EG/mgc
03/31/11
Item# 32

AN ORDINANCE 2011-03-31-0244

AUTHORIZING CONTRACTS WITH LENCOM, INC. D/B/A LENTZ PAINTING, AND RAUL'S LANDSCAPE SERVICES AS PRIMARY CONTRACTORS, AND WITH HOSPITAL KLEAN OF TEXAS, INC. AND UNDER CONSTRUCTION INC. AS SECONDARY CONTRACTORS, FOR DANGEROUS PREMISES ABATEMENT LOT CLEARING, SECURING OF UNOCCUPIED STRUCTURES AND GRAFFITI ABATEMENT, FOR A TERM BEGINNING APRIL 1, 2011 AND ENDING ON MARCH 31, 2013 WITH AN ESTIMATED ANNUAL VALUE OF $104,038.00 AND AN OPTION FOR TWO ADDITIONAL ONE-YEAR RENEWALS FOR ALL FOUR CONTRACTS.

* * * * *

WHEREAS, the Code Enforcement Services Department (CESD) enforces city codes related to dangerous premises abatement lot clearing, securing of unoccupied structures and the abatement of graffiti on vacant structures; and

WHEREAS, when property owners fail to comply with these requirements, the City may abate these properties through the use of contracted service providers; and

WHEREAS, these services are of a non-professional nature, and include but are not limited to the mowing of grass and weeds, the removal of brush, rubbish and trash, as well the removal of all rock, brick and/or dirt piles as required and the securing of all accessible unsecured entrances and painting over graffiti; and

WHEREAS, the current contract for these services expires March 31, 2011; and

WHEREAS, it was determined that in contrast to the existing contract with one service provider, the new contracts would divide the service area (city-wide) into two (2) work zones, Zone 1 (west) and Zone 2 (east), with the work zone boundary beginning north on Blanco Road following Blanco south to Fredericksburg Road, then to Flores Street continuing south on Pleasanton Road (see map, attached hereto and incorporated herein for all purposes as **Attachment I**); and

WHEREAS, it was further determined that the contract should be awarded to two (2) primary contractors and two (2) secondary contractors; and

WHEREAS, the splitting of the service area into work zones and the use of secondary contractors should improve response times and abatement capacity; and

WHEREAS, a competitive Request For Proposals (RFP) solicitation process reflecting the changes in approach was utilized to engage contractors to provide these abatement services; and

WHEREAS, the RFP was released on December 12, 2010 and proposals were due on January 14, 2011; and

WHEREAS, the RFP was advertised on the City's website and with the following periodicals: La Prensa De San Antonio: December 12th, 19th, 26th and January 2nd; Commercial Recorder: December 13th, 20th, 27th and January 3rd; San Antonio Observer: December 15th, 22nd, 29th and January 5th; and

WHEREAS, in addition to these outreach efforts, direct e-mail was sent to a list of 250 known potential respondents; and

WHEREAS, throughout the solicitation process, the Purchasing and General Services Department provided consultation and facilitation services in accordance with common procurement practices and requirements; and

WHEREAS, eight proposals were received, seven of which were considered responsive to the minimum RFP specifications; and

WHEREAS, a Pre-Proposal Conference was conducted on Wednesday, January 5, 2011; and

WHEREAS, additionally, the International and Economic Development Department, Small Business Office (SBO), provided direct assistance to several respondents regarding preparation of their response on the Small Business Economic Development Advocacy program requirements; and

WHEREAS, the evaluation committee, consisting of five total staff from the CESD and SBO, met three times including a process to interview the top four respondents and recommended that contracts be awarded as follows: Work Zone 1 Primary Contractor: Lencom, Inc. d/b/a Lentz Painting, Secondary Contractor: Hospital Klean of Texas, Inc., and Work Zone 2 Primary Contractor: Raul's Landscape Services, Secondary Contractor: Under Construction, Inc.; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee, the Director of the Purchasing and General Services Department, or her designee, or the Director of the Code Enforcement Services Department or his designee, is hereby authorized to execute contracts with Lencom, Inc. d/b/a Lentz Painting, and Raul's Landscape Services as primary contractors, and with Hospital Klean of Texas, Inc. and Under Construction, Inc. as secondary contractors, for dangerous premises abatement lot clearing, securing of unoccupied structures and graffiti abatement, for a term beginning April 1, 2011 and ending on March 31, 2013, with each contract having an estimated annual value of $104,038.00 and with an option for two additional one-year renewals for all four contracts. Copies of the contracts are attached hereto and incorporated herein for all purposes as **Attachments II - V**.

SECTION 2. Based on data provided by the department, The Office of Management and Budget will process administrative adjustments to the current year operating budget.

SECTION 3. Once administrative adjustments to the current year operating budget are processed, funding in the amount of $104,038.00 for this ordinance is available in Fund 11001000, Cost Center 6105020001 and General Ledger 5201040, as part of the Fiscal Year 2011 Budget.

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SECTION 4. Payment not to exceed the budgeted amount is authorized and should be encumbered with 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 become effective immediately upon passage by eight (8) or more affirmative votes of the entire City Council; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

PASSED AND APPROVED this 31st day of March, 2011.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Michael Bernard, City Attorney

Request for COUNCIL ACTION

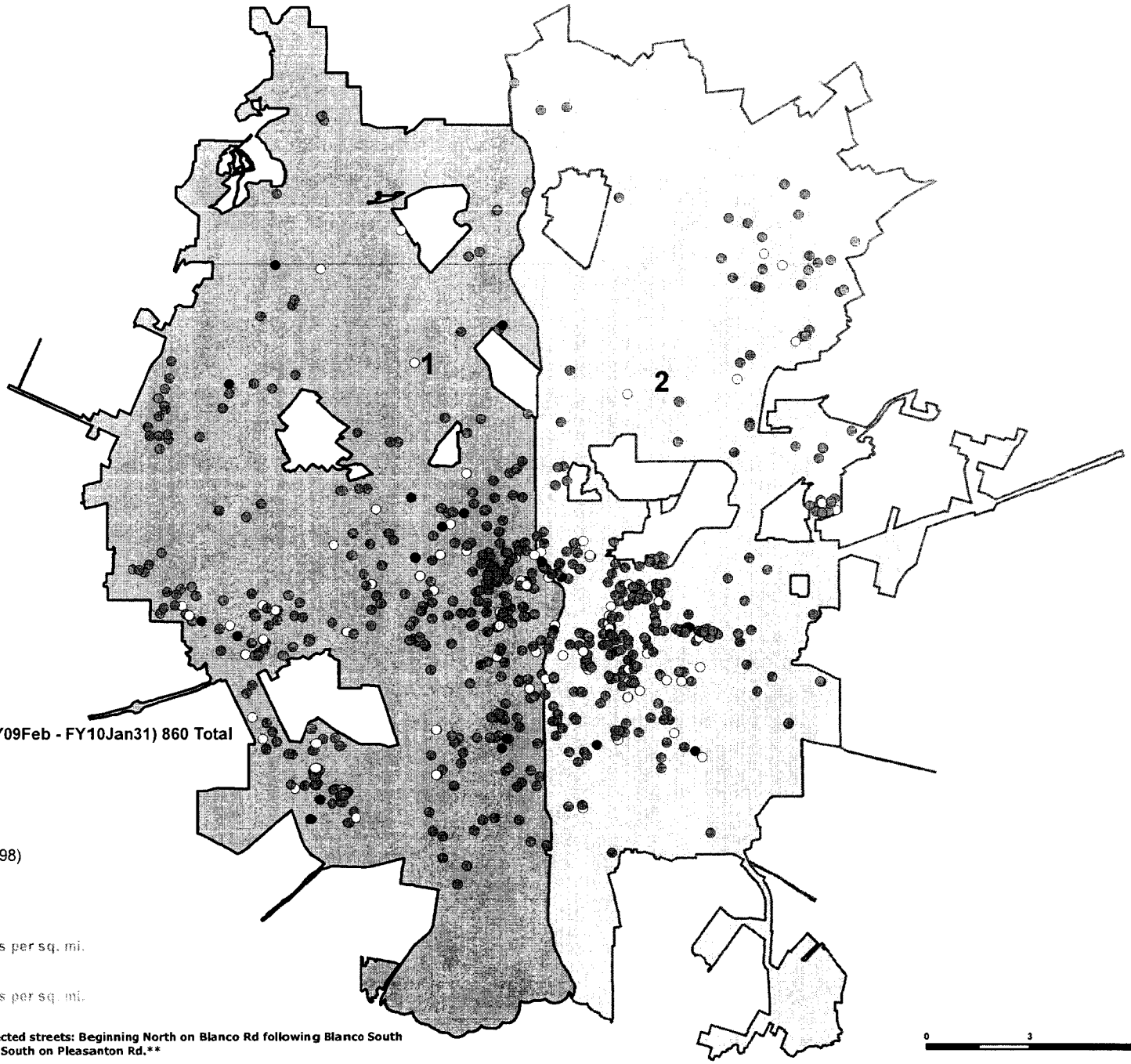
City of San Antonio

Agenda Voting Results - 32

Name:	6, 7A, 7B, 8, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 29A, 29B, 29C, 29D, 29E, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42
Date:	03/31/2011
Time:	02:57:50 PM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing contracts with Lencom, Inc. d/b/a Lentz Painting, and Raul's Landscape Services as primary contractors, and with Hospital Klean of Texas, Inc. and Under Construction Inc. as secondary contractors, for dangerous premises abatement lot clearing, securing of unoccupied structures and graffiti abatement, for a term beginning April 1, 2011 and ending on March 31, 2013 with an estimated annual value of $104,038.00 and the option for two additional one-year renewals. [T.C. Broadnax, Assistant City Manager; David D. Garza, Director, Code Enforcement Services]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				x
Jennifer V. Ramos	District 3	x					
Philip A. Cortez	District 4	x					
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

Dangerous Premises Work Zones



Legend

Dangerous Premises Violations (FY09Feb - FY10Jan31) 860 Total

- Tier 1: 1 Citation (581)
- Tier 2: 2 Citations (181)
- Tier 3: 3 or more Citations (98)

Dangerous Premises Work Zones

Work Zone 1: 235.96sq. mi.
Total Violations (462) 2 violations per sq. mi.

Work Zone 2: 207.20sq. mi.
Total Violations (398) 2 violations per sq. mi.

**** Work Zones boundary split derived from selected streets: Beginning North on Blanco Rd following Blanco South to Fredericksburg Rd, then to Flores continuing South on Pleasanton Rd.****

Attachment I

SERVICES CONTRACT
FOR
SECURING STRUCTURES & CLEARING LOTS

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Contract is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City") on behalf of the Code Enforcement Services Department (CESD) pursuant to Ordinance No. 2011-__-__-____, passed and approved on the ___ day of _____, 2011 and **Lencom, Inc. d/b/a Lentz Painting**, ("Contractor"), both of which may be referred to herein collectively as the "Parties".

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Contract, the following terms shall have meanings as set out below:

1.1 "City" is defined in the preamble of this Contract and includes its successors and assigns.

1.2 "Contractor" is defined in the preamble of this Contract and includes its successors.

1.3 "Director" shall mean the Director of the City's Code Enforcement Services Department.

1.4 "Extra Heavy Debris" shall mean discarded lumber, construction building materials, and bricks.

1.5 "Heavy Debris" shall mean appliances, toilets, furniture, tires, tree trunks, tree limbs and branches.

1.6 "Light Debris" shall mean grass clippings, high weeds (more than 12 inches in height), leaves, paper and plastic litter items, and discarded clothing and textiles of all sorts.

1.7 "Moderate Debris" shall mean trash items, including, but not limited to the following: aluminum or tin cans, toys, bottles, old vessels of sorts, and household items (e.g., dishes, tableware, pots and pans, etc.).

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Contract, the term of this Contract shall commence on the effective date of its authorizing ordinance and terminate on December 31, 2013.

2.2. The City reserves the right to extend the contract period for two (2) additional one (1) year periods based on the initial bid submitted, upon mutual consent of City of San Antonio and the contractor. Renewals shall be in writing and signed by the parties. The City Manager, her designee, or the Director of the Purchasing shall be the party with authority to execute a renewal on behalf of the City, without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds therefore.

2.3 The City reserves the right to extend the term of the contract in thirty (30) day increments, not to exceed ninety (90) days total with written notice to the Contractor; provided, that the City shall give the Contractor a preliminary written notice of its intent to extend at least ten (10) days before the contract expires. The parties agree and understand that the preliminary notice does not commit the City to an extension.

2.4 If funding for the entire Contract is not appropriated at the time this Contract is entered into, City retains the right to terminate this Contract at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

3.1 Contractor agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.

3.2 Contractor shall be the **Primary Contractor for Work Zone 1**, an area West of a line beginning North on Blanco Road following Blanco South to Fredericksburg Road, then to Flores continuing South on Pleasanton Road (as set out in Exhibit B). All work performed by Contractor hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Contractor, which is not satisfactory to Director. City shall have the right to terminate this Contract, in accordance with Article VII. Termination, in whole or in part, should Contractor's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

3.3 Contractor to clear and mow properties and, when necessary, secure vacant, accessible structures by attaching plywood to first floor doors and windows.

3.4 Contractor shall furnish all labor, fuel, tools, equipment, materials and supplies necessary to complete the work. Contractor shall maintain all tools, equipment, and supplies in a safe working condition. Contractor shall be required to own or lease all of the following equipment, or subcontract with another party who owns or leases the following equipment: Tractor, 19 hp & less; Tractor, greater than 19 hp; Commercial ride-on mower; Commercial stand-on mower; Edger; String Trimmer; Leaf Blower; Refuse Trailer; Dump Truck; Front End Loader; Chainsaw; and any other equipment that is necessary for completing the services described herein.

3.5 Contractor shall have and maintain throughout the contract term, including renewals, a valid City Tree Maintenance License.

3.6 Contractor shall perform all work in a superior, workmanlike manner.

3.7 City shall notify Contractor throughout the course of the contract term as services are required. Contractor shall complete requested services within three (3) calendar days of notification, unless City provides written approval extending time to complete services. Failure to complete services within required schedule may result in termination of the contract.

3.8 Clearing Parcels.

A. Contractor shall pick up and legally dispose of any and all brush, tree limbs, leaves, grass/weed clippings, trash, and rubbish within the assigned work location. Contractor shall remove all rocks, bricks, gravel piles, or dirt mounds within the assigned work area. These materials shall not be left on site.

B. Contractor shall clear assigned work locations from the middle of the alley to the curb line of the street and from side property line to side property line.

3.9 Mowing.

A. Contractor shall complete all mowing assignments so that the mown height is no greater than three inches (3").

B. Contractor shall remove all plant material & grass clippings that result from mowing /trimming.

C. Contractor shall ensure that all paved areas, including sidewalks, curbs, gutters, and streets are free of all plant material & clippings.

D. Contractor shall take extreme care to prevent injury and damage to property, and shall leave all areas in a clean condition.

3.10 Securing Structures.

A. Contractor shall board up all first floor doors and windows, including windows and doors with burglar bars, unless otherwise specified on order issued by City.

B. Contractor shall use the following material to secure structures and all material shall be new: 5/8" CDX plywood, 2" X 4" lumber, 3/8" carriage bolts with nuts & washers, & 8d common nails.

C. Contractor shall ensure that plywood extends past jambs and have bolts and nails at 6" spacing around the outside of the opening.

D. Contractor shall ensure that plywood on the front door opening shall not include bolts, but shall include only nails at 6" spacing around the outside of the opening.

E. Contractor shall use a solid sheet of plywood (no splicing) on all first floor openings that are 4' X 8' or smaller, unless otherwise specified on the purchase order. All plywood shall be painted solid white or gray.

F. Contractor may use splicing only on first floor openings larger than 4' X 8'. All such splicing shall use only lumber, plywood, bolts & nails, and all splices shall be fastened as approved by the City.

3.11 Graffiti Abatement.

A. Contractor shall paint all structures, objects and/ or fences that have been vandalized with graffiti as indicated in City work orders.

B. Contractor shall use the following material to paint graffiti: solid white paint, solid grey paint or upon request of the City, colored paint must be used to match the structure's existing color. Contractor may utilize latex paint suitable for various exterior surfaces upon approval by the City.

3.12 All work performed is subject to inspection and approval by City, and any modification to these specifications must be in writing from Director, or his designee. Unsatisfactory work shall be redone by Contractor at Contractor's expense. City shall not pay for unsatisfactory work. Failure to perform satisfactory work may result in termination of contract in whole or in part.

3.13 Contractor shall provide training for its employees, and any subcontractors, in Contractor's best practices, safety and procedures, including properly transporting and disposing of debris.

3.14 The Contractor shall control site safety and security at all times of actual working conditions and provide any safety equipment including, but not limited to, barricades tape or other means to control access to limit unauthorized persons for the safety of the public and City staff while performing services. Contractor shall be prohibited from posting signs which advertise their business at the designated sites without prior written authorization from the City. Costs associated with site security and safety are considered incidental to the project and will not be considered for reimbursement. Work methods and quality control measures are the responsibility of the Contractor. However, at its discretion, the City reserves the right to disapprove or suspend work methods considered unsafe, illegal, or detrimental to the project, the public health, safety, or welfare.

3.15 The Contractor shall assume full responsibility and liability for and act prudently in all aspects of handling, transport and disposal of any hazardous materials, securing any licenses and permits required by law and ensuring that any disposal facility to which any scrap, waste or hazardous materials may be moved are in compliance with Federal, State, and local laws and regulations. It shall be the responsibility of the Contractor to remove from the job site and properly dispose of all refuse at the end of each workday. Contractor is prohibited from salvaging and/or recycling of all or any materials generated or found within the project site. Materials and equipment left on site overnight shall be clearly marked and identified so as to ensure public safety. No materials or equipment shall be left on site over a weekend unless arrangements have been made with and approved by the City. At its own risk, Contractor shall be responsible for any materials or equipment left on site. Any loss of materials or equipment due to theft, vandalism, etc. shall be the responsibility of the Contractor.

3.16 All waste materials, including any and all tires (new or used), any and all brush, tree limbs, leaves, grass/weed clippings, trash, and rubbish removed from the location specified on the work order, shall be transported by a City authorized and City permitted hauler to an authorized disposal facility as described in this section and in compliance with all applicable regulations and local permitting requirements. Transports shall be insured, licensed, and permitted by Federal, State and local agencies, as appropriate for the waste material that is to be hauled. The Contractor and its subcontractors, if any, shall provide proof of licenses and permits, as required prior to commencing the work. Transport vehicles shall be in good working condition. All loads must be covered with a tarp or other suitable means to prevent dispersion of waste materials. The City reserves the right to order transporters removed from the site if the vehicle is not in good working condition, lacks a local permit, or does not have a cover, or for any other reason the City deems necessary to either ensure compliance with the contract or health and safety concerns All transporters shall haul waste material directly to the disposal facility from the demolition site and shall not spill or track mud, dirt, or waste on the street in route to the disposal facility.

A. All waste must be disposed of at an authorized landfill permitted by the State to accept such waste. Contractor shall show proof of current authorization for disposal at licensed and permitted landfill(s). Waste

containing no regulated asbestos-containing material may be disposed of at a Type I or Type IV landfill authorized to accept such waste. Waste that may contain regulated asbestos-containing material shall only be disposed of at a Type I landfill authorized to accept such waste. Receipts for disposals shall be kept on file at the Contractor's office for no less than three (3) years, and for so long as any unresolved transport manifest issue may be pending as a regulatory enforcement action. The receipts shall be available for City inspection during such times.

B. The Contractor shall manifest all waste material that is required to be manifested. The Contractor shall prepare all manifests, as necessary, and arrange for any special waste authorizations with the state or disposal facility for disposal. All coordination with the state and the disposal facility for disposal approval shall be the Contractor's responsibility. Unless alternative written direction is provided by the City and agreed to by the Contractor, the City Department requesting the service is the Generator for the wastes identified in the Work Orders. The City Inspector or other authorized City representative will sign all manifests as the Generator. The Contractor or the Contractor's transporter shall sign the manifest as the Transporter. The Disposal facility shall sign the manifest upon acceptance at the disposal facility, and the original signed manifest shall be promptly returned to the City. Manifests not returned to the City within the designated state and federal timelines, will prompt the City to make the appropriate TCEQ or EPA exception report. Payment will not be made until the original manifest is returned to the City. It shall be the Contractor's responsibility to locate delinquent manifests. Contractor shall be fully responsible and liable for all consequential regulatory liability, third party, and City damages that may arise or be asserted on account of un-manifested or delinquent manifested wastes.

3.17 The Contractor shall ensure that all Contractor's personnel, including all subcontractors, wear uniforms and an ID Badge at all times.

3.18 At the City's request, the Contractor may be requested to conduct employee background checks, to the extent allowable by law, including, at a minimum, references and prior employment histories to the extent necessary to verify representations made by said employees relative to their employment in the preceding five years.

IV. COMPENSATION TO CONTRACTOR

4.1 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Contract, City agrees to pay Contractor an amount not to exceed the prices shown on Exhibit A - Price Schedule, which is attached hereto and incorporated herein for all

purposes. All payments made hereunder are subject to and contingent upon appropriations therefore by the San Antonio City Council.

4.2 Contractor shall submit monthly invoices to City at the address shown on the Purchase Order(s). Invoices shall include each Purchase Order number, and separately identify and itemize the cost for each property being billed on the invoice. Contractor shall provide different or additional information on an invoice, if required by City.

4.3 City shall pay approved invoices that are properly competed and addressed within thirty (30) calendar days' of receipt. Invoices shall be considered paid on the date mailed.

4.4 No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City. The parties hereby agree that all compensable expenses of Contractor have been provided for in Exhibit A - Price Schedule. Total payments to Contractor cannot exceed that amount set forth in Exhibit A - Price Schedule, without prior approval and agreement of all parties, evidenced in writing and approved by Director.

4.5 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Contractor following written approval of the final work products and services by Director. City shall not be obligated or liable under this Contract to any party, other than Contractor, for the payment of any monies or the provision of any goods or services.

V. [RESERVED]

VI. [RESERVED.]

VII. TERMINATION

7.1 For purposes of this Contract, "termination" of this Contract shall mean termination by expiration of the Contract term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Contract may be terminated by City for convenience upon 10 calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. This Contract may be terminated in whole or in part by City for material breach of its terms upon on the date stated in a written notice, which notice shall be provided in accordance with Article VIII. Notice. The sale, transfer, pledge, conveyance or assignment of this Contract without prior approval, as provided in Article XII. Assignment and Subcontracting, shall be considered a material breach.

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

7.5 Termination not sole remedy. In no event shall City's action of terminating this Contract, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Contractor for any default hereunder or other action.

VIII. NOTICE

8.1 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: Director of Code Enforcement Services Department
Code Enforcement Services Dept.
P.O. Box 839966
San Antonio, TX 89283-3966.

If intended for CONTRACTOR, to:

Lencom, Inc. d/b/a Lentz Painting
Attn: Liz Lentz
10427 Perrin Beitel Road, Suite 207
San Antonio, Texas 78217

IX. [Reserved]

X. INSURANCE

A. Prior to the commencement of any work under an Agreement awarded pursuant to this RFP, the selected Respondent shall furnish a completed Certificate(s) of Insurance to the **City Code Enforcement Services Department,** which shall be clearly labeled "**Dangerous Premises Abatement Lot Clearing and Securing**

B. The City reserves the right to review these insurance requirements during the effective period of the Agreement and any extension or renewal thereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager, based upon changes in statutory law, court decisions or circumstances surrounding the Agreement, but in no instance will City allow modification whereupon City may incur increased risk.

C. Respondent's financial integrity is of interest to the City, and, therefore, subject to Respondent's right to maintain reasonable deductibles in such amounts as are approved by the City, Respondent shall obtain and maintain in full force and effect, for the duration of the Agreement, and any extension thereof, at Respondent's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M. Best's rating of no less than A-(VII), In the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/$500,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence; or its equivalent in Umbrella or Excess Liability Coverage

D. Respondent agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Respondent herein, and provide a certificate of insurance and endorsement that names the Respondent and the City as an additional insured. Respondent shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

E. 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 require the 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. Respondent shall be required to comply with any such requests and shall submit a copy of the replacement Certificate of Insurance to City at an address provided below by City within ten (10) days of the requested change. Respondent shall pay any costs incurred resulting from said changes.

City of San Antonio
Purchasing & General Services Department
P.O. Box 839966
San Antonio, Texas 78283-3966

F. Respondent agrees that, with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

1. Name the City and its officials, employees, volunteers and elected representatives as <u>additional insured by endorsement</u> as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability polices;

2. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

3. Workers' compensation, employers' liability, general liability and auto liability policies will provide a waiver of subrogation in favor of the City.

4. Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

G. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Respondent's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H. In addition to any other remedies the City may have upon Respondent's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Respondent to stop work under the Agreement, and/or withhold any payment(s) which become due to Respondent there under until Respondent demonstrates compliance with the requirements hereof.

I. Nothing herein contained shall be construed as limiting in any way the extent to which Respondent may be held responsible for payments of damages to persons or property resulting from Respondent's or its subcontractors' performance of the work covered under the Agreement. It is agreed that Respondent's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City for liability arising out of operations under this contract.

J. It is agreed that Respondent's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

K. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and hat no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

L. Respondent and any Subcontractor's are responsible for all damage to their own equipment and/or property.

XI. INDEMNIFICATION

11.1 **CONTRACTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and**

nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR's activities under this CONTRACT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this CONTRACT, 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 CONTRACT.

11.2 **It is the EXPRESS INTENT of the parties to this CONTRACT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by CONTRACTOR 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. CONTRACTOR 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.**

11.3 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. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

11.4 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONTRACTOR shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If CONTRACTOR fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall be

liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

11.5 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Contract. Persons retained to perform work pursuant to this Contract shall be the employees or subcontractors of Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.

12.2 It is City's understanding and this Contract is made in reliance thereon, that Contractor intends to use the following subcontractors in the performance of this Contract: [None.] Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director, prior to the provision of any services by said subcontractor.

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

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

12.5 Any attempt to transfer, pledge or otherwise assign this Contract without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Contract, City may, at its option, cancel this Contract and all rights, titles and interest of Contractor shall thereupon cease and terminate,

in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Contract. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Contract, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor 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 Contractor, 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 venturers between City and Contractor. The parties hereto understand and agree that the 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 the Contractor under this Contract and that the Contractor has no authority to bind the City.

XIV. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM

13.1 Contractor hereby acknowledges that it is the policy of the City of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), African American ("AABE"), and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by the City. This policy and its implementation are known as the Small, Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

13.2 Contractor shall implement the plan (hereafter "SBEDA plan") submitted with its proposal under the SBEDA Program for Small, African American, Minority and Women-owned Business Participation in this Contract, thereby meeting the percentages for participation of those groups as submitted in its proposal. Contractor's SBEDA plan, as submitted with Contractor's proposal, is attached hereto and incorporated herein by reference as Exhibit C. Contractor shall be in full compliance with this article by meeting the percentages listed in its proposal no later than 60 days from the date of execution of this Contract, and shall remain in compliance throughout the term of this Contract. Contractor further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this Contract, as may be approved pursuant to this Contract, which will meet the percentages submitted in its proposal.

13.3 Contractor shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/AABE/WBE's. Further, such records shall be open to

13.4 In all events, Contractor shall comply with the City's most current Small Business Economic Development Advocacy Program and any amendments or revisions thereto.

XIV. CONFLICT OF INTEREST

15.1 Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

15.2 Pursuant to the subsection above, Contractor warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Contractor further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

Except where the terms of this Contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Contractor, and subject to approval of Director, except for amendments that increase the cost of the services provided, which amendments require approval of the City Council of the City of San Antonio by passage of an ordinance therefore.

XVII. SEVERABILITY

If any clause or provision of this Contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Contract that is invalid, illegal, or unenforceable, there be added as a part of the Contract a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. LICENSES/CERTIFICATIONS

Contractor warrants and certifies that Contractor and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XIX. COMPLIANCE

Contractor shall provide and perform all services required under this Contract in compliance with all applicable federal, state and local laws, rules and regulations.

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Contract, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Contract 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 Contract, 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 Contract 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 Director and/or the City Council, as described in Article XVI. Amendments. 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.

XXI. LAW APPLICABLE

21.1 **THIS CONTRACT 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.

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

XXII. LEGAL AUTHORITY

The signer of this Contract for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Contract on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained.

XXIII. PARTIES BOUND

This Contract shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXIV. CAPTIONS

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

XXV. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Contract, which governs the rights and duties of the parties: Exhibit A – Price Schedule; Exhibit B – Work Zone; Exhibit C - Contractor's SBEDA plan.

---------- INTENTIONALLY LEFT BLANK ----------

XXVI. ENTIRE CONTRACT

This Contract, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire Contract between the parties hereto and contain all of the terms and conditions agreed upon. No other contracts, oral or otherwise, regarding the subject matter of this Contract 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, in accordance with Article XVI. Amendments.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO	**LENCOM, INC. d/b/a LENTZ PAINTING**
_____ *(Signature)*	Liz Lentz *(Signature)*
Printed Name: _____	Printed Name: Liz Lentz
Title: _____	Title: President
Date: _____	Date: 2-7-2011

Approved as to Form:

_____
City Attorney

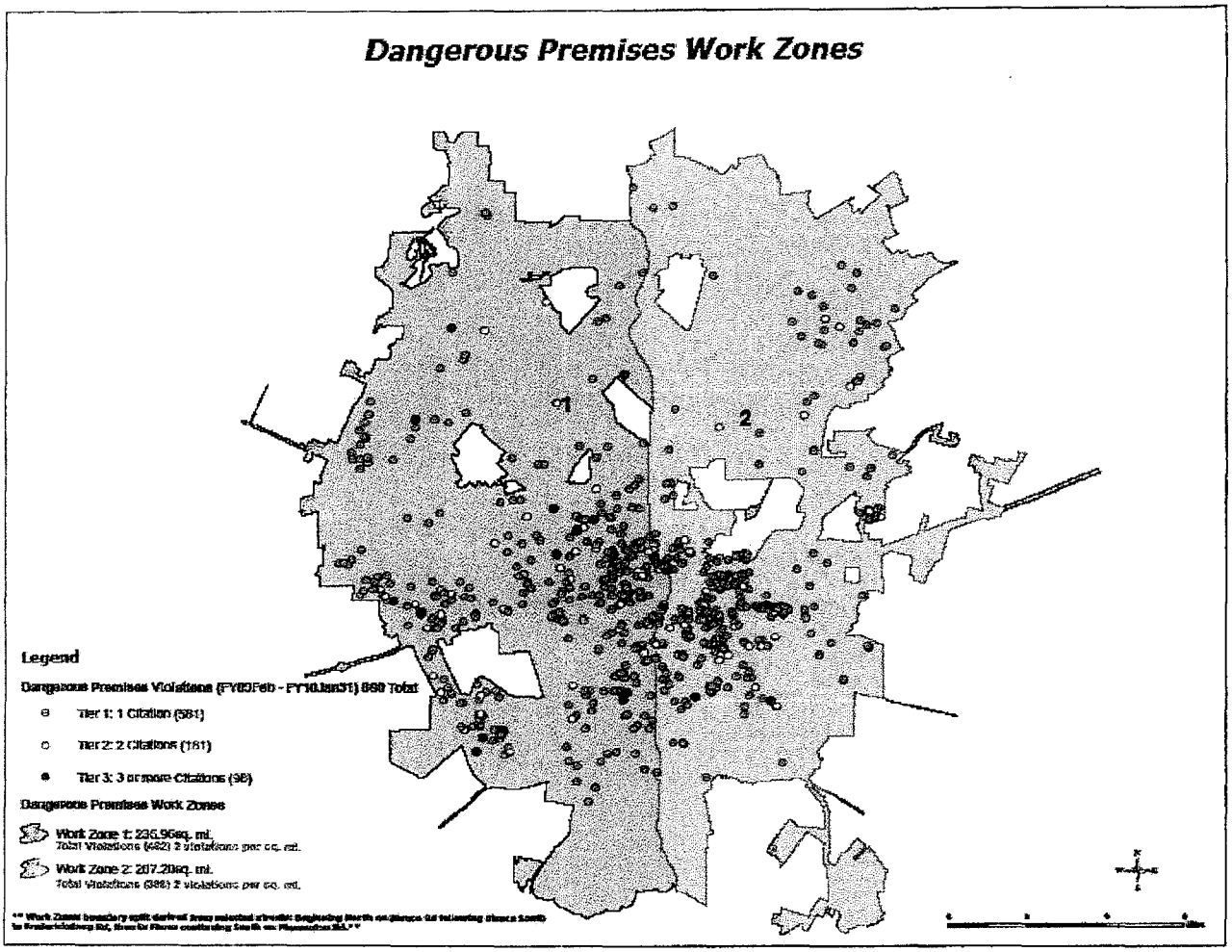
EXHIBIT A - PRICE SCHEDULE

DANGEROUS PREMISES ABATEMENT LOT CLEARING SECURING OF STRUCTURES AND GRAFFITI ABATEMENT

Lencom, Inc. dba Lentz Painting Work Zone 1

ITEM	SIZE	UOM	DESCRIPTION	EST QTY	Lencom, Inc. dba Lentz Painting PRICE PER ITEM	Lencom, Inc. dba Lentz Painting TOTAL EXTEMATED ANNUAL PRICE
1	LOT		MOW ONLY			
1a	0 – 7,500	sf	No debris; weed & grass height 12" < 48"	32	$53.00	$1,696.00
1b	0 – 7,500	sf	No debris; weed & grass height 48" +	22	$89.00	$1,958.00
1c	7,501 – 15,000	sf	No debris; weed & grass height 12" < 48"	12	$68.00	$816.00
1d	7,501 – 15,001	sf	No debris; weed & grass height 48" +	4	$143.00	$572.00
1e	15,001 - 22,500	sf	No debris; weed & grass height 12" < 48"	5	$87.00	$435.00
1f	15,001 - 22,500	sf	No debris; weed & grass height 48" +	3	$164.00	$492.00
2	LOT		CLEAR AND MOW			
2a	0 – 7,500	sf	Light debris; weed & grass height 12" < 48"	21	$71.00	$1,491.00
2b	0 – 7,500	sf	Light debris; weed & grass height 48" +	12	$143.00	$1,716.00
2c	7,501 – 15,000	sf	Light debris; weed & grass height 12" < 48"	14	$85.00	$1,190.00
2d	7,501 – 15,001	sf	Light debris; weed & grass height 48" +	2	$172.00	$344.00
2e	15,001 - 22,500	sf	Light debris; weed & grass height 12" < 48"	9	$109.00	$981.00
2f	15,001 - 22,500	sf	Light debris; weed & grass height 48" +	2	$214.00	$428.00
2g	0 – 7,500	sf	Moderate debris; weed & grass height 12" < 48"	31	$89.00	$2,759.00
2h	0 – 7,500	sf	Moderate debris; weed & grass height 48" +	9	$179.00	$1,611.00
2i	7,501 – 15,000	sf	Moderate debris; weed & grass height 12" < 48"	17	$114.00	$1,938.00
2j	7,501 – 15,001	sf	Moderate debris; weed & grass height 48" +	4	$218.00	$872.00
2k	15,001 - 22,500	sf	Moderate debris; weed & grass height 12" < 48"	6	$143.00	$858.00
2l	15,001 - 22,500	sf	Moderate debris; weed & grass height 48" +	3	$274.00	$822.00
2m	0 – 7,500	sf	Heavy debris; weed & grass height 12" < 48"	42	$107.00	$4,494.00
2n	0 – 7,500	sf	Heavy debris; weed & grass height 48" +	9	$203.00	$1,827.00
2o	7,501 – 15,000	sf	Heavy debris; weed & grass height 12" < 48"	18	$137.00	$2,466.00
2p	7,501 – 15,001	sf	Heavy debris; weed & grass height 48" +	6	$241.00	$1,446.00
2q	15,001 - 22,500	sf	Heavy debris; weed & grass height 12" < 48"	6	$153.00	$918.00
2r	15,001 - 22,500	sf	Heavy debris; weed & grass height 48" +	3	$269.00	$807.00
2s	0 – 7,500	sf	Heavy debris; weed & grass height 12" < 48"	6	$155.00	$930.00
2t	0 – 7,500	sf	Heavy debris; weed & grass height 48" +	7	$215.00	$1,505.00
2u	7,501 – 15,000	sf	Extra Heavy debris; weed & grass height 12" < 48"	9	$183.00	$1,647.00
2v	7,501 – 15,001	sf	Extra Heavy debris; weed & grass height 48" +	4	$286.00	$1,144.00
2w	15,001 - 22,500	sf	Extra Heavy debris; weed & grass height 12" < 48"	2	$197.00	$394.00
2x	15,001 - 22,500	sf	Extra Heavy debris; weed & grass height 48" +	3	$340.00	$1,020.00
3	LOT		SECURING STRUCTURES			
3a	3' x 5'	each	Window	129	$45.00	$5,805.00
3b	3' x 7'	each	Door	66	$45.00	$2,970.00
4			GRAFFITI ABATEMENT			
4a	N/A	hour	Paint Graffiti Structure	82	$36.00	$2,952.00
5			EMERGENCY MOBILIZATION			
5a	N/A	hour	Emergency Mobilization Fee	7	$56.00	$392.00

EXHIBIT B – Work Zone



SERVICES CONTRACT
FOR
SECURING STRUCTURES & CLEARING LOTS

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Contract is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City") on behalf of the Code Enforcement Services Department (CESD) pursuant to Ordinance No. 2011-__-__-____, passed and approved on the ___ day of _____, 2011 and **Raul's Landscape Services**, ("Contractor"), both of which may be referred to herein collectively as the "Parties".

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Contract, the following terms shall have meanings as set out below:

1.1 "City" is defined in the preamble of this Contract and includes its successors and assigns.

1.2 "Contractor" is defined in the preamble of this Contract and includes its successors.

1.3 "Director" shall mean the Director of the City's Code Enforcement Services Department.

1.4 "Extra Heavy Debris" shall mean discarded lumber, construction building materials, and bricks.

1.5 "Heavy Debris" shall mean appliances, toilets, furniture, tires, tree trunks, tree limbs and branches.

1.6 "Light Debris" shall mean grass clippings, high weeds (more than 12 inches in height), leaves, paper and plastic litter items, and discarded clothing and textiles of all sorts.

1.7 "Moderate Debris" shall mean trash items, including, but not limited to the following: aluminum or tin cans, toys, bottles, old vessels of sorts, and household items (e.g., dishes, tableware, pots and pans, etc.).

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Contract, the term of this Contract shall commence on the effective date of its authorizing ordinance and terminate on December 31, 2013.

2.2. The City reserves the right to extend the contract period for two (2) additional one (1) year periods based on the initial bid submitted, upon mutual consent of City of San Antonio and the contractor. Renewals shall be in writing and signed by the parties. The City Manager, her designee, or the Director of the Purchasing shall be the party with authority to execute a renewal on behalf of the City, without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds therefore.

2.3 The City reserves the right to extend the term of the contract in thirty (30) day increments, not to exceed ninety (90) days total with written notice to the Contractor; provided, that the City shall give the Contractor a preliminary written notice of its intent to extend at least ten (10) days before the contract expires. The parties agree and understand that the preliminary notice does not commit the City to an extension.

2.4 If funding for the entire Contract is not appropriated at the time this Contract is entered into, City retains the right to terminate this Contract at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

3.1 Contractor agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.

3.2 Contractor shall be the **Primary Contractor for Work Zone 2** (as set out in Exhibit B). All work performed by Contractor hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Contractor, which is not satisfactory to Director. City shall have the right to terminate this Contract, in accordance with Article VII. Termination, in whole or in part, should Contractor's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

3.3 Contractor to clear and mow properties and, when necessary, secure vacant, accessible structures by attaching plywood to first floor doors and windows.

3.4 Contractor shall furnish all labor, fuel, tools, equipment, materials and supplies necessary to complete the work. Contractor shall maintain all tools, equipment, and supplies in a safe working condition. Contractor shall be required to own or lease all of the following equipment, or subcontract with another party who owns or leases the following equipment: Tractor, 19 hp & less; Tractor, greater than 19 hp; Commercial ride-on mower; Commercial stand-on mower; Edger; String Trimmer; Leaf Blower; Refuse Trailer; Dump Truck; Front End Loader; Chainsaw; and any other equipment that is necessary for completing the services described herein.

3.5 Contractor shall have and maintain throughout the contract term, including renewals, a valid City Tree Maintenance License.

3.6 Contractor shall perform all work in a superior, workmanlike manner.

3.7 City shall notify Contractor throughout the course of the contract term as services are required. Contractor shall complete requested services within three (3) calendar days of notification, unless City provides written approval extending time to complete services. Failure to complete services within required schedule may result in termination of the contract.

3.8 Clearing Parcels.

A. Contractor shall pick up and legally dispose of any and all brush, tree limbs, leaves, grass/weed clippings, trash, and rubbish within the assigned work location. Contractor shall remove all rocks, bricks, gravel piles, or dirt mounds within the assigned work area. These materials shall not be left on site.

B. Contractor shall clear assigned work locations from the middle of the alley to the curb line of the street and from side property line to side property line.

3.9 Mowing.

A. Contractor shall complete all mowing assignments so that the mown height is no greater than three inches (3").

B. Contractor shall remove all plant material & grass clippings that result from mowing /trimming.

C. Contractor shall ensure that all paved areas, including sidewalks, curbs, gutters, and streets are free of all plant material & clippings.

D. Contractor shall take extreme care to prevent injury and damage to property, and shall leave all areas in a clean condition.

3.10 Securing Structures.

A. Contractor shall board up all first floor doors and windows, including windows and doors with burglar bars, unless otherwise specified on order issued by City.

B. Contractor shall use the following material to secure structures and all material shall be new: 5/8" CDX plywood, 2" X 4" lumber, 3/8" carriage bolts with nuts & washers, & 8d common nails.

C. Contractor shall ensure that plywood extends past jambs and have bolts and nails at 6" spacing around the outside of the opening.

D. Contractor shall ensure that plywood on the front door opening shall not include bolts, but shall include only nails at 6" spacing around the outside of the opening.

E. Contractor shall use a solid sheet of plywood (no splicing) on all first floor openings that are 4' X 8' or smaller, unless otherwise specified on the purchase order. All plywood shall be painted solid white or gray.

F. Contractor may use splicing only on first floor openings larger than 4' X 8'. All such splicing shall use only lumber, plywood, bolts & nails, and all splices shall be fastened as approved by the City.

3.11 Graffiti Abatement.

A. Contractor shall paint all structures, objects and/ or fences that have been vandalized with graffiti as indicated in City work orders.

B. Contractor shall use the following material to paint graffiti: solid white paint, solid grey paint or upon request of the City, colored paint must be used to match the structure's existing color. Contractor may utilize latex paint suitable for various exterior surfaces upon approval by the City.

3.12 All work performed is subject to inspection and approval by City, and any modification to these specifications must be in writing from Director, or his designee. Unsatisfactory work shall be redone by Contractor at Contractor's expense. City shall not pay for unsatisfactory work. Failure to perform satisfactory work may result in termination of contract in whole or in part.

3.13 Contractor shall provide training for its employees, and any subcontractors, in Contractor's best practices, safety and procedures, including properly transporting and disposing of debris.

3.14 The Contractor shall control site safety and security at all times of actual working conditions and provide any safety equipment including, but not limited to, barricades tape or other means to control access to limit unauthorized persons for the safety of the public and City staff while performing services. Contractor shall be prohibited from posting signs which advertise their business at the designated sites without prior written authorization from the City. Costs associated with site security and safety are considered incidental to the project and will not be considered for reimbursement. Work methods and quality control measures are the responsibility of the Contractor. However, at its discretion, the City reserves the right to disapprove or suspend work methods considered unsafe, illegal, or detrimental to the project, the public health, safety, or welfare.

3.15 The Contractor shall assume full responsibility and liability for and act prudently in all aspects of handling, transport and disposal of any hazardous materials, securing any licenses and permits required by law and ensuring that any disposal facility to which any scrap, waste or hazardous materials may be moved are in compliance with Federal, State, and local laws and regulations. It shall be the responsibility of the Contractor to remove from the job site and properly dispose of all refuse at the end of each workday. Contractor is prohibited from salvaging and/or recycling of all or any materials generated or found within the project site. Materials and equipment left on site overnight shall be clearly marked and identified so as to ensure public safety. No materials or equipment shall be left on site over a weekend unless arrangements have been made with and approved by the City. At its own risk, Contractor shall be responsible for any materials or equipment left on site. Any loss of materials or equipment due to theft, vandalism, etc. shall be the responsibility of the Contractor.

3.16 All waste materials, including any and all tires (new or used), any and all brush, tree limbs, leaves, grass/weed clippings, trash, and rubbish removed from the location specified on the work order, shall be transported by a City authorized and City permitted hauler to an authorized disposal facility as described in this section and in compliance with all applicable regulations and local permitting requirements. Transports shall be insured, licensed, and permitted by Federal, State and local agencies, as appropriate for the waste material that is to be hauled. The Contractor and its subcontractors, if any, shall provide proof of licenses and permits, as required prior to commencing the work. Transport vehicles shall be in good working condition. All loads must be covered with a tarp or other suitable means to prevent dispersion of waste materials. The City reserves the right to order transporters removed from the site if the vehicle is not in good working condition, lacks a local permit, or does not have a cover, or for any other reason the City deems necessary to either ensure compliance with the contract or health and safety concerns All transporters shall haul waste material directly to the disposal facility from the demolition site and shall not spill or track mud, dirt, or waste on the street in route to the disposal facility.

A. All waste must be disposed of at an authorized landfill permitted by the State to accept such waste. Contractor shall show proof of current authorization for disposal at licensed and permitted landfill(s). Waste containing no regulated asbestos-containing material may be disposed of

at a Type I or Type IV landfill authorized to accept such waste. Waste that may contain regulated asbestos-containing material shall only be disposed of at a Type I landfill authorized to accept such waste. Receipts for disposals shall be kept on file at the Contractor's office for no less than three (3) years, and for so long as any unresolved transport manifest issue may be pending as a regulatory enforcement action. The receipts shall be available for City inspection during such times.

B. The Contractor shall manifest all waste material that is required to be manifested. The Contractor shall prepare all manifests, as necessary, and arrange for any special waste authorizations with the state or disposal facility for disposal. All coordination with the state and the disposal facility for disposal approval shall be the Contractor's responsibility. Unless alternative written direction is provided by the City and agreed to by the Contractor, the City Department requesting the service is the Generator for the wastes identified in the Work Orders. The City Inspector or other authorized City representative will sign all manifests as the Generator. The Contractor or the Contractor's transporter shall sign the manifest as the Transporter. The Disposal facility shall sign the manifest upon acceptance at the disposal facility, and the original signed manifest shall be promptly returned to the City. Manifests not returned to the City within the designated state and federal timelines, will prompt the City to make the appropriate TCEQ or EPA exception report. Payment will not be made until the original manifest is returned to the City. It shall be the Contractor's responsibility to locate delinquent manifests. Contractor shall be fully responsible and liable for all consequential regulatory liability, third party, and City damages that may arise or be asserted on account of un-manifested or delinquent manifested wastes.

3.17 The Contractor shall ensure that all Contractor's personnel, including all subcontractors, wear uniforms and an ID Badge at all times.

3.18 At the City's request, the Contractor may be requested to conduct employee background checks, to the extent allowable by law, including, at a minimum, references and prior employment histories to the extent necessary to verify representations made by said employees relative to their employment in the preceding five years.

IV. COMPENSATION TO CONTRACTOR

4.1 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Contract, City agrees to pay Contractor an amount not to exceed the prices shown on Exhibit A - Price Schedule, which is attached hereto and incorporated herein for all

purposes. All payments made hereunder are subject to and contingent upon appropriations therefore by the San Antonio City Council.

4.2 Contractor shall submit monthly invoices to City at the address shown on the Purchase Order(s). Invoices shall include each Purchase Order number, and separately identify and itemize the cost for each property being billed on the invoice. Contractor shall provide different or additional information on an invoice, if required by City.

4.3 City shall pay approved invoices that are properly competed and addressed within thirty (30) calendar days' of receipt. Invoices shall be considered paid on the date mailed.

4.4 No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City. The parties hereby agree that all compensable expenses of Contractor have been provided for in Exhibit A - Price Schedule. Total payments to Contractor cannot exceed that amount set forth in Exhibit A - Price Schedule, without prior approval and agreement of all parties, evidenced in writing and approved by Director.

4.5 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Contractor following written approval of the final work products and services by Director. City shall not be obligated or liable under this Contract to any party, other than Contractor, for the payment of any monies or the provision of any goods or services.

V. [RESERVED]

VI. [RESERVED.]

VII. TERMINATION

7.1 For purposes of this Contract, "termination" of this Contract shall mean termination by expiration of the Contract term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Contract may be terminated by City for convenience upon 10 calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. This Contract may be terminated in whole or in part by City for material breach of its terms upon on the date stated in a written notice, which notice shall be provided in accordance with Article VIII. Notice. The sale, transfer, pledge, conveyance or assignment of this Contract without prior approval, as provided in Article XII. Assignment and Subcontracting, shall be considered a material breach.

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

7.5 Termination not sole remedy. In no event shall City's action of terminating this Contract, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Contractor for any default hereunder or other action.

VIII. NOTICE

8.1 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: Director of Code Enforcement Services Department
Code Enforcement Services Dept.
P.O. Box 839966
San Antonio, TX 89283-3966.

If intended for CONTRACTOR, to:

Raul's Landscape Services
Attn: Raul Cerda
1422 Drury Lane
San Antonio, Texas 78221

IX. [Reserved]

X. INSURANCE

A. Prior to the commencement of any work under an Agreement awarded pursuant to this RFP, the selected Respondent shall furnish a completed Certificate(s) of Insurance to the **City Code Enforcement Services Department,** which shall be clearly labeled "**Dangerous Premises Abatement Lot Clearing and Securing**

B. The City reserves the right to review these insurance requirements during the effective period of the Agreement and any extension or renewal thereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager, based upon changes in statutory law, court decisions or circumstances surrounding the Agreement, but in no instance will City allow modification whereupon City may incur increased risk.

C. Respondent's financial integrity is of interest to the City, and, therefore, subject to Respondent's right to maintain reasonable deductibles in such amounts as are approved by the City, Respondent shall obtain and maintain in full force and effect, for the duration of the Agreement, and any extension thereof, at Respondent's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M. Best's rating of no less than A-(VII), In the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/$500,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence; or its equivalent in Umbrella or Excess Liability Coverage

D. Respondent agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Respondent herein, and provide a certificate of insurance and endorsement that names the Respondent and the City as an additional insured. Respondent shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

E. 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 require the 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. Respondent shall be required to comply with any such requests and shall submit a copy of the replacement Certificate of Insurance to City at an address provided below by City within ten (10) days of the requested change. Respondent shall pay any costs incurred resulting from said changes.

City of San Antonio
Purchasing & General Services Department
P.O. Box 839966
San Antonio, Texas 78283-3966

F. Respondent agrees that, with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

1. Name the City and its officials, employees, volunteers and elected representatives as additional insured by endorsement as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability polices;

2. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

3. Workers' compensation, employers' liability, general liability and auto liability policies will provide a waiver of subrogation in favor of the City.

4. Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

G. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Respondent's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H. In addition to any other remedies the City may have upon Respondent's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Respondent to stop work under the Agreement, and/or withhold any payment(s) which become due to Respondent there under until Respondent demonstrates compliance with the requirements hereof.

I. Nothing herein contained shall be construed as limiting in any way the extent to which Respondent may be held responsible for payments of damages to persons or property resulting from Respondent's or its subcontractors' performance of the work covered under the Agreement. It is agreed that Respondent's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City for liability arising out of operations under this contract.

J. It is agreed that Respondent's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

K. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and hat no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

L. Respondent and any Subcontractor's are responsible for all damage to their own equipment and/or property.

XI. INDEMNIFICATION

11.1 **CONTRACTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and**

nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR's activities under this CONTRACT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this CONTRACT, 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 CONTRACT.

11.2 **It is the EXPRESS INTENT of the parties to this CONTRACT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by CONTRACTOR 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. CONTRACTOR 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.**

11.3 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. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

11.4 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONTRACTOR shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If CONTRACTOR fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall be

liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

11.5 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Contract. Persons retained to perform work pursuant to this Contract shall be the employees or subcontractors of Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.

12.2 It is City's understanding and this Contract is made in reliance thereon, that Contractor intends to use the following subcontractors in the performance of this Contract: [None.] Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director, prior to the provision of any services by said subcontractor.

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

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

12.5 Any attempt to transfer, pledge or otherwise assign this Contract without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Contract, City may, at its option, cancel this Contract and all rights, titles and interest of Contractor shall thereupon cease and terminate,

in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Contract. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Contract, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor 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 Contractor, 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 venturers between City and Contractor. The parties hereto understand and agree that the 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 the Contractor under this Contract and that the Contractor has no authority to bind the City.

XIV. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM

13.1 Contractor hereby acknowledges that it is the policy of the City of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), African American ("AABE"), and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by the City. This policy and its implementation are known as the Small, Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

13.2 Contractor shall implement the plan (hereafter "SBEDA plan") submitted with its proposal under the SBEDA Program for Small, African American, Minority and Women-owned Business Participation in this Contract, thereby meeting the percentages for participation of those groups as submitted in its proposal. Contractor's SBEDA plan, as submitted with Contractor's proposal, is attached hereto and incorporated herein by reference as Exhibit C. Contractor shall be in full compliance with this article by meeting the percentages listed in its proposal no later than 60 days from the date of execution of this Contract, and shall remain in compliance throughout the term of this Contract. Contractor further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this Contract, as may be approved pursuant to this Contract, which will meet the percentages submitted in its proposal.

13.3 Contractor shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/AABE/WBE's. Further, such records shall be open to

13.4 In all events, Contractor shall comply with the City's most current Small Business Economic Development Advocacy Program and any amendments or revisions thereto.

XIV. CONFLICT OF INTEREST

15.1 Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

15.2 Pursuant to the subsection above, Contractor warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Contractor further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

Except where the terms of this Contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Contractor, and subject to approval of Director, except for amendments that increase the cost of the services provided, which amendments require approval of the City Council of the City of San Antonio by passage of an ordinance therefore.

XVII. SEVERABILITY

If any clause or provision of this Contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Contract that is invalid, illegal, or unenforceable, there be added as a part of the Contract a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. LICENSES/CERTIFICATIONS

Contractor warrants and certifies that Contractor and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XIX. COMPLIANCE

Contractor shall provide and perform all services required under this Contract in compliance with all applicable federal, state and local laws, rules and regulations.

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Contract, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Contract 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 Contract, 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 Contract 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 Director and/or the City Council, as described in Article XVI. Amendments. 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.

XXI. LAW APPLICABLE

21.1 **THIS CONTRACT 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.

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

XXII. LEGAL AUTHORITY

The signer of this Contract for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Contract on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained.

XXIII. PARTIES BOUND

This Contract shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXIV. CAPTIONS

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

XXV. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Contract, which governs the rights and duties of the parties: Exhibit A – Price Schedule; Exhibit B – Work Zone; Exhibit C - Contractor's SBEDA plan.

---------- INTENTIONALLY LEFT BLANK ----------

XXVI. ENTIRE CONTRACT

This Contract, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire Contract between the parties hereto and contain all of the terms and conditions agreed upon. No other contracts, oral or otherwise, regarding the subject matter of this Contract 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, in accordance with Article XVI. Amendments.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO	**RAUL'S LANDSCAPE SERVICES**
_____	_____
(Signature)	*(Signature)*
Printed Name: _____	Printed Name: Raul Cerda
Title: _____	Title: Principal / Owner
Date: _____	Date: 2-10-2011

Approved as to Form:

_____

City Attorney

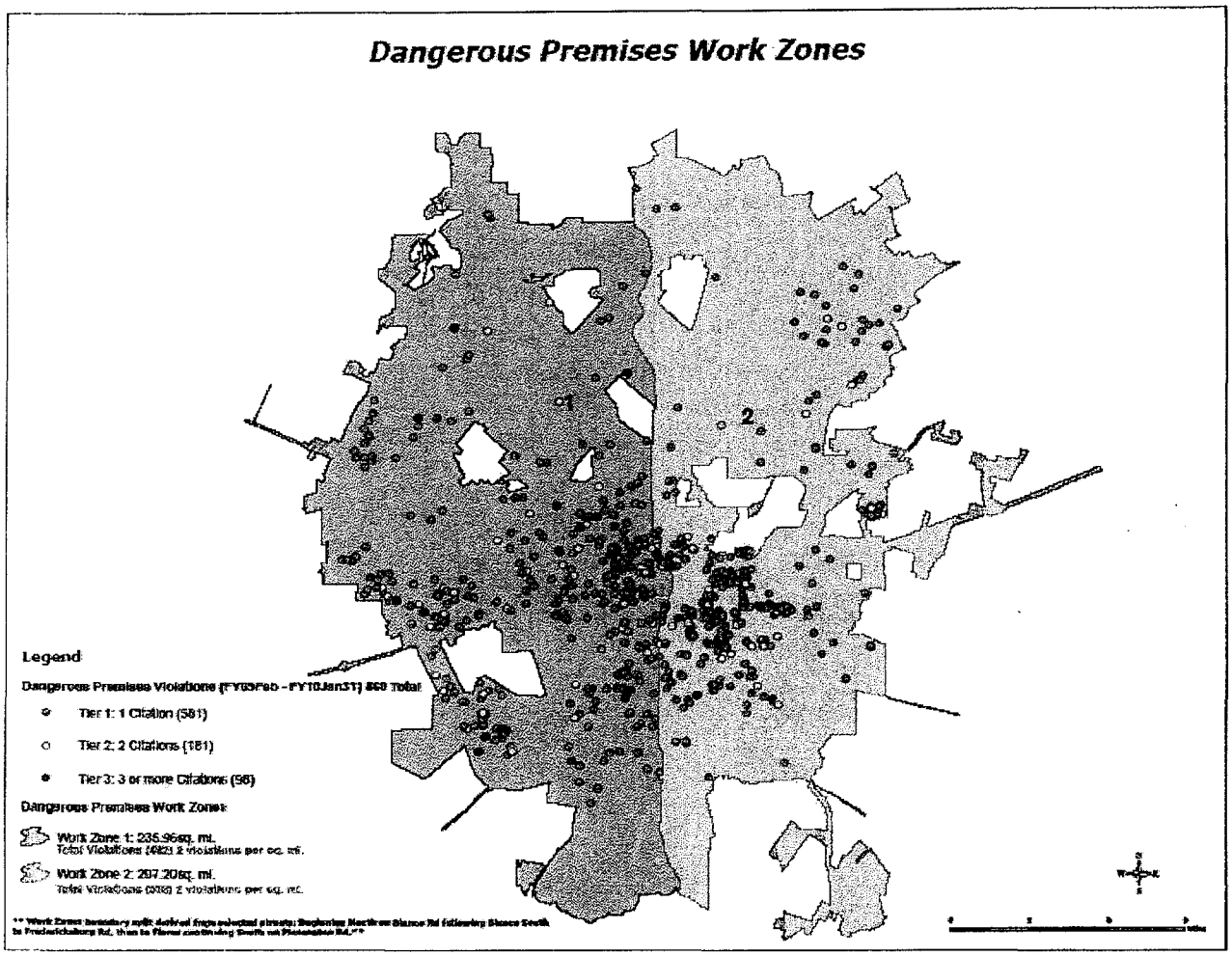
EXHIBIT A - PRICE SCHEDULE

DANGEROUS PREMISES ABATEMENT LOT CLEARING SECURING OF STRUCTURES AND GRAFFITI ABATEMENT

Raul's Landscape Services Work Zone 2

ITEM	SIZE	UOM	DESCRIPTION	EST. QTY	Raul's Landscape Service PRICE PER ITEM	Raul's Landscape Service TOTAL EXTIMATED ANNUAL PRICE
1	LOT		MOW ONLY			
1a	0 – 7,500	sf	No debris; weed & grass height 12" < 48"	32	$54.00	$1,728.00
1b	0 – 7,500	sf	No debris; weed & grass height 48" +	22	$90.00	$1,980.00
1c	7,501 – 15,000	sf	No debris; weed & grass height 12" < 48"	12	$69.00	$828.00
1d	7,501 – 15,001	sf	No debris; weed & grass height 48" +	4	$144.00	$576.00
1e	15,001 - 22,500	sf	No debris; weed & grass height 12" < 48"	5	$88.00	$440.00
1f	15,001 - 22,500	sf	No debris; weed & grass height 48" +	3	$165.00	$495.00
2	LOT		CLEAR AND MOW			
2a	0 – 7,500	sf	Light debris; weed & grass height 12" < 48"	21	$72.00	$1,512.00
2b	0 – 7,500	sf	Light debris; weed & grass height 48" +	12	$144.00	$1,728.00
2c	7,501 – 15,000	sf	Light debris; weed & grass height 12" < 48"	14	$86.00	$1,204.00
2d	7,501 – 15,001	sf	Light debris; weed & grass height 48" +	2	$173.00	$346.00
2e	15,001 - 22,500	sf	Light debris; weed & grass height 12" < 48"	9	$110.00	$990.00
2f	15,001 - 22,500	sf	Light debris; weed & grass height 48" +	2	$215.00	$430.00
2g	0 – 7,500	sf	Moderate debris; weed & grass height 12" < 48"	31	$90.00	$2,790.00
2h	0 – 7,500	sf	Moderate debris; weed & grass height 48" +	9	$180.00	$1,620.00
2i	7,501 – 15,000	sf	Moderate debris; weed & grass height 12" < 48"	17	$115.00	$1,955.00
2j	7,501 – 15,001	sf	Moderate debris; weed & grass height 48" +	4	$219.00	$876.00
2k	15,001 - 22,500	sf	Moderate debris; weed & grass height 12" < 48"	6	$144.00	$864.00
2l	15,001 - 22,500	sf	Moderate debris; weed & grass height 48" +	3	$275.00	$825.00
2m	0 – 7,500	sf	Heavy debris; weed & grass height 12" < 48"	42	$108.00	$4,536.00
2n	0 – 7,500	sf	Heavy debris; weed & grass height 48" +	9	$204.00	$1,836.00
2o	7,501 – 15,000	sf	Heavy debris; weed & grass height 12" < 48"	18	$138.00	$2,484.00
2p	7,501 – 15,001	sf	Heavy debris; weed & grass height 48" +	6	$242.00	$1,452.00
2q	15,001 - 22,500	sf	Heavy debris; weed & grass height 12" < 48"	6	$154.00	$924.00
2r	15,001 - 22,500	sf	Heavy debris; weed & grass height 48" +	3	$270.00	$810.00
2s	0 – 7,500	sf	Heavy debris; weed & grass height 12" < 48"	6	$156.00	$936.00
2t	0 – 7,500	sf	Heavy debris; weed & grass height 48" +	7	$216.00	$1,512.00
2u	7,501 – 15,000	sf	Extra Heavy debris; weed & grass height 12" < 48"	9	$184.00	$1,656.00
2v	7,501 – 15,001	sf	Extra Heavy debris; weed & grass height 48" +	4	$287.00	$1,148.00
2w	15,001 - 22,500	sf	Extra Heavy debris; weed & grass height 12" < 48"	2	$198.00	$396.00
2x	15,001 - 22,500	sf	Extra Heavy debris; weed & grass height 48" +	3	$341.00	$1,023.00
3	LOT		SECURING STRUCTURES			
3a	3' x 5'	each	Window	129	$45.00	$5,805.00
3b	3' x 7'	each	Door	66	$45.00	$2,970.00
4			GRAFFITI ABATEMENT			
4a	N/A	hour	Paint Graffiti Structure	82	$36.00	$2,952.00
5			EMERGENCY MOBILIZATION			
5a	N/A	hour	Emergency Mobilization Fee	7	$56.00	$392.00

EXHIBIT B – Work Zone



SERVICES CONTRACT
FOR
SECURING STRUCTURES & CLEARING LOTS

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Contract is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City") on behalf of the Code Enforcement Services Department (CESD) pursuant to Ordinance No. 2011-__-__-____, passed and approved on the ___ day of _____, 2011 and **Hospital Klean of Texas, Inc.**, ("Contractor"), both of which may be referred to herein collectively as the "Parties".

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Contract, the following terms shall have meanings as set out below:

1.1 "City" is defined in the preamble of this Contract and includes its successors and assigns.

1.2 "Contractor" is defined in the preamble of this Contract and includes its successors.

1.3 "Director" shall mean the Director of the City's Code Enforcement Services Department.

1.4 "Extra Heavy Debris" shall mean discarded lumber, construction building materials, and bricks.

1.5 "Heavy Debris" shall mean appliances, toilets, furniture, tires, tree trunks, tree limbs and branches.

1.6 "Light Debris" shall mean grass clippings, high weeds (more than 12 inches in height), leaves, paper and plastic litter items, and discarded clothing and textiles of all sorts.

1.7 "Moderate Debris" shall mean trash items, including, but not limited to the following: aluminum or tin cans, toys, bottles, old vessels of sorts, and household items (e.g., dishes, tableware, pots and pans, etc.).

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Contract, the term of this Contract shall commence on the effective date of its authorizing ordinance and terminate on December 31, 2013.

2.2. The City reserves the right to extend the contract period for two (2) additional one (1) year periods based on the initial bid submitted, upon mutual consent of City of San Antonio and the contractor. Renewals shall be in writing and signed by the parties. The City Manager, her designee, or the Director of the Purchasing shall be the party with authority to execute a renewal on behalf of the City, without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds therefore.

2.3 The City reserves the right to extend the term of the contract in thirty (30) day increments, not to exceed ninety (90) days total with written notice to the Contractor; provided, that the City shall give the Contractor a preliminary written notice of its intent to extend at least ten (10) days before the contract expires. The parties agree and understand that the preliminary notice does not commit the City to an extension.

2.4 If funding for the entire Contract is not appropriated at the time this Contract is entered into, City retains the right to terminate this Contract at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

3.1 Contractor agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.

3.2 Contractor shall be the **Secondary Contractor for Work Zone 1**, an area West of a line beginning North on Blanco Road following Blanco South to Fredericksburg Road, then to Flores continuing South on Pleasanton Road (as set out in Exhibit B). All work performed by Contractor hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Contractor, which is not satisfactory to Director. City shall have the right to terminate this Contract, in accordance with Article VII. Termination, in whole or in part, should Contractor's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

3.3 Contractor to clear and mow properties and, when necessary, secure vacant, accessible structures by attaching plywood to first floor doors and windows.

3.4 Contractor shall furnish all labor, fuel, tools, equipment, materials and supplies necessary to complete the work. Contractor shall maintain all tools, equipment, and supplies in a safe working condition. Contractor shall be required to own or lease all of the following equipment, or subcontract with another party who owns or leases the following equipment: Tractor, 19 hp & less; Tractor, greater than 19 hp; Commercial ride-on mower; Commercial stand-on mower; Edger; String Trimmer; Leaf Blower; Refuse Trailer; Dump Truck; Front End Loader; Chainsaw; and any other equipment that is necessary for completing the services described herein.

3.5 Contractor shall have and maintain throughout the contract term, including renewals, a valid City Tree Maintenance License.

3.6 Contractor shall perform all work in a superior, workmanlike manner.

3.7 City shall notify Contractor throughout the course of the contract term as services are required. Contractor shall complete requested services within three (3) calendar days of notification, unless City provides written approval extending time to complete services. Failure to complete services within required schedule may result in termination of the contract.

3.8 Clearing Parcels.

A. Contractor shall pick up and legally dispose of any and all brush, tree limbs, leaves, grass/weed clippings, trash, and rubbish within the assigned work location. Contractor shall remove all rocks, bricks, gravel piles, or dirt mounds within the assigned work area. These materials shall not be left on site.

B. Contractor shall clear assigned work locations from the middle of the alley to the curb line of the street and from side property line to side property line.

3.9 Mowing.

A. Contractor shall complete all mowing assignments so that the mown height is no greater than three inches (3").

B. Contractor shall remove all plant material & grass clippings that result from mowing /trimming.

C. Contractor shall ensure that all paved areas, including sidewalks, curbs, gutters, and streets are free of all plant material & clippings.

D. Contractor shall take extreme care to prevent injury and damage to property, and shall leave all areas in a clean condition.

3.10 Securing Structures.

A. Contractor shall board up all first floor doors and windows, including windows and doors with burglar bars, unless otherwise specified on order issued by City.

B. Contractor shall use the following material to secure structures and all material shall be new: 5/8" CDX plywood, 2" X 4" lumber, 3/8" carriage bolts with nuts & washers, & 8d common nails.

C. Contractor shall ensure that plywood extends past jambs and have bolts and nails at 6" spacing around the outside of the opening.

D. Contractor shall ensure that plywood on the front door opening shall not include bolts, but shall include only nails at 6" spacing around the outside of the opening.

E. Contractor shall use a solid sheet of plywood (no splicing) on all first floor openings that are 4' X 8' or smaller, unless otherwise specified on the purchase order. All plywood shall be painted solid white or gray.

F. Contractor may use splicing only on first floor openings larger than 4' X 8'. All such splicing shall use only lumber, plywood, bolts & nails, and all splices shall be fastened as approved by the City.

3.11 Graffiti Abatement.

A. Contractor shall paint all structures, objects and/ or fences that have been vandalized with graffiti as indicated in City work orders.

B. Contractor shall use the following material to paint graffiti: solid white paint, solid grey paint or upon request of the City, colored paint must be used to match the structure's existing color. Contractor may utilize latex paint suitable for various exterior surfaces upon approval by the City.

3.12 All work performed is subject to inspection and approval by City, and any modification to these specifications must be in writing from Director, or his designee. Unsatisfactory work shall be redone by Contractor at Contractor's expense. City shall not pay for unsatisfactory work. Failure to perform satisfactory work may result in termination of contract in whole or in part.

3.13 Contractor shall provide training for its employees, and any subcontractors, in Contractor's best practices, safety and procedures, including properly transporting and disposing of debris.

3.14 The Contractor shall control site safety and security at all times of actual working conditions and provide any safety equipment including, but not limited to, barricades tape or other means to control access to limit unauthorized persons for the safety of the public and City staff while performing services. Contractor shall be prohibited from posting signs which advertise their business at the designated sites without prior written authorization from the City. Costs associated with site security and safety are considered incidental to the project and will not be considered for reimbursement. Work methods and quality control measures are the responsibility of the Contractor. However, at its discretion, the City reserves the right to disapprove or suspend work methods considered unsafe, illegal, or detrimental to the project, the public health, safety, or welfare.

3.15 The Contractor shall assume full responsibility and liability for and act prudently in all aspects of handling, transport and disposal of any hazardous materials, securing any licenses and permits required by law and ensuring that any disposal facility to which any scrap, waste or hazardous materials may be moved are in compliance with Federal, State, and local laws and regulations. It shall be the responsibility of the Contractor to remove from the job site and properly dispose of all refuse at the end of each workday. Contractor is prohibited from salvaging and/or recycling of all or any materials generated or found within the project site. Materials and equipment left on site overnight shall be clearly marked and identified so as to ensure public safety. No materials or equipment shall be left on site over a weekend unless arrangements have been made with and approved by the City. At its own risk, Contractor shall be responsible for any materials or equipment left on site. Any loss of materials or equipment due to theft, vandalism, etc. shall be the responsibility of the Contractor.

3.16 All waste materials, including any and all tires (new or used), any and all brush, tree limbs, leaves, grass/weed clippings, trash, and rubbish removed from the location specified on the work order, shall be transported by a City authorized and City permitted hauler to an authorized disposal facility as described in this section and in compliance with all applicable regulations and local permitting requirements. Transports shall be insured, licensed, and permitted by Federal, State and local agencies, as appropriate for the waste material that is to be hauled. The Contractor and its subcontractors, if any, shall provide proof of licenses and permits, as required prior to commencing the work. Transport vehicles shall be in good working condition. All loads must be covered with a tarp or other suitable means to prevent dispersion of waste materials. The City reserves the right to order transporters removed from the site if the vehicle is not in good working condition, lacks a local permit, or does not have a cover, or for any other reason the City deems necessary to either ensure compliance with the contract or health and safety concerns All transporters shall haul waste material directly to the disposal facility from the demolition site and shall not spill or track mud, dirt, or waste on the street in route to the disposal facility.

A. All waste must be disposed of at an authorized landfill permitted by the State to accept such waste. Contractor shall show proof of current authorization for disposal at licensed and permitted landfill(s). Waste

containing no regulated asbestos-containing material may be disposed of at a Type I or Type IV landfill authorized to accept such waste. Waste that may contain regulated asbestos-containing material shall only be disposed of at a Type I landfill authorized to accept such waste. Receipts for disposals shall be kept on file at the Contractor's office for no less than three (3) years, and for so long as any unresolved transport manifest issue may be pending as a regulatory enforcement action. The receipts shall be available for City inspection during such times.

B. The Contractor shall manifest all waste material that is required to be manifested. The Contractor shall prepare all manifests, as necessary, and arrange for any special waste authorizations with the state or disposal facility for disposal. All coordination with the state and the disposal facility for disposal approval shall be the Contractor's responsibility. Unless alternative written direction is provided by the City and agreed to by the Contractor, the City Department requesting the service is the Generator for the wastes identified in the Work Orders. The City Inspector or other authorized City representative will sign all manifests as the Generator. The Contractor or the Contractor's transporter shall sign the manifest as the Transporter. The Disposal facility shall sign the manifest upon acceptance at the disposal facility, and the original signed manifest shall be promptly returned to the City. Manifests not returned to the City within the designated state and federal timelines, will prompt the City to make the appropriate TCEQ or EPA exception report. Payment will not be made until the original manifest is returned to the City. It shall be the Contractor's responsibility to locate delinquent manifests. Contractor shall be fully responsible and liable for all consequential regulatory liability, third party, and City damages that may arise or be asserted on account of un-manifested or delinquent manifested wastes.

3.17 The Contractor shall ensure that all Contractor's personnel, including all subcontractors, wear uniforms and an ID Badge at all times.

3.18 At the City's request, the Contractor may be requested to conduct employee background checks, to the extent allowable by law, including, at a minimum, references and prior employment histories to the extent necessary to verify representations made by said employees relative to their employment in the preceding five years.

IV. COMPENSATION TO CONTRACTOR

4.1 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Contract, City agrees to pay Contractor an amount not to exceed the prices shown on Exhibit A - Price Schedule, which is attached hereto and incorporated herein for all

purposes. All payments made hereunder are subject to and contingent upon appropriations therefore by the San Antonio City Council.

4.2 Contractor shall submit monthly invoices to City at the address shown on the Purchase Order(s). Invoices shall include each Purchase Order number, and separately identify and itemize the cost for each property being billed on the invoice. Contractor shall provide different or additional information on an invoice, if required by City.

4.3 City shall pay approved invoices that are properly competed and addressed within thirty (30) calendar days' of receipt. Invoices shall be considered paid on the date mailed.

4.4 No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City. The parties hereby agree that all compensable expenses of Contractor have been provided for in Exhibit A - Price Schedule. Total payments to Contractor cannot exceed that amount set forth in Exhibit A - Price Schedule, without prior approval and agreement of all parties, evidenced in writing and approved by Director.

4.5 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Contractor following written approval of the final work products and services by Director. City shall not be obligated or liable under this Contract to any party, other than Contractor, for the payment of any monies or the provision of any goods or services.

V. [RESERVED]

VI. [RESERVED.]

VII. TERMINATION

7.1 For purposes of this Contract, "termination" of this Contract shall mean termination by expiration of the Contract term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Contract may be terminated by City for convenience upon 10 calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. This Contract may be terminated in whole or in part by City for material breach of its terms upon on the date stated in a written notice, which notice shall be provided in accordance with Article VIII. Notice. The sale, transfer, pledge, conveyance or assignment of this Contract without prior approval, as provided in Article XII. Assignment and Subcontracting, shall be considered a material breach.

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

7.5 Termination not sole remedy. In no event shall City's action of terminating this Contract, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Contractor for any default hereunder or other action.

VIII. NOTICE

8.1 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: Director of Code Enforcement Services Department
Code Enforcement Services Dept.
P.O. Box 839966
San Antonio, TX 89283-3966.

If intended for CONTRACTOR, to:

Hospital Klean of Texas, Inc.
Attn: Kenneth Flores
15303 Tradesman drive
San Antonio, Texas 78249

IX. [Reserved]

X. INSURANCE

A. Prior to the commencement of any work under an Agreement awarded pursuant to this RFP, the selected Respondent shall furnish a completed Certificate(s) of Insurance to the **City Code Enforcement Services Department**, which shall be clearly labeled "**Dangerous Premises Abatement Lot Clearing and Securing**

B. The City reserves the right to review these insurance requirements during the effective period of the Agreement and any extension or renewal thereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager, based upon changes in statutory law, court decisions or circumstances surrounding the Agreement, but in no instance will City allow modification whereupon City may incur increased risk.

C. Respondent's financial integrity is of interest to the City, and, therefore, subject to Respondent's right to maintain reasonable deductibles in such amounts as are approved by the City, Respondent shall obtain and maintain in full force and effect, for the duration of the Agreement, and any extension thereof, at Respondent's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M. Best's rating of no less than A-(VII), In the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/$500,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence; or its equivalent in Umbrella or Excess Liability Coverage

D. Respondent agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Respondent herein, and provide a certificate of insurance and endorsement that names the Respondent and the City as an additional insured. Respondent shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

E. 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 require the 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. Respondent shall be required to comply with any such requests and shall submit a copy of the replacement Certificate of Insurance to City at an address provided below by City within ten (10) days of the requested change. Respondent shall pay any costs incurred resulting from said changes.

City of San Antonio
Purchasing & General Services Department
P.O. Box 839966
San Antonio, Texas 78283-3966

F. Respondent agrees that, with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

1. Name the City and its officials, employees, volunteers and elected representatives as <u>additional insured by endorsement</u> as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability polices;

2. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

3. Workers' compensation, employers' liability, general liability and auto liability policies will provide a waiver of subrogation in favor of the City.

4. Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

G. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Respondent's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H. In addition to any other remedies the City may have upon Respondent's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Respondent to stop work under the Agreement, and/or withhold any payment(s) which become due to Respondent there under until Respondent demonstrates compliance with the requirements hereof.

I. Nothing herein contained shall be construed as limiting in any way the extent to which Respondent may be held responsible for payments of damages to persons or property resulting from Respondent's or its subcontractors' performance of the work covered under the Agreement. It is agreed that Respondent's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City for liability arising out of operations under this contract.

J. It is agreed that Respondent's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

K. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and hat no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

L. Respondent and any Subcontractor's are responsible for all damage to their own equipment and/or property.

XI. INDEMNIFICATION

11.1 **CONTRACTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and**

nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR's activities under this CONTRACT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this CONTRACT, 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 CONTRACT.

11.2 **It is the EXPRESS INTENT of the parties to this CONTRACT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by CONTRACTOR 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. CONTRACTOR 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.**

11.3 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. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

11.4 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONTRACTOR shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If CONTRACTOR fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall be

liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

11.5 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Contract. Persons retained to perform work pursuant to this Contract shall be the employees or subcontractors of Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.

12.2 It is City's understanding and this Contract is made in reliance thereon, that Contractor intends to use the following subcontractors in the performance of this Contract: [None.] Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director, prior to the provision of any services by said subcontractor.

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

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

12.5 Any attempt to transfer, pledge or otherwise assign this Contract without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Contract, City may, at its option, cancel this Contract and all rights, titles and interest of Contractor shall thereupon cease and terminate,

in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Contract. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Contract, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor 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 Contractor, 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 venturers between City and Contractor. The parties hereto understand and agree that the 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 the Contractor under this Contract and that the Contractor has no authority to bind the City.

XIV. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM

13.1 Contractor hereby acknowledges that it is the policy of the City of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), African American ("AABE"), and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by the City. This policy and its implementation are known as the Small, Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

13.2 Contractor shall implement the plan (hereafter "SBEDA plan") submitted with its proposal under the SBEDA Program for Small, African American, Minority and Women-owned Business Participation in this Contract, thereby meeting the percentages for participation of those groups as submitted in its proposal. Contractor's SBEDA plan, as submitted with Contractor's proposal, is attached hereto and incorporated herein by reference as Exhibit C. Contractor shall be in full compliance with this article by meeting the percentages listed in its proposal no later than 60 days from the date of execution of this Contract, and shall remain in compliance throughout the term of this Contract. Contractor further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this Contract, as may be approved pursuant to this Contract, which will meet the percentages submitted in its proposal.

13.3 Contractor shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/AABE/WBE's. Further, such records shall be open to

13.4 In all events, Contractor shall comply with the City's most current Small Business Economic Development Advocacy Program and any amendments or revisions thereto.

XIV. CONFLICT OF INTEREST

15.1 Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

15.2 Pursuant to the subsection above, Contractor warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Contractor further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

Except where the terms of this Contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Contractor, and subject to approval of Director, except for amendments that increase the cost of the services provided, which amendments require approval of the City Council of the City of San Antonio by passage of an ordinance therefore.

XVII. SEVERABILITY

If any clause or provision of this Contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter,

City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Contract that is invalid, illegal, or unenforceable, there be added as a part of the Contract a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. LICENSES/CERTIFICATIONS

Contractor warrants and certifies that Contractor and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XIX. COMPLIANCE

Contractor shall provide and perform all services required under this Contract in compliance with all applicable federal, state and local laws, rules and regulations.

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Contract, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Contract 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 Contract, 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 Contract 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 Director and/or the City Council, as described in Article XVI. Amendments. 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.

XXI. LAW APPLICABLE

21.1 **THIS CONTRACT 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.**

21.2 Any legal action or proceeding brought or maintained, directly or indirectly,

as a result of this Contract shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XXII. LEGAL AUTHORITY

The signer of this Contract for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Contract on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained.

XXIII. PARTIES BOUND

This Contract shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXIV. CAPTIONS

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

XXV. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Contract, which governs the rights and duties of the parties: Exhibit A – Price Schedule; Exhibit B – Work Zone; Exhibit C - Contractor's SBEDA plan.

---------- INTENTIONALLY LEFT BLANK ----------

XXVI. ENTIRE CONTRACT

This Contract, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire Contract between the parties hereto and contain all of the terms and conditions agreed upon. No other contracts, oral or otherwise, regarding the subject matter of this Contract 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, in accordance with Article XVI. Amendments.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO	**HOSPITAL KLEAN OF TEXAS, INC.**
_____	_____
(Signature)	*(Signature)*
Printed Name: _____	Printed Name: Kenneth Flores
Title: _____	Title: Pres
Date: _____	Date: 2-3-2011

Approved as to Form:

_____
City Attorney

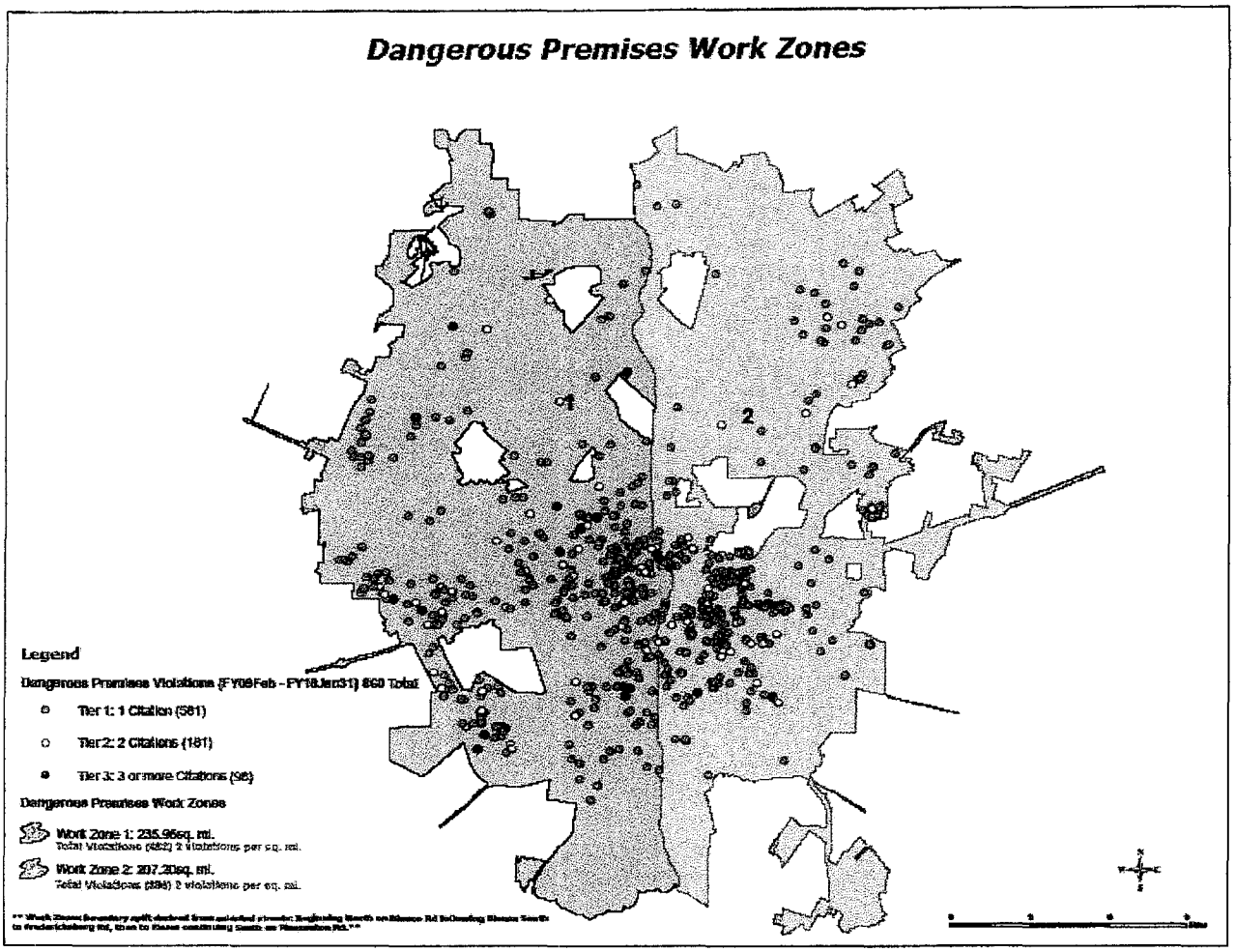
EXHIBIT A - PRICE SCHEDULE

DANGEROUS PREMISES ABATEMENT LOT CLEARING SECURING OF STRUCTURES AND GRAFFITI ABATEMENT

Hospital Klean of Texas, Inc. Work Zone 1

ITEM	SIZE	UOM	DESCRIPTION	EST QTY	Hospital Klean of Texas, Inc. PRICE PER ITEM	Hospital Klean of Texas, Inc. TOTAL ESTIMATED ANNUAL PRICE
1	LOT		MOW ONLY			
1a	0 - 7,500	sf	No debris; weed & grass height 12" < 48"	32	$54.00	$1,728.00
1b	0 – 7,500	sf	No debris; weed & grass height 48" +	22	$90.00	$1,980.00
1c	7,501 – 15,000	sf	No debris; weed & grass height 12" < 48"	12	$69.00	$828.00
1d	7,501 – 15,001	sf	No debris; weed & grass height 48" +	4	$144.00	$576.00
1e	15,001 - 22,500	sf	No debris; weed & grass height 12" < 48"	5	$88.00	$440.00
1f	15,001 - 22,500	sf	No debris; weed & grass height 48" +	3	$165.00	$495.00
2	LOT		CLEAR AND MOW			
2a	0 – 7,500	sf	Light debris; weed & grass height 12" < 48"	21	$72.00	$1,512.00
2b	0 – 7,500	sf	Light debris; weed & grass height 48" +	12	$144.00	$1,728.00
2c	7,501 – 15,000	sf	Light debris; weed & grass height 12" < 48"	14	$86.00	$1,204.00
2d	7,501 – 15,001	sf	Light debris; weed & grass height 48" +	2	$173.00	$346.00
2e	15,001 - 22,500	sf	Light debris; weed & grass height 12" < 48"	9	$110.00	$990.00
2f	15,001 - 22,500	sf	Light debris; weed & grass height 48" +	2	$215.00	$430.00
2g	0 – 7,500	sf	Moderate debris; weed & grass height 12" < 48"	31	$90.00	$2,790.00
2h	0 – 7,500	sf	Moderate debris; weed & grass height 48" +	9	$180.00	$1,620.00
2i	7,501 – 15,000	sf	Moderate debris; weed & grass height 12" < 48"	17	$115.00	$1,955.00
2j	7,501 – 15,001	sf	Moderate debris; weed & grass height 48" +	4	$219.00	$876.00
2k	15,001 - 22,500	sf	Moderate debris; weed & grass height 12" < 48"	6	$144.00	$864.00
2l	15,001 - 22,500	sf	Moderate debris; weed & grass height 48" +	3	$275.00	$825.00
2m	0 – 7,500	sf	Heavy debris; weed & grass height 12" < 48"	42	$108.00	$4,536.00
2n	0 – 7,500	sf	Heavy debris; weed & grass height 48" +	9	$204.00	$1,836.00
2o	7,501 – 15,000	sf	Heavy debris; weed & grass height 12" < 48"	18	$138.00	$2,484.00
2p	7,501 – 15,001	sf	Heavy debris; weed & grass height 48" +	6	$242.00	$1,452.00
2q	15,001 - 22,500	sf	Heavy debris; weed & grass height 12" < 48"	6	$154.00	$924.00
2r	15,001 - 22,500	sf	Heavy debris; weed & grass height 48" +	3	$270.00	$810.00
2s	0 – 7,500	sf	Heavy debris; weed & grass height 12" < 48"	6	$156.00	$936.00
2t	0 – 7,500	sf	Heavy debris; weed & grass height 48" +	7	$216.00	$1,512.00
2u	7,501 – 15,000	sf	Extra Heavy debris; weed & grass height 12" < 48"	9	$184.00	$1,656.00
2v	7,501 – 15,001	sf	Extra Heavy debris; weed & grass height 48" +	4	$287.00	$1,148.00
2w	15,001 - 22,500	sf	Extra Heavy debris; weed & grass height 12" < 48"	2	$198.00	$396.00
2x	15,001 - 22,500	sf	Extra Heavy debris; weed & grass height 48" +	3	$341.00	$1,023.00
3	LOT		SECURING STRUCTURES			
3a	3' x 5'	each	Window	129	$45.00	$5,805.00
3b	3' x 7'	each	Door	66	$45.00	$2,970.00
4			GRAFFITI ABATEMENT			
4a	N/A	hour	Paint Graffiti Structure	82	$36.00	$2,952.00
5			EMERGENCY MOBILIZATION			
5a	N/A	hour	Emergency Mobilization Fee	7	$56.00	$392.00

EXHIBIT B – Work Zone



SERVICES CONTRACT
FOR
SECURING STRUCTURES & CLEARING LOTS

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Contract is entered into by and between the City of San Antonio, a Texas Municipal Corporation ("City") on behalf of the Code Enforcement Services Department (CESD) pursuant to Ordinance No. 2011-__-__-____, passed and approved on the ___ day of _____, 2011 and **Under Construction, Inc.,** ("Contractor"), both of which may be referred to herein collectively as the "Parties".

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Contract, the following terms shall have meanings as set out below:

1.1 "City" is defined in the preamble of this Contract and includes its successors and assigns.

1.2 "Contractor" is defined in the preamble of this Contract and includes its successors.

1.3 "Director" shall mean the Director of the City's Code Enforcement Services Department.

1.4 "Extra Heavy Debris" shall mean discarded lumber, construction building materials, and bricks.

1.5 "Heavy Debris" shall mean appliances, toilets, furniture, tires, tree trunks, tree limbs and branches.

1.6 "Light Debris" shall mean grass clippings, high weeds (more than 12 inches in height), leaves, paper and plastic litter items, and discarded clothing and textiles of all sorts.

1.7 "Moderate Debris" shall mean trash items, including, but not limited to the following: aluminum or tin cans, toys, bottles, old vessels of sorts, and household items (e.g., dishes, tableware, pots and pans, etc.).

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Contract, the term of this Contract shall commence on the effective date of its authorizing ordinance and terminate on December 31, 2013.

2.2. The City reserves the right to extend the contract period for two (2) additional one (1) year periods based on the initial bid submitted, upon mutual consent of City of San Antonio and the contractor. Renewals shall be in writing and signed by the parties. The City Manager, her designee, or the Director of the Purchasing shall be the party with authority to execute a renewal on behalf of the City, without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds therefore.

2.3 The City reserves the right to extend the term of the contract in thirty (30) day increments, not to exceed ninety (90) days total with written notice to the Contractor; provided, that the City shall give the Contractor a preliminary written notice of its intent to extend at least ten (10) days before the contract expires. The parties agree and understand that the preliminary notice does not commit the City to an extension.

2.4 If funding for the entire Contract is not appropriated at the time this Contract is entered into, City retains the right to terminate this Contract at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

3.1 Contractor agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.

3.2 Contractor shall be the **Secondary Contractor for Work Zone 2**, an area East of a line beginning North on Blanco Road following Blanco South to Fredericksburg Road, then to Flores continuing South on Pleasanton Road (as set out in Exhibit B). All work performed by Contractor hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Contractor, which is not satisfactory to Director. City shall have the right to terminate this Contract, in accordance with Article VII. Termination, in whole or in part, should Contractor's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

3.3 Contractor to clear and mow properties and, when necessary, secure vacant, accessible structures by attaching plywood to first floor doors and windows.

3.4 Contractor shall furnish all labor, fuel, tools, equipment, materials and supplies necessary to complete the work. Contractor shall maintain all tools, equipment, and supplies in a safe working condition. Contractor shall be required to own or lease all of the following equipment, or subcontract with another party who owns or leases the following equipment: Tractor, 19 hp & less; Tractor, greater than 19 hp; Commercial ride-on mower; Commercial stand-on mower; Edger; String Trimmer; Leaf Blower; Refuse Trailer; Dump Truck; Front End Loader; Chainsaw; and any other equipment that is necessary for completing the services described herein.

3.5 Contractor shall have and maintain throughout the contract term, including renewals, a valid City Tree Maintenance License.

3.6 Contractor shall perform all work in a superior, workmanlike manner.

3.7 City shall notify Contractor throughout the course of the contract term as services are required. Contractor shall complete requested services within three (3) calendar days of notification, unless City provides written approval extending time to complete services. Failure to complete services within required schedule may result in termination of the contract.

3.8 Clearing Parcels.

A. Contractor shall pick up and legally dispose of any and all brush, tree limbs, leaves, grass/weed clippings, trash, and rubbish within the assigned work location. Contractor shall remove all rocks, bricks, gravel piles, or dirt mounds within the assigned work area. These materials shall not be left on site.

B. Contractor shall clear assigned work locations from the middle of the alley to the curb line of the street and from side property line to side property line.

3.9 Mowing.

A. Contractor shall complete all mowing assignments so that the mown height is no greater than three inches (3").

B. Contractor shall remove all plant material & grass clippings that result from mowing /trimming.

C. Contractor shall ensure that all paved areas, including sidewalks, curbs, gutters, and streets are free of all plant material & clippings.

D. Contractor shall take extreme care to prevent injury and damage to property, and shall leave all areas in a clean condition.

3.10 Securing Structures.

A. Contractor shall board up all first floor doors and windows, including windows and doors with burglar bars, unless otherwise specified on order issued by City.

B. Contractor shall use the following material to secure structures and all material shall be new: 5/8" CDX plywood, 2" X 4" lumber, 3/8" carriage bolts with nuts & washers, & 8d common nails.

C. Contractor shall ensure that plywood extends past jambs and have bolts and nails at 6" spacing around the outside of the opening.

D. Contractor shall ensure that plywood on the front door opening shall not include bolts, but shall include only nails at 6" spacing around the outside of the opening.

E. Contractor shall use a solid sheet of plywood (no splicing) on all first floor openings that are 4' X 8' or smaller, unless otherwise specified on the purchase order. All plywood shall be painted solid white or gray.

F. Contractor may use splicing only on first floor openings larger than 4' X 8'. All such splicing shall use only lumber, plywood, bolts & nails, and all splices shall be fastened as approved by the City.

3.11 Graffiti Abatement.

A. Contractor shall paint all structures, objects and/ or fences that have been vandalized with graffiti as indicated in City work orders.

B. Contractor shall use the following material to paint graffiti: solid white paint, solid grey paint or upon request of the City, colored paint must be used to match the structure's existing color. Contractor may utilize latex paint suitable for various exterior surfaces upon approval by the City.

3.12 All work performed is subject to inspection and approval by City, and any modification to these specifications must be in writing from Director, or his designee. Unsatisfactory work shall be redone by Contractor at Contractor's expense. City shall not pay for unsatisfactory work. Failure to perform satisfactory work may result in termination of contract in whole or in part.

3.13 Contractor shall provide training for its employees, and any subcontractors, in Contractor's best practices, safety and procedures, including properly transporting and disposing of debris.

3.14 The Contractor shall control site safety and security at all times of actual working conditions and provide any safety equipment including, but not limited to, barricades tape or other means to control access to limit unauthorized persons for the safety of the public and City staff while performing services. Contractor shall be prohibited from posting signs which advertise their business at the designated sites without prior written authorization from the City. Costs associated with site security and safety are considered incidental to the project and will not be considered for reimbursement. Work methods and quality control measures are the responsibility of the Contractor. However, at its discretion, the City reserves the right to disapprove or suspend work methods considered unsafe, illegal, or detrimental to the project, the public health, safety, or welfare.

3.15 The Contractor shall assume full responsibility and liability for and act prudently in all aspects of handling, transport and disposal of any hazardous materials, securing any licenses and permits required by law and ensuring that any disposal facility to which any scrap, waste or hazardous materials may be moved are in compliance with Federal, State, and local laws and regulations. It shall be the responsibility of the Contractor to remove from the job site and properly dispose of all refuse at the end of each workday. Contractor is prohibited from salvaging and/or recycling of all or any materials generated or found within the project site. Materials and equipment left on site overnight shall be clearly marked and identified so as to ensure public safety. No materials or equipment shall be left on site over a weekend unless arrangements have been made with and approved by the City. At its own risk, Contractor shall be responsible for any materials or equipment left on site. Any loss of materials or equipment due to theft, vandalism, etc. shall be the responsibility of the Contractor.

3.16 All waste materials, including any and all tires (new or used), any and all brush, tree limbs, leaves, grass/weed clippings, trash, and rubbish removed from the location specified on the work order, shall be transported by a City authorized and City permitted hauler to an authorized disposal facility as described in this section and in compliance with all applicable regulations and local permitting requirements. Transports shall be insured, licensed, and permitted by Federal, State and local agencies, as appropriate for the waste material that is to be hauled. The Contractor and its subcontractors, if any, shall provide proof of licenses and permits, as required prior to commencing the work. Transport vehicles shall be in good working condition. All loads must be covered with a tarp or other suitable means to prevent dispersion of waste materials. The City reserves the right to order transporters removed from the site if the vehicle is not in good working condition, lacks a local permit, or does not have a cover, or for any other reason the City deems necessary to either ensure compliance with the contract or health and safety concerns All transporters shall haul waste material directly to the disposal facility from the demolition site and shall not spill or track mud, dirt, or waste on the street in route to the disposal facility.

A. All waste must be disposed of at an authorized landfill permitted by the State to accept such waste. Contractor shall show proof of current authorization for disposal at licensed and permitted landfill(s). Waste

containing no regulated asbestos-containing material may be disposed of at a Type I or Type IV landfill authorized to accept such waste. Waste that may contain regulated asbestos-containing material shall only be disposed of at a Type I landfill authorized to accept such waste. Receipts for disposals shall be kept on file at the Contractor's office for no less than three (3) years, and for so long as any unresolved transport manifest issue may be pending as a regulatory enforcement action. The receipts shall be available for City inspection during such times.

B. The Contractor shall manifest all waste material that is required to be manifested. The Contractor shall prepare all manifests, as necessary, and arrange for any special waste authorizations with the state or disposal facility for disposal. All coordination with the state and the disposal facility for disposal approval shall be the Contractor's responsibility. Unless alternative written direction is provided by the City and agreed to by the Contractor, the City Department requesting the service is the Generator for the wastes identified in the Work Orders. The City Inspector or other authorized City representative will sign all manifests as the Generator. The Contractor or the Contractor's transporter shall sign the manifest as the Transporter. The Disposal facility shall sign the manifest upon acceptance at the disposal facility, and the original signed manifest shall be promptly returned to the City. Manifests not returned to the City within the designated state and federal timelines, will prompt the City to make the appropriate TCEQ or EPA exception report. Payment will not be made until the original manifest is returned to the City. It shall be the Contractor's responsibility to locate delinquent manifests. Contractor shall be fully responsible and liable for all consequential regulatory liability, third party, and City damages that may arise or be asserted on account of un-manifested or delinquent manifested wastes.

3.17 The Contractor shall ensure that all Contractor's personnel, including all subcontractors, wear uniforms and an ID Badge at all times.

3.18 At the City's request, the Contractor may be requested to conduct employee background checks, to the extent allowable by law, including, at a minimum, references and prior employment histories to the extent necessary to verify representations made by said employees relative to their employment in the preceding five years.

IV. COMPENSATION TO CONTRACTOR

4.1 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Contract, City agrees to pay Contractor an amount not to exceed the prices shown on Exhibit A - Price Schedule, which is attached hereto and incorporated herein for all

purposes. All payments made hereunder are subject to and contingent upon appropriations therefore by the San Antonio City Council.

4.2 Contractor shall submit monthly invoices to City at the address shown on the Purchase Order(s). Invoices shall include each Purchase Order number, and separately identify and itemize the cost for each property being billed on the invoice. Contractor shall provide different or additional information on an invoice, if required by City.

4.3 City shall pay approved invoices that are properly competed and addressed within thirty (30) calendar days' of receipt. Invoices shall be considered paid on the date mailed.

4.4 No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City. The parties hereby agree that all compensable expenses of Contractor have been provided for in Exhibit A - Price Schedule. Total payments to Contractor cannot exceed that amount set forth in Exhibit A - Price Schedule, without prior approval and agreement of all parties, evidenced in writing and approved by Director.

4.5 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Contractor following written approval of the final work products and services by Director. City shall not be obligated or liable under this Contract to any party, other than Contractor, for the payment of any monies or the provision of any goods or services.

V. [RESERVED]

VI. [RESERVED.]

VII. TERMINATION

7.1 For purposes of this Contract, "termination" of this Contract shall mean termination by expiration of the Contract term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Contract may be terminated by City for convenience upon 10 calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice.

7.3 Termination For Cause. This Contract may be terminated in whole or in part by City for material breach of its terms upon on the date stated in a written notice, which notice shall be provided in accordance with Article VIII. Notice. The sale, transfer, pledge, conveyance or assignment of this Contract without prior approval, as provided in Article XII. Assignment and Subcontracting, shall be considered a material breach.

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

7.5 Termination not sole remedy. In no event shall City's action of terminating this Contract, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Contractor for any default hereunder or other action.

VIII. NOTICE

8.1 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: Director of Code Enforcement Services Department
Code Enforcement Services Dept.
P.O. Box 839966
San Antonio, TX 89283-3966.

If intended for CONTRACTOR, to:

Under Construction, Inc.
Attn: Robin J. Johnson
1231 Ganton Lane
San Antonio, Texas 78260

IX. [Reserved]

X. INSURANCE

A. Prior to the commencement of any work under an Agreement awarded pursuant to this RFP, the selected Respondent shall furnish a completed Certificate(s) of Insurance to the **City Code Enforcement Services Department**, which shall be clearly labeled "**Dangerous Premises Abatement Lot Clearing and Securing**

B. The City reserves the right to review these insurance requirements during the effective period of the Agreement and any extension or renewal thereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager, based upon changes in statutory law, court decisions or circumstances surrounding the Agreement, but in no instance will City allow modification whereupon City may incur increased risk.

C. Respondent's financial integrity is of interest to the City, and, therefore, subject to Respondent's right to maintain reasonable deductibles in such amounts as are approved by the City, Respondent shall obtain and maintain in full force and effect, for the duration of the Agreement, and any extension thereof, at Respondent's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M. Best's rating of no less than A-(VII), In the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/$500,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence; or its equivalent in Umbrella or Excess Liability Coverage

D. Respondent agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Respondent herein, and provide a certificate of insurance and endorsement that names the Respondent and the City as an additional insured. Respondent shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

E. 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 require the 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. Respondent shall be required to comply with any such requests and shall submit a copy of the replacement Certificate of Insurance to City at an address provided below by City within ten (10) days of the requested change. Respondent shall pay any costs incurred resulting from said changes.

City of San Antonio
Purchasing & General Services Department
P.O. Box 839966
San Antonio, Texas 78283-3966

F. Respondent agrees that, with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

1. Name the City and its officials, employees, volunteers and elected representatives as <u>additional insured by endorsement</u> as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability polices;

2. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

3. Workers' compensation, employers' liability, general liability and auto liability policies will provide a waiver of subrogation in favor of the City.

4. Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

G. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Respondent's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

H. In addition to any other remedies the City may have upon Respondent's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Respondent to stop work under the Agreement, and/or withhold any payment(s) which become due to Respondent there under until Respondent demonstrates compliance with the requirements hereof.

I. Nothing herein contained shall be construed as limiting in any way the extent to which Respondent may be held responsible for payments of damages to persons or property resulting from Respondent's or its subcontractors' performance of the work covered under the Agreement. It is agreed that Respondent's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City for liability arising out of operations under this contract.

J. It is agreed that Respondent's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

K. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and hat no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

L. Respondent and any Subcontractor's are responsible for all damage to their own equipment and/or property.

XI. INDEMNIFICATION

11.1 **CONTRACTOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and**

nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR's activities under this CONTRACT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this CONTRACT, 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 CONTRACT.

11.2 **It is the EXPRESS INTENT of the parties to this CONTRACT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by CONTRACTOR 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. CONTRACTOR 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.**

11.3 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. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

11.4 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONTRACTOR shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If CONTRACTOR fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall be

liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

11.5 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.

XII. ASSIGNMENT AND SUBCONTRACTING

12.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Contract. Persons retained to perform work pursuant to this Contract shall be the employees or subcontractors of Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.

12.2 It is City's understanding and this Contract is made in reliance thereon, that Contractor intends to use the following subcontractors in the performance of this Contract: [None.] Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by Director, prior to the provision of any services by said subcontractor.

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

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

12.5 Any attempt to transfer, pledge or otherwise assign this Contract without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Contract, City may, at its option, cancel this Contract and all rights, titles and interest of Contractor shall thereupon cease and terminate,

in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Contract. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Contract, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

XIII. INDEPENDENT CONTRACTOR

Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor 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 Contractor, 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 venturers between City and Contractor. The parties hereto understand and agree that the 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 the Contractor under this Contract and that the Contractor has no authority to bind the City.

XIV. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM

13.1 Contractor hereby acknowledges that it is the policy of the City of San Antonio to assist in increasing the competitiveness and qualifications of small ("SBE"), women ("WBE"), African American ("AABE"), and minority-owned business ("MBE") enterprises in order to afford greater opportunities for obtaining and participating in contracts, related subcontracts, and leases and concessions awarded by the City. This policy and its implementation are known as the Small, Business Economic Development Advocacy Program (hereinafter referred to as "SBEDA Program").

13.2 Contractor shall implement the plan (hereafter "SBEDA plan") submitted with its proposal under the SBEDA Program for Small, African American, Minority and Women-owned Business Participation in this Contract, thereby meeting the percentages for participation of those groups as submitted in its proposal. Contractor's SBEDA plan, as submitted with Contractor's proposal, is attached hereto and incorporated herein by reference as Exhibit C. Contractor shall be in full compliance with this article by meeting the percentages listed in its proposal no later than 60 days from the date of execution of this Contract, and shall remain in compliance throughout the term of this Contract. Contractor further agrees to continue to make every effort to utilize businesses for subcontracting and supplying during the duration of this Contract, as may be approved pursuant to this Contract, which will meet the percentages submitted in its proposal.

13.3 Contractor shall maintain records showing all contracts, subcontracts, and supplier awards to SBE/MBE/AABE/WBE's. Further, such records shall be open to

13.4 In all events, Contractor shall comply with the City's most current Small Business Economic Development Advocacy Program and any amendments or revisions thereto.

XIV. CONFLICT OF INTEREST

15.1 Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

15.2 Pursuant to the subsection above, Contractor warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Contractor further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XVI. AMENDMENTS

Except where the terms of this Contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Contractor, and subject to approval of Director, except for amendments that increase the cost of the services provided, which amendments require approval of the City Council of the City of San Antonio by passage of an ordinance therefore.

XVII. SEVERABILITY

If any clause or provision of this Contract is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Contract shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Contract that is invalid, illegal, or unenforceable, there be added as a part of the Contract a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XVIII. LICENSES/CERTIFICATIONS

Contractor warrants and certifies that Contractor and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XIX. COMPLIANCE

Contractor shall provide and perform all services required under this Contract in compliance with all applicable federal, state and local laws, rules and regulations.

XX. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Contract, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Contract 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 Contract, 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 Contract 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 Director and/or the City Council, as described in Article XVI. Amendments. 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.

XXI. LAW APPLICABLE

21.1 **THIS CONTRACT 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.

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

XXII. LEGAL AUTHORITY

The signer of this Contract for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Contract on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained.

XXIII. PARTIES BOUND

This Contract shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXIV. CAPTIONS

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

XXV. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Contract, which governs the rights and duties of the parties: Exhibit A – Price Schedule; Exhibit B – Work Zone; Exhibit C - Contractor's SBEDA plan.

---------- INTENTIONALLY LEFT BLANK ----------

XXVI. ENTIRE CONTRACT

This Contract, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire Contract between the parties hereto and contain all of the terms and conditions agreed upon. No other contracts, oral or otherwise, regarding the subject matter of this Contract 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, in accordance with Article XVI. Amendments.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO	**UNDER CONSTRUCTION, INC.**
_____	_____
(Signature)	*(Signature)*
Printed Name: _____	Printed Name: Robin J. Johnson
Title: _____	Title: PRESIDENT
Date: _____	Date: 2/8/11

Approved as to Form:

_____

City Attorney

EXHIBIT A - PRICE SCHEDULE

DANGEROUS PREMISES ABATEMENT LOT CLEARING SECURING OF STRUCTURES AND GRAFFITI ABATEMENT
Under Construction, Inc. Work Zone 2

ITEM	SIZE	UOM	DESCRIPTION	EST QTY	Under Construction, Inc. PRICE PER ITEM	Under Construction, Inc. TOTAL ESTIMATED ANNUAL PRICE
1	LOT		MOW ONLY			
1a	0 – 7,500	sf	No debris; weed & grass height 12" < 48"	32	$54.00	$1,728.00
1b	0 – 7,500	sf	No debris; weed & grass height 48" +	22	$90.00	$1,980.00
1c	7,501 – 15,000	sf	No debris; weed & grass height 12" < 48"	12	$69.00	$828.00
1d	7,501 – 15,001	sf	No debris; weed & grass height 48" +	4	$144.00	$576.00
1e	15,001 - 22,500	sf	No debris; weed & grass height 12" < 48"	5	$88.00	$440.00
1f	15,001 - 22,500	sf	No debris; weed & grass height 48" +	3	$165.00	$495.00
2	LOT		CLEAR AND MOW			
2a	0 – 7,500	sf	Light debris; weed & grass height 12" < 48"	21	$72.00	$1,512.00
2b	0 – 7,500	sf	Light debris; weed & grass height 48" +	12	$144.00	$1,728.00
2c	7,501 – 15,000	sf	Light debris; weed & grass height 12" < 48"	14	$86.00	$1,204.00
2d	7,501 – 15,001	sf	Light debris; weed & grass height 48" +	2	$173.00	$346.00
2e	15,001 - 22,500	sf	Light debris; weed & grass height 12" < 48"	9	$110.00	$990.00
2f	15,001 - 22,500	sf	Light debris; weed & grass height 48" +	2	$215.00	$430.00
2g	0 – 7,500	sf	Moderate debris; weed & grass height 12" < 48"	31	$90.00	$2,790.00
2h	0 – 7,500	sf	Moderate debris; weed & grass height 48" +	9	$180.00	$1,620.00
2i	7,501 – 15,000	sf	Moderate debris; weed & grass height 12" < 48"	17	$115.00	$1,955.00
2j	7,501 – 15,001	sf	Moderate debris; weed & grass height 48" +	4	$219.00	$876.00
2k	15,001 - 22,500	sf	Moderate debris; weed & grass height 12" < 48"	6	$144.00	$864.00
2l	15,001 - 22,500	sf	Moderate debris; weed & grass height 48" +	3	$275.00	$825.00
2m	0 – 7,500	sf	Heavy debris; weed & grass height 12" < 48"	42	$108.00	$4,536.00
2n	0 – 7,500	sf	Heavy debris; weed & grass height 48" +	9	$204.00	$1,836.00
2o	7,501 – 15,000	sf	Heavy debris; weed & grass height 12" < 48"	18	$138.00	$2,484.00
2p	7,501 – 15,001	sf	Heavy debris; weed & grass height 48" +	6	$242.00	$1,452.00
2q	15,001 - 22,500	sf	Heavy debris; weed & grass height 12" < 48"	6	$154.00	$924.00
2r	15,001 - 22,500	sf	Heavy debris; weed & grass height 48" +	3	$270.00	$810.00
2s	0 – 7,500	sf	Heavy debris; weed & grass height 12" < 48"	6	$156.00	$936.00
2t	0 – 7,500	sf	Heavy debris; weed & grass height 48" +	7	$216.00	$1,512.00
2u	7,501 – 15,000	sf	Extra Heavy debris; weed & grass height 12" < 48"	9	$184.00	$1,656.00
2v	7,501 – 15,001	sf	Extra Heavy debris; weed & grass height 48" +	4	$287.00	$1,148.00
2w	15,001 - 22,500	sf	Extra Heavy debris; weed & grass height 12" < 48"	2	$198.00	$396.00
2x	15,001 - 22,500	sf	Extra Heavy debris; weed & grass height 48" +	3	$341.00	$1,023.00
3	LOT		SECURING STRUCTURES			
3a	3' x 5'	each	Window	129	$45.00	$5,805.00
3b	3' x 7'	each	Door	66	$45.00	$2,970.00
4			GRAFFITI ABATEMENT			
4a	N/A	hour	Paint Graffiti Structure	82	$36.00	$2,952.00
5			EMERGENCY MOBILIZATION			
5a	N/A	hour	Emergency Mobilization Fee	7	$56.00	$392.00

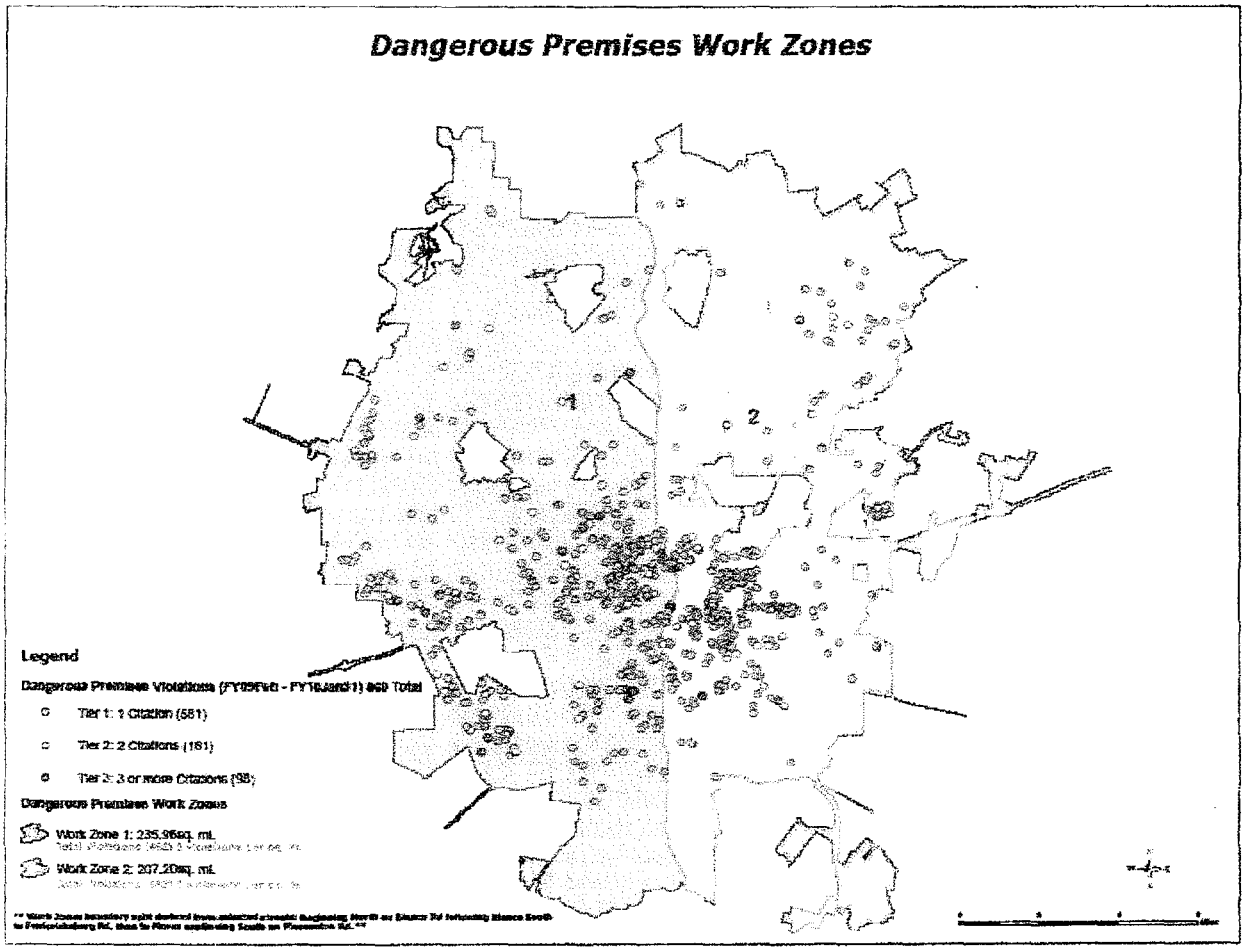



EXHIBIT B – Work Zone