

AN ORDINANCE

2011-08-04-0614

SELECTING MERCURY ASSOCIATES, INC. AND AWARDING A CONTRACT IN AN AMOUNT UP TO \$95,000.00 FOR A FLEET ALTERNATIVE FUELS ACQUISITION STRATEGY STUDY, FUNDED BY THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 THROUGH THE DEPARTMENT OF ENERGY.

* * * * *

WHEREAS, President Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA) into law on February 17, 2009, which provides a total of \$787 billion in spending and tax cuts to preserve and create jobs, and make investments in infrastructure, energy and science, unemployment assistance, and State and local stabilization; and

WHEREAS, on December 1, 2009, the Department of Energy awarded the City of San Antonio \$12,897,000.00 in ARRA funds through the Energy Efficiency Conservation Block Grant (EECBG) to manage and implement a program that will result in the reduction of fossil fuel emissions and improve energy efficiency; and

WHEREAS, the City issued a Request for Proposals (RFP 11-056) on April 15, 2011 to complete a “Fleet Alternative Fuels Acquisition Strategy Study”; four firms submitted responses which were evaluated and scored by a committee consisting of representatives from Public Works, Solid Waste Management, Office of Environmental Policy and Office of Management and Budget; based on the evaluations and rankings made in the selection process, staff recommends awarding a contract to Mercury Associates, Inc. as the most responsive firm; and

WHEREAS, this ordinance authorizes the selection of, and a contract with, Mercury Associates, Inc., for a term to February 29, 2012, in an amount up to \$95,000.00 to perform the “Fleet Alternative Fuels Acquisition Strategy Study”, funded by the ARRA through the Department of Energy; **NOW THEREFORE**,

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

SECTION 1. Mercury Associates, Inc., is hereby selected for the “Fleet Alternative Fuels Acquisition Strategy Study” to provide services for the City of San Antonio as the most qualified respondent to the Request for Proposal (RFP 11-056).

SECTION 2. The City Manager, or her designee, or the Director, Office of Environmental Policy, or his designee, is hereby authorized to take all actions necessary to negotiate and execute an Agreement with Mercury Associates, Inc. in an amount up to \$95,000.00 to perform the Fleet Alternative Fuels Acquisition Strategy Study, with a term from the effective date of this Ordinance to February 29, 2012. A copy of the Agreement is attached and incorporated herein for all purposes as **Attachment I**.

SECTION 3. Fund 2301455001 entitled "Energy Efficiency & Conservation Block Program" and Internal Order 155000000056, are hereby designated for use in the accounting for the fiscal transaction in the acceptance of this contract.

SECTION 4. The sum of \$95,000.00 is hereby appropriated in the above designated fund and will be disbursed from GL 5201040 "Fees to Pros". Payment is authorized to Mercury Associates, Inc. upon issuance of a Purchase Order.

SECTION 5. The financial fiscal allocations in this Ordinance are subject to approval by the Chief Financial Officer, City of San Antonio. The Chief Financial Officer, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

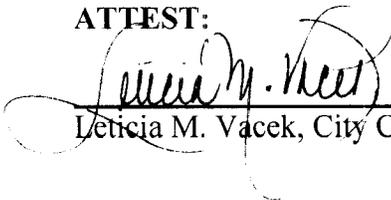
SECTION 6. This ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise it shall be effective on the tenth day after passage hereof.

PASSED and APPROVED this 4th day of August, 2011.



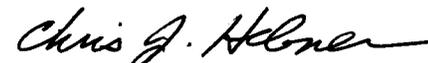
M A Y O R
Julián Castro

ATTEST:

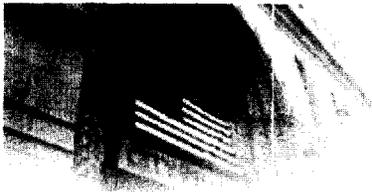


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

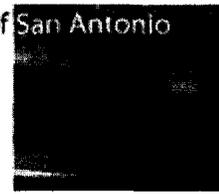


601 Michael D. Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 21

Name:	21						
Date:	08/04/2011						
Time:	11:28:17 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a contract with Mercury Associates, Inc. in an amount up to \$95,000.00 for a Fleet Alternative Fuels Acquisition Strategy Study, funded by the American Recovery and Reinvestment Act of 2009 through the Department of Energy through February 29, 2012. [Edward Benavides, Chief of Staff; Laurence Doxsey, Director, Office of Environmental Policy]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				x
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9	x					
Carlton Soules	District 10		x			x	

**AGREEMENT BETWEEN THE CITY OF SAN ANTONIO
AND
MERCURY ASSOCIATES, INC.
FOR
“FLEET ALTERNATIVE FUELS ACQUISITION
STRATEGY STUDY” (RFP 11-056)**

**STATE OF TEXAS
COUNTY OF BEXAR**

This agreement (hereinafter referred to as the “Agreement”), made and entered into in San Antonio, Bexar County, Texas, between the City of San Antonio, a Municipal Corporation in the State of Texas acting by and through its City Manager (hereinafter referred to as “CITY”), and

Mercury Associates, Inc.
16051 Comprint Circle
Gaithersburg, MD 20877

incorporated under the laws of the State of Maryland (hereinafter referred to as “MERCURY ASSOCIATES”), acting by and through Randall G. Owen, Senior Vice President, and pursuant to Ordinance No. 2011-06-____-_____, passed and approved by the City Council on June ____, 2011.

Terms and conditions for performance and compensation payment for this Agreement are set forth in the following contract documents, true and correct copies of which are attached and fully incorporated herein verbatim for all purposes:

1. Exhibit I, a Request for Proposal for “Fleet Alternative Fuels Acquisition Strategy Study” (RFP 11-056), issued on April 15, 2011;
2. Exhibit II, Addendum I, dated April 21, 2011;
3. Exhibit III, Addendum II, dated April 27, 2011;
4. Exhibit IV, Scope of Work;
5. Exhibit V, Invoice Template
6. Exhibit VI, Copy of Enabling Ordinance No. 2011-06-____-_____

Referenced Documents: Further, MERCURY ASSOCIATES’ responses to the RFQ and its addendum are also fully incorporated by reference, verbatim, for all purposes. All the documents attached hereto and those incorporated by reference constitute the contract documents for this Agreement.

Conflict: The RFQ and its addendum govern MERCURY ASSOCIATES’ responses; this Integration Agreement governs both the RFQ and responses; the Enabling Ordinance governs all in case of conflict.

This agreement supersedes any previous agreement or understanding of the parties, whether written or oral.

Scope of Work: MERCURY ASSOCIATES will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the CITY and in compliance with the “Scope of Work to Conduct a Fleet Alternative Fuels Acquisition Strategy Study For the City of San Antonio Office of Environmental Policy” attached hereto as “Exhibit IV”, to implement and complete the tasks in the EECBG grant’s statement of work.

Contract Pricing and Billing: As authorized by the Ordinance, total budget sums shall not exceed \$95,000.00 (Ninety Five-Thousand dollars) unless City Council action is taken to amend the enabling Ordinance. If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, CITY retains the right to terminate this Agreement at the expiration of each of CITY’s budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

This Agreement is funded by the American Recovery and Reinvestment Act of 2009 (ARRA), from the U.S. Department of Energy (DOE), as an “Energy Efficiency and Conservation Block Grant” program (hereinafter referred to as “EECBG”). If this grant is terminated or funding is not provided by DOE during the term of this Agreement, CITY retains the right to terminate this Agreement with no liability to CITY.

MERCURY ASSOCIATES will bill the CITY based upon the following milestones:

- 10% at project initiation;
- 20% at the acceptance by the Office of Environmental Policy of the City of San Antonio of Task 1 in MERCURY ASSOCIATES’s proposal (research fleet to be included in the study);
- 20% at the acceptance by the Office of Environmental Policy of the City of San Antonio of Task 2 of MERCURY ASSOCIATES’s proposal (research available technologies);
- 30% at the acceptance by the Office of Environmental Policy of the City of San Antonio of Task 3 in MERCURY ASSOCIATES’s proposal (conduct feasibility analysis);
- 20% at the acceptance by the Office of Environmental Policy of the City of San Antonio of the deliverables from Task 4 and the completion of project.

An initial invoice, based on these payment terms may be billed to CITY immediately after the execution date of the Agreement. Subsequent invoices, consistent with the above, may be billed upon the completion and acceptance of task deliverables. The information contained in such invoices shall be in such detail as may be required by CITY. CITY shall pay MERCURY ASSOCIATES upon the delivery by MERCURY ASSOCIATES to CITY of an invoice and the approval of said invoice by the Director of the Office of Environmental Policy. Upon approval of the invoice by CITY, CITY shall pay MERCURY ASSOCIATES no later than thirty (30) days after the date of such approval; provided, however, that such approval shall be based upon satisfactory completion of the work described in “Scope of Work to Conduct a Fleet Alternative Fuels Acquisition Strategy Study for the City of San Antonio Office of Environmental Policy”

attached hereto as “Exhibit IV”. The question of satisfactory completion of said work shall be determined by the CITY alone and its decision shall be final.

Final Payment due under the Agreement will not be paid until the all work, reports, data, documents and any other unfinished services necessary to complete performance under the AGREEMENT have been received, performed and are approved by the CITY, as meeting all the tasks required in the *Scope of Work* and meeting all applicable milestones in *contract Pricing and Billing*. The CITY shall not be liable for any payment under this AGREEMENT for services which are unsatisfactory or which have not been approved by the CITY.

CITY shall not be obligated or liable under the Agreement to any party, other than MERCURY ASSOCIATES, including any subcontractors, for payment of any monies for provision of any goods or services.

Work Start Date: Work shall start immediately upon instruction to MERCURY ASSOCIATES from the Director of the Office of Environmental Policy or his designee, but no sooner than contract execution, for performance of various CITY projects described in the RFP’s scope of services or the contract documents identified above.

Annual Term of Performance and Termination Date: Time is of the essence in the performance of this Agreement. This Agreement shall commence on the date of the City’s signing, after acceptance and approval as signified by the passage of an Ordinance and written notification to MERCURY ASSOCIATES to proceed, , and shall terminate on February 29, 2012.

Termination: In addition to any other provision of this agreement, CITY may terminate this Agreement, in whole or in part, for any of the below listed reasons. For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term or earlier termination pursuant to any of the provisions hereof.

This Agreement may be terminated by CITY upon written notice, provided such notice specifies an effective date for termination of not less than 30 (thirty) calendar days from the date of such notice. All services being terminated shall cease upon the date specified in such notice. CITY shall equitably compensate MERCURY ASSOCIATES in accordance with the terms of this Agreement for the services properly performed prior to the date specified in such notice, following inspection and acceptance of same by CITY. MERCURY ASSOCIATES shall not, however, be entitled to lost or anticipated profits should CITY choose to exercise its option to terminate. MERCURY ASSOCIATES shall submit an invoice for work performed prior to the date of termination within thirty (30) days of the date for termination specified in the notice. CITY shall not be responsible for payment of any invoices received after the expiration of said thirty (30) days.

CITY reserves the right to terminate this Agreement in whole or in part upon breach of any term or provision of this Agreement by MERCURY ASSOCIATES and MERCURY ASSOCIATES failure to cure such breach within ten (10) days of its receipt of written notice. If at any time during the term of this Agreement, MERCURY ASSOCIATES shall fail to commence the work

in accordance with the provisions of this Agreement or fail to diligently provide services in an efficient, timely and careful manner and in strict accordance with the provisions of this Agreement, or fail to use an adequate number or quality of personnel or equipment to complete the work or fail to perform any of its obligations under this Agreement, CITY shall have the right, if MERCURY ASSOCIATES shall not cure any such default after ten (10) days written notice thereof, to terminate this Agreement in whole or in part and complete the work in any manner it deems desirable, including engaging the services of other parties therefor. Any such act by CITY shall not be deemed a waiver of any other right or remedy of CITY. If after exercising any such remedy, the cost to CITY of the performance of the balance of the work is in excess of that part of the agreement sum, which has not heretofore been paid to MERCURY ASSOCIATES hereunder, MERCURY ASSOCIATES shall be liable for and shall reimburse CITY for such excess.

MERCURY ASSOCIATES reserves the right to terminate this Agreement in whole or in part upon breach of any term or provision of this Agreement by CITY and the CITY's failure to cure such breach within ten (10) days of its receipt of written notice.

By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties hereunder, or if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

Election Of Remedies - Termination Not Sole Remedy. In no event shall CITY's action in terminating this Agreement, whether for cause or otherwise, be deemed an election of CITY's remedies. Nor shall such termination limit in any way, at law or equity, CITY's rights to seek damages from or otherwise pursue MERCURY ASSOCIATES for any default hereunder or other action.

Notice: Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for CITY, to:

City of San Antonio
Attn: Office of Environmental Policy
PO Box 839966
San Antonio, Texas 78283-3966

If intended for MERCURY ASSOCIATES, to:

Mercury Associates
Attn: Randall G. Owen
16051 Comprint Circle

Gaithersburg, MD 20877

Insurance: Except as expressly set forth herein, nothing shall be construed as limiting in any way the extent to which MERCURY ASSOCIATES may be held responsible for payments of damages to persons or property resulting from MERCURY ASSOCIATES' or its subcontractors' negligence or willful misconduct in performance of the work covered under this Agreement.

Prior to the commencement of any work under this Agreement, MERCURY ASSOCIATES shall furnish a completed Certificate of Insurance to CITY's Office of Environmental Policy Director and City Clerk's Office. The Certificate of Insurance shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which certificate shall furnish and contain all required information referenced or indicated thereon. **THE CERTIFICATE MUST IDENTIFY THE PROJECT CONTRACT BY NAME** "Fleet Alternative Fuels Acquisition Strategy Study". CITY shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to the City's OFFICE OF ENVIRONMENTAL POLICY Director, Laurence Doxsey and no officer or employee shall have authority to waive this requirement.

CITY reserves the right to review the insurance requirements of this Agreement during the effective period of this Agreement and any extension or renewal hereof, if any, and to require modification of insurance coverage and its limits when deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but in no instance shall CITY allow modification whereupon CITY may incur increased risk.

MERCURY ASSOCIATES' financial integrity is of interest to CITY, therefore, subject to MERCURY ASSOCIATES' right to maintain reasonable deductibles in such amounts as are approved by CITY, MERCURY ASSOCIATES shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at MERCURY ASSOCIATES' sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and rated A- (VII) or better by A.M. Best Company in the following types and for amounts not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNT</u>
(A) Worker's Compensation, and Employer's Liability,	Statutory Limit \$500,000/\$500,000/\$500,000
Broad form Commercial General Liability-to include but not be limited to, coverage for the following where the exposure exists:	Combined Single Limit for Bodily Injury or Property Damage of \$1,000,000 per occurrence, with an aggregate of \$2,000,000 or its equivalent in umbrella Or excess liability coverage

- (1) Premises/Operations
- (2) Independent Contractor's Liability
- (3) Products and Completed Operations
- (4) Personal Injury
- (5) Contractual Liability

Material Requirements: As they apply to the limits required by the CITY, the CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto., and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by CITY, MERCURY ASSOCIATES shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof. All of MERCURY ASSOCIATES' insurance requirements under this Contract are material obligations.

MERCURY ASSOCIATES agrees that with respect to the above required insurance, all insurance Contracts and Certificate(s) of Insurance shall contain the following required provisions.

- Name CITY and its officers, employees, and elected representatives as additional insureds by endorsement with respect to operations and activities of, or on behalf of, the named insured performed under contract with CITY, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where CITY is an additional insured shown on the policy;
- Workers' compensation, employers' liability policy and general liability shall provide a waiver of subrogation in favor of CITY.

MERCURY ASSOCIATES shall notify CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than seven (7) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to CITY at the following address:

**City of San Antonio
Office of Environmental Policy
P.O. Box 839966
San Antonio, Texas 78283-3966**

In addition to any other remedies CITY may have upon MERCURY ASSOCIATES' failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order MERCURY ASSOCIATES to stop work hereunder, CITY shall have the right to terminate the

Agreement, and/or withhold any payment(s) which become due to MERCURY ASSOCIATES hereunder until MERCURY ASSOCIATES demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which MERCURY ASSOCIATES may be held responsible for payments of damages to persons or property resulting from MERCURY ASSOCIATES' or its subconsultants' performance of the work covered under this Contract.

Indemnity: MERCURY ASSOCIATES covenants and agrees to FULLY INDEMNIFY, and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers, and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to MERCURY ASSOCIATES' activities under this Contract, including any acts or omissions of MERCURY ASSOCIATES, any agent, officer, director, representative, employee, consultant or subcontractor of MERCURY ASSOCIATES, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights and performance of the duties under this Agreement. all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. MERCURY ASSOCIATES shall promptly advise the CITY in writing of any claim or demand against the CITY or MERCURY ASSOCIATES known to MERCURY ASSOCIATES related to or arising out of MERCURY ASSOCIATES' activities under this Agreement and shall see to the investigation of and defense of such claim or demand at MERCURY ASSOCIATES' cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving MERCURY ASSOCIATES of any of its obligations under this paragraph.

It is the EXPRESS INTENT of the parties to this Contract, that the INDEMNITY provided for in this Section, is an INDEMNITY extended by MERCURY ASSOCIATES to INDEMNIFY, PROTECT and HOLD HARMLESS, the City from the consequences of the CITY's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury,

death, or damage. MERCURY ASSOCIATES further AGREES TO DEFEND, AT ITS OWN EXPENSE, and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the City and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

Assignment and Subcontracting: MERCURY ASSOCIATES shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of MERCURY ASSOCIATES. MERCURY ASSOCIATES, its employees or its subcontractors shall perform all necessary work.

Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of MERCURY ASSOCIATES. CITY shall in no event be obligated to any third party, including any subcontractor of MERCURY ASSOCIATES, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the Chief.

Except as otherwise stated herein, MERCURY ASSOCIATES may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the Director. As a condition of such consent, if such consent is granted, MERCURY ASSOCIATES shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor MERCURY ASSOCIATES, assignee, transferee or subcontractor.

Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void *ab initio* and shall confer no rights upon any third person. Should MERCURY ASSOCIATES assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, CITY may, at its option, cancel this Agreement and all rights, titles and interest of MERCURY ASSOCIATES shall thereupon cease and terminate, in accordance with the termination provisions above, notwithstanding any other remedy available to CITY under this Agreement. The violation of this provision by MERCURY ASSOCIATES shall in no event release MERCURY ASSOCIATES from any obligation under the terms of this Agreement, nor shall it relieve or release MERCURY ASSOCIATES from the payment of any damages to CITY, which CITY sustains as a result of such violation.

Nonwaiver of Performance: Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no

waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of CITY, such changes must be approved by the Director. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

Independent Contractor: MERCURY ASSOCIATES covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of CITY; that MERCURY ASSOCIATES shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between CITY and MERCURY ASSOCIATES, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between CITY and MERCURY ASSOCIATES. The parties hereto understand and agree that City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by MERCURY ASSOCIATES under this Agreement and that MERCURY ASSOCIATES has no authority to bind CITY.

Source of Funds – American Recovery & Reinvestment Act: Funds for this contract come in whole or in part from a grant made available through the American Recovery and Reinvestment Act of 2009 (“ARRA”). MERCURY ASSOCIATES and any subcontractors, as subrecipients of ARRA funds, must comply with all terms, conditions and requirements of the Act as it currently exists and as they may be changed or supplemented during the term of this contract. MERCURY ASSOCIATES and any subcontractors shall comply with all special provisions as specified in the Act and current and future Department of Energy guidance.

Buy American Requirements; Use of Domestic Iron, Steel, and Manufactured Goods: Pursuant to Section 1605 of the ARRA, none of the funds appropriated or otherwise made available by the ARRA may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work, unless all of the iron, steel, and manufactured goods used in the project are produced or manufactured in the United States. Production in the United States of the iron or steel used in the project requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. These requirements do not apply to iron or steel used as components or subcomponents of manufactured goods used in the project. There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in the project, as long as the manufacturing occurs in the United States.

Job Creation and Retention: Pursuant to section 1512c of the ARRA, not later than 5 days after the end each calendar quarter, you must submit a report to CITY that contains an estimate of the number of jobs created and the number of jobs retained as a result of your receiving ARRA funds pursuant to this contract. Include a brief description of the types of jobs created and jobs retained. This description may rely on job titles, broader labor categories, or your existing

practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work. "Jobs created" means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the ARRA. This definition covers only prime contractor positions established in the United States and outlying areas. The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter. "Jobs retained" means an estimate of those previously existing filled positions that are retained as a result of funding by the ARRA. This definition covers only prime contractor positions established in the United States and outlying areas. The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

Davis Bacon Act: MERCURY ASSOCIATES and its subcontractors shall comply, as applicable, with the provisions of the Davis-Bacon Act, as amended (40 U.S.C. § 3142); The Contract Work Hours & Safety Standards Act (40 U.S.C. § 3702); and The Copeland "Anti-Kickback" Act (18 U.S.C. § 874). Upon execution of this Agreement, the most recent wage provisions shall apply to all applicable activities.

Waste Stream Conditions: If applicable MERCURY ASSOCIATES shall submit a waste management plan addressing waste generated by the proposed Project. This waste management plan will describe MERCURY ASSOCIATES' plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead ballasts, etc.) generated as a result activities under the Project. MERCURY ASSOCIATES shall regularly evidence compliance with their waste management plan by submitting copies of waste transport and disposal manifests.

Records Retention: MERCURY ASSOCIATES shall retain all records owned by or to which CITY has the legal right of access to satisfy CITY's obligations for a retention period required by the Texas Local Government Records Act, being five years from date of contract termination, and in the event of litigation or claims, whatever additional time is necessary to resolve all litigation or claims. CITY shall be notified immediately by MERCURY ASSOCIATES of any requests, by a third party, for information pertaining to documentation and records obtained and/or generated under the CONTRACT. As such, MERCURY ASSOCIATES understands and agrees that CITY will process and handle all such open records requests.

Right of Review and Audit: MERCURY ASSOCIATES and its subcontractors, if any, shall properly, accurately, and completely maintain all books, documents, papers, accounting records, and other evidence pertaining to this AGREEMENT and shall make such materials available to CITY, at the City's Office of Environmental Policy, 111 Soledad, Suite 725, San Antonio, Texas, or successor local address, at all reasonable times and as often as CITY may deem necessary during the AGREEMENT term, including any renewal and extension hereof, for the purpose of auditing, examining and making copies by CITY, and any of its authorized

representatives. Further, MERCURY ASSOCIATES acknowledges that it is potentially subject to Single Audit as the loan funds managed exceed \$500,000.00.

Access to Contractor Records: Inspectors General, the Accountability and Transparency Board, and the Government Accountability Office are granted authority to examine any records of the contractor regarding ARRA transactions as required by ARRA Sections 902, 1514 and 1515. You acknowledge this requirement and agree to grant such access to these entities and CITY, if requested. You shall maintain documentation of your purchases of materials or goods furnished hereunder that are sufficient to demonstrate that they are U.S.-made. You must retain this documentation for the duration of this contract, and for four years after the expiration or termination of this Agreement. You shall permit inspection and copying of such documents to these parties and CITY at no cost.

Anti-discrimination and Equal Opportunity Provisions: All anti-discrimination and equal opportunity statutes, regulations, and Executive Orders that apply to the expenditure of funds under Federal contracts, grants, cooperative agreements, loans, and other forms of Federal assistance shall apply here. You shall comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975. Generally applicable civil rights laws apply, including (but not limited to) the Fair Housing Act, the Fair Credit Reporting Act, the Americans With Disabilities Act Title VII of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, the Age Discrimination in Employment Act, and the Uniform Relocation Act. You agree that you will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability.

Amendments: Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both CITY and MERCURY ASSOCIATES, and signed by the Director. Substantive changes, to include an increase in the amount of compensation, shall require additional City Council approval.

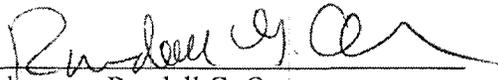
THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

Entire Agreement: This Agreement, together with its authorizing ordinance and its exhibits, as listed above, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties.

Agreed, Consented to, and Executed this _____ day of June, 2011.

MERCURY ASSOCIATES

BY: 
Printed name: Randall G. Owen
Title: Senior Vice President

CITY OF SAN ANTONIO

BY: _____
Printed name: _____
Title: _____
CITY MANAGER, or her designee

APPROVED AS TO FORM:
Office of the City Attorney
Michael D. Bernard, City Attorney

By: _____
Assistant City Attorney