreement, so as to deliver completed detailed construction drawings, specifications, revised design analysis, and cost estimates for review on all authorized work on each construction contract within **twenty-one (21) consecutive calendar days** following authorization to proceed with the Final Design Phase of each construction contract.

D. Barring an early termination as provided herein, this Agreement shall remain in force: 1) For a period which may reasonably be required for the design, award of construction contracts, and construction of the improvements included in all construction contracts, including extra work and required extensions thereto; or 2) Unless construction has not begun within a period of **twelve (12) months** after the completion of the services called for in that phase of work last authorized. However, the Owner may determine that this Agreement may remain in full force past the twelve-month period noted above. Such a determination shall be made at the Owner's sole discretion and will be based upon the individual circumstances of this project and this Agreement.

V. PAYMENTS TO THE LANDSCAPE ARCHITECT

A. Payments for Basic Services of The Landscape Architect Under Section I

1. The Owner shall pay the Landscape Architect an amount not to exceed **FORTY THOUSAND ONE HUNDRED SIXTY-TWO and 00/100 DOLLARS ($40,162.00)** for all basic services and reimbursables performed hereunder. The Landscape Architect's fee proposal for the performance of all basic services and reimbursables is attached hereto and made a part hereof for all purposes as Attachment "B."

2. Payment on account of said fees for the basic services provided in Sec. V, Part A.1., shall be made as follows:

The compensation for each phase of the basic services on each construction contract shall be made monthly so that the compensation at the approved completion of each phase shall bring the fee up to the following percentages of the total basic compensation:

		Payment	Plan Completion
a.	**Report Design Phase**	**20%**	**20%**
b.	**Preliminary Design Phase**	**55%**	**55%**
c.	**Final Design Phase**	**75%**	**100%**
d.	**Bidding Phase**	**80%**	
e.	**Construction Phase**	**100%**	

The Owner shall make payments upon presentation of the Landscape Architect's detailed statement and accompanying status report and the Owner's written approval.

3. Except as specifically set forth herein as a cost for which Landscape Architect can bill Owner, all costs of performing the services required under this agreement, of every kind and nature whatsoever, including by way of example and not in limitation, overhead costs, payroll expenses, interest charges incurred by Landscape Architect for whatever reason, copies, office and equipment rentals and similar costs, shall be borne by Landscape Architect and not passed on to Owner or otherwise paid by Owner.

B. **Payments for Additional Services of the Landscape Architect Under Section II**
If authorized by written amendment to this Agreement before services are rendered:

1. The Owner shall pay the Landscape Architect for additional services performed by personnel assigned to the regularly established office of the Landscape Architect at the hourly rates established in Attachment "B" hereof, plus the reasonable actual cost of the reimbursable expenses as hereinafter defined.

2. The Owner shall pay the Landscape Architect for additional services performed in connection with administering subcontracts for services of the types provided in Sec. II, Part A., at the **rate of actual cost plus five percent (5%)**.

3. Reimbursable expenses shall mean the reasonable actual expense of transportation and subsistence of principals and employees while traveling

in connection with the Project, field office expenses, toll telephone calls and telegrams, reproduction of reports, drawings and specifications, and similar Project related items.

4. Payments for additional services shall be made monthly upon presentation of the Landscape Architect's detailed statement and its written approval by the Owner.

C. **General**

1. The payroll cost of salaries and wages used as a basis for payment under Sec. V, Part B.1., and Sec. V, Part B.2., shall mean the cost of salaries and wages paid to principals and employees engaged directly on the Project, including, but not limited to, social security contributions, unemployment, excise and payroll taxes, worker's compensation, health and retirement benefits, sick leave, vacation, and holiday pay applicable thereto.

2. If the Landscape Architect's most recent cost estimate for any construction contract is in excess of the estimated Project cost, the Owner shall give written approval of an increase in the limit, or shall cooperate in revising the Project's scope or quality, or both, to reduce the cost as required. Such revisions shall be made, and Drawings and Specifications modified by the Landscape Architect without further compensation.

3. If this Agreement is terminated upon completion of any phase of the Landscape Architect's services, the payments to be made in accordance with Sec. V, Part A.2., on account of that and all prior phases shall constitute total payment for services rendered; if terminated during any phase of the work, the Landscape Architect shall be paid for services performed during such phase on the basis of a reasonable estimate of the portion of such phase completed prior to termination. In the event of any termination, the Landscape Architect shall be paid to the extent services performed by the Landscape Architect are completed and payment for such services is due, including payment for additional services performed under Sec. V, Part B. Such payment to the Landscape Architect and any employees, subcontractors, or independent contractors employed by the Landscape Architect, and the Landscape Architect shall not be entitled to any other claims or damages against the Owner, including but not limited to lost profits, office expenses, or overhead expenses. Any previous payments made to the Landscape Architect shall be credited to the payments due under this Agreement. <u>The Owner shall not be responsible for compensation or damages for delay, overhead costs, damages for loss of anticipated profits on work not performed, demobilization or cancellation costs or charges, payroll expenses, or any similar costs on account of any termination.</u>

4. **Suspension/delay of work.** Landscape Architect shall have no claim for compensation or damages for compensation or damages for delay, including but not limited to lost profits, interest expenses incurred by Landscape Architect or office expenses/overhead, should Landscape Architect be prevented from proceeding with the work required of this Agreement by any act or omission of Owner or any reason not under the control of Owner. Landscape Architect agrees that Landscape Architect shall be granted an extension of time to perform the work required of the agreement but shall not be otherwise compensated for, nor entitled to recover, any costs, expenses or damages arising from or related to such delays; provided further that in the event of termination of the Agreement by Owner for any reason including but not limited to Owner's convenience, as of the date of termination, any extension of time shall terminate as well.

VI. GENERAL CONSIDERATIONS

A. Termination

This Agreement may be terminated without cause for the convenience of the Owner by giving **fifteen (15) days written notice.**

In the event of failure to perform in accordance with the terms herein, the Owner may terminate this Agreement by giving **seven (7) days written notice.** If this Agreement is so terminated, the Landscape Architect shall be paid as provided herein. The termination of this Agreement by the Owner shall not be construed as a release of any claims that the Owner may be lawfully entitled to assert against the Landscape Architect, and the Landscape Architect shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of this Agreement by the Landscape Architect. The Owner may withhold any payment to the Landscape Architect for the purpose of setoff until such time as the exact amount of damages due the Owner from the Landscape Architect is determined.

B. Ownership of Documents

Tracings, drawings, plans, specifications, original field survey notes, maps and other recordations prepared or obtained under the terms of this Agreement shall be delivered to and become the property of the Owner prior to payment to the Landscape Architect for work under the Construction Phase. If this Agreement is terminated at any time for any reason prior to payment to the Landscape Architect for work under the Construction Phase, all tracings, drawings, plans, specifications, original field survey notes, maps, diskettes, and other recordations prepared or obtained under the terms of this Agreement shall upon termination be delivered to and become the property of the Owner prior to payment to the Landscape Architect as provided in Sec. V, Part C.3. Sketches, charts,

computations, and other data prepared for and under this Agreement shall be made available to the Owner upon request and without restriction on their use, or further compensation to the Landscape Architect. The Owner in requiring ownership of the above listed documents hereby releases the Landscape Architect from all responsibility in connection with their use on any project other than their use on this Project.

C. **Estimates**

The Landscape Architect is expected to be knowledgeable of the cost of construction, labor, and materials in the El Paso area and of bidding and market trends. The estimates of construction cost provided for herein are to be made in light of such knowledge and are expected to be **at or below** the bid for the base bid item expected from the lowest responsible bidder.

The Landscape Architect's final estimate for the construction of the Project, shall take into account all labor costs, which shall be based on the current City of El Paso prevailing wage rates as adopted by the City Council. In the event that the Project is funded with federal funds, the higher of the City of El Paso prevailing wage rates or the Davis-Bacon wage rates shall be utilized by the Landscape Architect in compiling the Landscape Architect's final estimate for the Project.

D. **Project Budget**

The Landscape Architect acknowledges that the budget for the Project allocates **FOUR HUNDRED TWENTY-FIVE THOUSAND FORTY-TWO and NO/100 DOLLARS ($425,042.00)** for the award of a base bid construction contract. The base bids shall include all features essential to the operation of the Project for its intended use. The Landscape Architect does hereby agree to design the Project such that the Landscape Architect's final estimate for the construction of the Project, including all features essential to its intended use, is within the above budgeted amount for the base bid. The Landscape Architect further understands that payment of the increment for the Final Design Phase is conditional upon the bid of the lowest responsible bidder being within **ten percent (10%)** of his final estimate for the base bid. If all responsible bids exceed the final estimate by more than **ten percent (10%)**, the Landscape Architect expressly agrees, at the direction of the Owner, to redesign the Project without additional charge to the Owner in order to bring the Project within the budgetary limitations.

E. **Insurance**

The Landscape Architect shall secure and maintain at the Landscape Architect's expense such Comprehensive Liability, Property Damage Liability, Vehicle Liability and Workers' Compensation insurance as shall protect the Landscape Architect from workers' compensation claims under applicable state law and from all claims from bodily injury, death, or property damage which may arise from the

performance of services under this Agreement. Provided, the Landscape Architect shall provide or secure public liability insurance for personal injuries or death, arising out of any one accident or other cause, in a minimum sum of **TWO HUNDRED FIFTY THOUSAND and NO/100 DOLLARS ($250,000.00)** for one person **and FIVE HUNDRED THOUSAND and NO/100 DOLLARS ($500,000.00)** for two or more persons; and in addition, shall provide property damage liability insurance in a minimum sum of **ONE HUNDRED THOUSAND and NO/100 DOLLARS ($100,000.00)** for property damages arising out of any one accident or other cause, or in amounts equal to the maximum liability for damages for municipalities for claims arising under governmental functions, provided for under the Texas Tort Claim Act, whichever is greater. Such insurance shall be available on a "per occurrence" basis for death or bodily injury or property damage, which is caused by an occurrence, which takes place during the policy period. The Landscape Architect shall procure and shall maintain at the Landscape Architect's expense Professional Liability Insurance for the benefit of the Owner to cover the errors and omissions of the Landscape Architect, its principals or officers, agents, or employees in the performance of this Agreement.

The Landscape Architect shall maintain said insurance with insurance underwriters authorized to do business in the State of Texas, satisfactory to Owner. All policies required by this Agreement, with the exception of Workers' Compensation and Professional Liability Insurance, shall name the Owner, its officials, servants, agents, and employees as additional insureds. All policies shall identify the name of the City project for which the insurance is being issued. The Landscape Architect shall, prior to the execution of this Agreement, furnish the Owner with a certificate from the insurance carrier showing such insurance to be in full force and effect during the entire term of this Agreement, or shall deposit with Owner copies of said policies, if requested by Owner. Said policies or certificates shall contain a provision that written notice of cancellation or of any material change in said policy by the insurer shall be delivered to Owner **thirty (30) days** in advance of the effective date thereof and shall show the type, amounts, classes of operation covered, effective dates and dates of expiration of policies.

F. **Successors and Assigns**

This Agreement shall be binding on the Owner, its successors and assigns, and on the Landscape Architect, its partners, successors, executors, administrators, legal representatives, and assigns. Neither the Owner nor the Landscape Architect shall assign, sublet, or transfer any interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the Owner.

G. Compliance with Laws

The Landscape Architect shall comply with all federal, state, and local laws and ordinances applicable to the work covered hereunder.

H. Change of Legal Status

In the event that there is a change in any way of the legal status of the entity that has entered into this Agreement, including but not limited to the dissolution of a partnership or a corporate entity, the Owner shall have the right to 1) immediately terminate this Agreement for convenience, or 2) consent to the change in the legal status and continue under this Agreement, or 3) enter into an Agreement with any person, corporation, or association that it deems to be qualified to perform the services requested herein with no further legal obligation or liability under this Agreement.

I. Copyright and Reproduction Rights

By execution of this Agreement, the Landscape Architect and the Owner agree that the City is the author of all work performed under this Agreement and as such is the copyright owner and owns all rights comprised in the copyright. Any copyright or other property interest that vests in the Landscape Architect for work performed under this Agreement is immediately transferred to the Owner. The City shall have the exclusive right to sell, distribute, copy, duplicate, modify, assign or reproduce the work performed by the Landscape Architect for any purpose whatsoever. The Landscape Architect shall retain no rights to any of the work performed by the Landscape Architect under this Agreement unless authorized by the Owner in writing.

J. Conflicting Provisions

Any provision contained in any Attachments to this Agreement, which may be in conflict or inconsistent with any of the paragraphs in the Agreement shall be void to the extent of such conflict or inconsistency.

K. Auditing Records

Landscape Architect's records subject to audit shall include but not be limited to records which, in the Owner's discretion, have a bearing on matters of interest to the Owner in connection with the Landscape Architect's work for the Owner and shall be open to inspection and subject to audit and/or reproduction by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of a) Landscape Architect's compliance with contract requirements, and b) compliance with provisions for computing Direct Personnel Expense with reimbursables, if applicable.

Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Agreement. In those situations where Landscape Architect's records have been generated from computerized data,

Landscape Architect agrees to provide Owner's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange format.

The Owner or its designee shall be entitled to audit all of the Landscape Architect's records related to this Project, and shall be allowed to interview any of the Landscape Architect's employees, pursuant to the provisions of this section throughout the term of this contract and for a period of **three (3) years** after final payment or longer if required by law. Such audits may require inspection and photo copying of selected documents from time to time at reasonable times and places.

VII. SPECIAL PROVISIONS

A. Topographic Surveys

Topographic surveys, to be provided as Basic Services, shall be limited to the area of the various project construction sites.

B. Time of Essence; Liquidated Damages

TIME IS OF THE ESSENCE in this Agreement. The Landscape Architect agrees to accept and adhere to the schedule established herein. Failure of the Landscape Architect to adhere to this schedule without due cause, approved in writing by the City Engineer, shall cause damage to the Owner which the Landscape Architect agrees to compensate at the rate of **ONE HUNDRED and NO/100 DOLLARS ($100.00) per day**, without the right of setoff or counterclaims.

It is hereby understood and mutually agreed, by and between the Landscape Architect and the Owner, that the date of beginning and the time for completion as specified in this Agreement of the work to be done hereunder are **ESSENTIAL CONDITIONS** in this Agreement. It is further mutually understood and agreed that the work embraced in this Agreement shall be commenced on a date to be specified in the **"Notice to Proceed."**

The Landscape Architect agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as shall ensure completion thereof within time specified. It is expressly understood and agreed, by and between the Landscape Architect and the Owner that the time for the completion of the work described herein is a reasonable time for the completion of the same.

If the Landscape Architect shall neglect, fail, or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the Owner, then the Landscape Architect does hereby agree, as a part consideration for the awarding of this Agreement, to pay the Owner the amount specified in this Agreement, not as a penalty but as liquidated damages for such breach of

Agreement as hereinafter set forth, for each and every calendar day that the Landscape Architect shall be in default after the time stipulated in this Agreement for completing the work.

The said amount is fixed and agreed upon by and between the Landscape Architect and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, and said amount in agreed to be the amount of damages which the Owner would sustain.

It is further agreed that **TIME IS OF THE ESSENCE** in each of the specifications wherein a definite and certain length of time is fixed for the performance of any act and in every portion of this agreement. Additionally, time shall be of the essence where under this Agreement additional time is allowed for the completion of any work. However, when the Owner determines in writing that the Landscape Architect is without fault and the reasons for a time extension are acceptable, the Landscape Architect shall not be charged with liquidated damages or any excess cost.

C. Equal Employment Opportunity

In providing services under this Agreement, the Landscape Architect shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, or national origin. The Landscape Architect shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, disability, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Landscape Architect shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the government setting forth the provisions of this nondiscrimination clause. The Landscape Architect shall state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, age, disability, or national origin. The Landscape Architect shall incorporate the foregoing requirements of this section in all of its subcontracts for work to be performed on this Project.

D. Obligations of the Landscape Architect with Respect to Third Party Relationships

The Landscape Architect shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Project with respect to which assistance is being provided under this Agreement.

E. **Interest of Members of Local Governing Body, or Other Public Officials**

No member of the governing body of the City of El Paso, State of Texas, and no other public official of the City of El Paso, State of Texas, who exercises any function or responsibility with respect to the Project shall during his or her tenure or for **one (1) year** thereafter, have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project assisted under this Agreement.

F. **Law Governing Agreement**

For the purpose of determining place of Agreement and the law governing same, this Agreement is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the **County of El Paso, Texas.**

G. **INDEMNIFICATION**

THE OWNER SHALL NOT BE SUBJECT TO ANY OBLIGATIONS OR LIABILITIES OF THE LANDSCAPE ARCHITECT INCURRED IN THE PERFORMANCE OF THIS AGREEMENT. THE LANDSCAPE ARCHITECT EXPRESSLY AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND THE OWNER, ITS OFFICERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY, ARISING FROM OR RELATING TO ANY ACTS OR OMISSIONS OF THE LANDSCAPE ARCHITECT, ITS PRINCIPALS OR OFFICERS, AGENTS, OR EMPLOYEES IN PERFORMANCE OF THIS AGREEMENT.

H. **Authorization To Enter Agreement**

If the Landscape Architect signs this Agreement as a corporation, each of the persons executing this Agreement on behalf of the Landscape Architect warrants to the Owner that the Landscape Architect is a duly authorized and existing corporation, that the Landscape Architect is qualified to do business in the State of Texas, that the Landscape Architect has full right and authority to enter into this Agreement, and that each and every person signing on behalf of the Landscape Architect is authorized to do so. Upon the Owner's request, the Landscape Architect shall provide evidence satisfactory to the Owner confirming these representations.

I. **Entire Agreement**

This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations,

representations, or agreements, either written or oral. This Agreement shall not be amended or modified except by written instrument signed by both parties.

J. Remedies / Sanctions for Breach of Agreement

Violation or breach of any terms of this Agreement by the Landscape Architect shall be grounds for terminating the Agreement, and any increased cost arising from the Landscape Architect's default, breach, or violation of the terms herein shall be paid by the Landscape Architect.

The remedies herein reserved shall be cumulative and additional to any other or further remedies in law or equity. No waiver of a breach of any provisions of this Agreement shall constitute a waiver of any breach of such provision.

K. Notices

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other shall be in writing and shall be either personally delivered or sent by certified mail, return receipt, to the following addresses:

To the Owner: **The City of El Paso**
Attn: The City Manager
Two Civic Center Plaza
El Paso, Texas 79901-1196

with a copy to: **The City of El Paso**
Attn: City Engineer
Two Civic Center Plaza
El Paso, Texas 79901-1196

To the Landscape Architect: Landscape Architectural Services
Attn: Lewis C. Wright, Jr.
630 Gary Lane
El Paso Texas 79922

VIII. COMPLIANCE WITH ALL LAWS - FEDERAL FUNDING REQUIREMENTS

Landscape Architect, at Landscape Architect's expense, agrees that it will operate and perform its responsibilities and covenants under this Agreement in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Owner or Landscape Architect with respect to the use of federal funds and nondiscrimination in the administration of contracts which are funded, in whole or in part, with federal funds.

Specifically, and not in limitation of the foregoing, Landscape Architect agrees that the following covenants shall apply throughout the performance of this Agreement because federal funds are involved and that, in the event of breach of the above covenant or

breach of any of the following covenants, Owner shall have the right to terminate this Agreement.

A. Anti-Kickback Rules

Salaries of Landscape Architects, Engineers, draftsmen, technical engineers, technicians and other employees and consultants performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C., Sec. 874; and Title 40 U.S.C., Sec. 276c). The Landscape Architect shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this Agreement to ensure compliance by subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

B. Section 3 Clause

The following provisions are incorporated into this Agreement, as required by 24 CFR 135.20 (b):

1. To the extent that the work to be performed under this Agreement is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given lower income residents of the Project be awarded to business concerns, which are located in or owned in substantial part by persons residing in the area of the Project.

2. The parties to this Agreement shall comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability, which would prevent them from complying with these requirements.

3. The Landscape Architect shall send to each labor organization, or representative of workers with which the Landscape Architect has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of the Landscape Architect's commitments under this Section 3 clause and

shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

4. The Landscape Architect shall include this Section 3 clause in every subcontract for work in connection with the Project and shall, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Landscape Architect shall not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and shall not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of the construction contract, shall be a condition of the federal financial assistance provided to the Project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its Landscape Architects and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

6. That in the furnishing of services hereunder for the purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Landscape Architect shall furnish such services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

7. That in the furnishing of services hereunder for the purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Landscape Architect shall furnish such services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, as said Regulation may be amended. Landscape Architect shall also comply with the applicable provisions of Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112) and 49 CFR Part 27.

8. That no person on the grounds of race, creed, color, sex, age, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the performance of this Agreement.

C. **Access to Records**

In accordance with OMB Circular A-102, Attachment "O," Sec. 4h, the Owner, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Landscape Architect which are directly pertinent to the Owner's Community Development Block Grant Program for the purpose of making audit, examination excerpts, and transcriptions.

D. **Interest of Certain Federal Officials**

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit to arise herefrom.

E. **Davis-Bacon Wages**

In preparation of any cost estimates and the Project budget, described herein, the Landscape Architect shall base such estimates and the project budget on the premise that the regulations and requirements enumerated in 29 CFR Part 5, Subpart A (Davis-Bacon and Related Act) apply to the project and must be followed and obeyed by the selected Landscape Architect.

F. **Termination for Cancellation of Grant**

Should this Agreement be terminated as a result of cancellation of federal funds covering this Project, the Owner shall promptly notify the Landscape Architect of the cancellation by certified mail-return receipt requested, whereupon the Landscape Architect shall immediately, on receipt of the letter, cease and desist from performing any other work or services hereunder. In such an event, the Landscape Architect will be paid for professional services performed to said date upon furnishing the Owner a progress report and an invoice to such date, and upon acceptance of the work by the Owner.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

OWNER: THE CITY OF EL PASO

_____
Joe Wardy, Mayor

ATTEST:

_____
Richarda Duffy Momsen, City Clerk

LANDSCAPE ARCHITECT: LANDSCAPE ARCHITECTURAL SERVICES

_____
Lewis C. Wright, Jr.
Principal

APPROVED AS TO FORM:

Theresa Cullen-Garney
Deputy Attorney

APPROVED AS TO CONTENT:

Rick Conner, P.E.
City Engineer

ACKNOWLEDGMENTS

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____ 2005, by _____, as **Mayor of the City of El Paso, Texas.**

_____
Notary Public, State of Texas

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____ 2005, by **Lewis C. Wright, Jr.**, as **Principal** of **Landscape Architectural Services.**

_____
Notary Public, State of Texas

ATTACHMENT " A "

PROJECT SCOPE

TITLE: **CAPISTRANO PARK IMPROVEMENTS**

LOCATION: 8700 Padilla Drive
District No 6

Construction Budget: **$ 425,042.00**

GENERAL DESCRIPTION:

Consultant shall prepare construction documents for park improvements at Capistrano Park. Work consists of installation of a new automated irrigation system, ADA accessible picnic units with shade canopies, benches, trash receptacles, a walk/jog path, chain link fence on the perimeter of the canal, shade trees, light poles, and park and rule signs. The following are the requirements the consultant must follow:

* Irrigation system
* Walk/jog trail with chat areas
* 50 trees
* Reconditioned trenches with Bermuda grass
* Minimum of 10 benches
* Minimum of 6 picnic units with shade canopy
* Minimum of 10 trash receptacles
* Minimum of 10 light poles
* ADA ramps and sidewalks
* 1 Park name sign
* 3 Park rule signs
* Chain link fence

SERVICES REQUIRED:

[X] Investigation
[X] Planning
[X] Design
[X] Utility Coordination
[X] Public Contact & Coordination
[X] Bidding & Construction
[X] Stakeout of ROW for all utility relocation (if necessary)
[X] Construction Administration and Observation
[X] TDLR review and inspection services

PRODUCTS REQUIRED:

[X] Drawings
[X] Cost Estimates
[X] Required Reports
[X] Specifications
[X] Design Analysis

GENERAL REQUIREMENTS AND CRITERIA:

1. Design shall meet all applicable City Codes and Ordinances.
2. Design shall comply with Engineering Department Guidelines.
3. Design must comply with all local, state and federal laws and regulations, including but not limited to the Americans with Disabilities Act.
4. Consultant shall engage services of consultant that prepares TDLR, TAS, and ADA reviews and inspections.

OTHER CONSIDERATIONS:

1. Design shall be coordinated through the City of El Paso's Engineering Department, in conjunction with the City's Community and Human Development and Parks and Recreation Departments, utility service providers, and all other affected agencies and public representatives.
2. Design shall allow the Community and Human Development, Parks and Recreation and Engineering Departments a walk-through inspection with the consultant to discuss a conceptual plan, evaluate the project and retain the integrity of the project scope.
3. All utility concerns will be addressed in the preliminary design phase, if applicable.
4. All utility service laterals replacement shall be incorporated in the design drawings.
5. Service stub-outs to property lines at vacant lots shall be incorporated in the design drawings.
6. If existing trees would be removed from residents' parkway areas, tree replacement may be considered for incorporation into the project scope. Trees will only be replaced with written consent of property owner. Species of trees will be chosen from a list of trees specified by the Design Consultant/Engineering Department. The estimated costs associated with tree replacement must be approved by the Department of Community and Human Development before the Final Design Phase begins.
7. Zoning compliance letter, site plans, and special permits must be obtained by Consultant, if required.
8. Prospective consultants shall coordinate with the City Engineering Department before developing a design that would include demolition of private improvements within the public right-of-way.
9. Demolition design plan for Capistrano Park Improvements Project located at 8700 Padilla Drive.
10. Installation of automated irrigation system complete with controllers, valves, backflow device, meters, pumps and power as required, in compliance with El Paso Water Utilities, Water Conservation Plan, Building Codes and Department Irrigation guidelines. The system

shall be designed to operate with the Rainbird Maxicom computer system currently operated by the Parks Department at City Hall.

11. The system shall be Maxicom compatible and include the cost of telephone line and hook-up. Meet with Southwestern Bell during the design phase to verify point of connection and location of CCU.
12. Loop mainlines.
13. Irrigation system must be designed in accordance with current State of Texas Licensed Irrigator's Regulations.
14. The system shall be designed to distribute 1.25" of water in a eight (8) hour watering window.
15. The water meter size shall be converted to comply with the system.
16. Provide an evaluation of the park site listed to include determination of soil conditions and introduce variety of 50 shade trees (3-4 inch caliper preferred) compatible with the region and as recommended in *West Texas Urban Forestry Tree Planting Guide* by the Texas Urban Forestry Council and the El Paso County Suggested Plant List by the Texas Agricultural Extension Service and the Texas A&M Research and Extension Center.
17. Provide for mulch material around base of new trees.
18. Recondition trenches and over seed with common Bermuda grass.
19. All trees shall be selected and approved by the Parks and Recreation Department, as to shape and form prior to planting.
20. All trees shall be planted in early spring or early fall.
21. Provide pavement repairs as needed throughout sites where applicable. This is for areas where new irrigation will effect paved surfaces such as parking lots, sidewalks, etc.
22. Provide a minimum of 10 benches with back support constructed of plastic coated expanded metal.
23. Provide a minimum of 10 plastic coated expanded metal permanently grounded trash receptacles with flat-type lids.
24. Provide a minimum of 6 picnic units on concrete slabs with shade canopy.
25. Provide ADA accessible path of travel to baseball fields and picnic tables; install ramps and sidewalks if required.
26. Provide a 10-foot wide asphalt walk/jog path (2750 ft) around the perimeter of the park to include site preparation, grading and back filling if necessary, need to comply with ADA requirements. Tie into sidewalk for ADA.
27. Markings in 10th of a mile for the walk/jog path.
28. Install Bollards where adjacent to ramp and flumes are also required.
29. Installation of chat areas between walk/jog path and sidewalks.
30. Provide a minimum of 10 concrete light poles with vandal guard light fixtures to illuminate the entire Park with all electrical control panels and controls to include photocells.
31. Provide a 6 ft. high chain link fence on the perimeter of canal.
32. All construction to be welded.
33. Provide one park name sign and 3 park rule signs.
34. The design shall provide for all new materials. Reusing existing equipment and materials is not allowed.
35. Designer is responsible for verifying actual working water pressures at point of connection in the field prior to any design work and informing Parks Department of results.

36. Designer shall meet with Public Service Board (PSB) to verify that PSB's water supply lines will meet water supply demands and water meter size requests and design pressures of system. Provide letter from PSB stating such.
37. Designer shall provide a water audit of the system after installation to verify water application rates of the design. A Certified Water Auditor shall conduct the audit and results shall be given to the Parks Department and also be reflected on the Precipitation Schedule and Watering Schedule provided on the as-built design drawings.
38. Design must meet all applicable City Code and Ordinances.
39. Consultant shall provide a detailed site plan to include all sites

PROJECT SCHEDULE: (Consecutive Calendar Days)

Report Phase	14 Days
Preliminary Design Phase	45 Days
Final Design Phase	21 Days

Date: December 27, 2004

ATTACHMENT " B "

LANDSCAPE ARCHITECTURAL SERVICES

Registered Landscape Architects and Irrigation Consultants

TEXAS NEW MEXICO ARIZONA

630 Gary Lane
(915) 581-2676

EL PSAO, TEXAS 79922
E-mail: lwright@whc.net

PROPOSAL FOR DESIGN FEES

November 17, 2004

Mr. Javier Reyes
City Engineering
2 Civic Center Plaza
EL Paso, Texas 79901

RE: Capistrano Park Improvements (Revised 12/10/04)
8700PadillaDrive
EL Paso, Texas

Dear Mr. Reyes:

LAS appreciate the opportunity to work with you and submit this proposal for landscape design services pertaining to the reference project. The following is a scope of work and services that will be provided by this firm.

Scope of work:

Design the list of improvements to the above park as described in the given project scope of work. Design an irrigation system as needed for the improvements. Irrigation plan shall comply with all City Ordinances and State Irrigation Codes. Site observation will be preformed during construction with a final inspection to close out the project.

Design Phases:

This phase shall include: Field investigations, conferences, design, construction documents and cost estimates for the development of the landscape and irrigation system. Final construction documents (plans only) for the landscape and irrigation shall be submitted to the Building Permits and Inspection Department for the City of El Paso for approval.

Bidding Phase:

This firm will be aviable to answer any questions from the bidders during this phase.

Construction Observation Phase:

Site observation will be made once a week and answer any questions that might come to surface. A list of deficiencies, as needed, will be complied for the contractor to correct during installation.

Final Inspection Phase:

A list of deficiencies, as needed, will be complied for the contractor to correct before final payment.

LAS FEE OUTLINE

DESIGN PHASE

Landscape Architect	65 hrs	@ $100.00	=	$ 6,500.00
Cad Operator	80 hrs	@ $45.00	=	$ 3,600.00
Secretarial	20 hrs	@ $38.00	=	$ 760.00
Printing				$ 500.00
Total				$11,360.00

BIDDING PHASE

Landscape Architect	12 hrs	@ $100.00	=	$1,200.00
Secretarial	4 hrs	@ $38.00	=	$ 152.00
Printing				$1,500.00
Total				$2,852.00

CONSTRUCTION PHASE

Landscape Architect	30 hrs	@ $100.00	=	$3,000.00
Secretarial	15 hrs	@ $38.00	=	$ 570.00
Total				$3,570.00

TOTAL DESIGN FEES

LAS - Landscape Architect	$17,782.00
(Construction Documents and Approvals)	
Consultant Management	$ 1,065.00
Consultants (See attached proposals)	
ADA review and filing – ADA Consulting	$ 815.00
Civil - Brock and Bustillos	$12,500.00
Electrical – Gonzalo Aguilar	$ 8,000.00
TOTAL FEES	**$40,162.00**

LAS appreciate the opportunity to work on this project. If you have any questions, please feel free to contact LAS.

Sincerely,

Lewis C. Wright, Jr., RLA, ASLA, ASIC