EFG/eg
06/11/15
Item #5

AN ORDINANCE 2015-06-11-0509

AUTHORIZING CONTRACTS WITH BIG TEX LAWN SERVICE, DANIEL GOMEZ D/B/A GOMEZ SHREDDING, LA MED FACILITY MAINTENANCE AND RAUL'S LANDSCAPE SERVICE FOR DANGEROUS PREMISES ABATEMENT, LOT CLEARING AND SECURING OF STRUCTURES, FOR A TERM BEGINNING JULY 1, 2015 AND ENDING ON JUNE 30, 2016 WITH A CUMULATIVE ANNUAL VALUE NOT TO EXCEED $360,000.00 AND AN OPTION FOR ONE ADDITIONAL ONE-YEAR RENEWAL FOR ALL FOUR CONTRACTS.

* * * * *

WHEREAS, Code Enforcement, as a division of the Development Services Department, enforces city codes related to dangerous premises abatement, lot clearing, and securing of unoccupied 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, a competitive Request for Proposals (RFP) was released on February 25, 2015 and advertised on the City's website and within area periodicals consistent with notice requirements; and

WHEREAS, seven proposals to the RFP were received by the April 1, 2015 due date; and

WHEREAS, the evaluation committee, consisting of staff from the Development Services Department, with the assistance of the Finance Department and Economic Development Department's Small Business Office, reviewed the proposals, conducted interviews and now recommends that contracts be awarded to the top four respondents: Big Tex Lawn Service, Daniel Gomez d/b/a Gomez Shredding, La Med Facility Maintenance, and Raul's Landscape Service; **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 Development Services Department, or his designee, or the Director of Finance, or his designee, is hereby authorized to execute contracts with Big Tex Lawn Service, Daniel Gomez d/b/a Gomez Shredding, La Med Facility Maintenance, and Raul's Landscape Service, for dangerous premises abatement lot clearing, securing of unoccupied structures and graffiti abatement, for a term beginning July 1, 2015 and ending on June 30, 2016, with the cumulative annual value of the four contracts not to exceed

$360,000.00 and with an option for one additional one-year renewal for all four contracts. Copies of the contracts are attached hereto and incorporated herein for all purposes as **Attachments I - IV**.

SECTION 2. The amount up to $360,000.00 will be encumbered upon issuance of purchase orders, and payment is authorized to various vendors. All expenditures will be in accordance with the Fiscal Year 2015 and subsequent budgets that fall within the term period of this contract approved by City Council.

SECTION 4. Payment not to exceed the budgeted amount is authorized and should be encumbered with a purchase order.

SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance 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 is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 11th day of June, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda, Acting City Attorney

Agenda Item:	**5 (in consent vote: 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19)**
Date:	06/11/2015
Time:	10:05:57 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing contracts with Big Tex Lawn Service, Daniel Gomez d/b/a Gomez Shredding, La Med Facility Maintenance, and Raul's Landscape Service to provide Dangerous Premises Abatement Lot Clearing and Securing of Structures for the Development Services Department in a cumulative amount not to exceed $360,000.00 annually. [Ben Gorzell, Chief Financial Officer; Troy Elliott, Director, Finance]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Trevino	District 1		x				x
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7	x					
Ron Nirenberg	District 8	x					
Joe Krier	District 9		x				
Michael Gallagher	District 10		x			x	

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 Development Services Department (DSD) pursuant to Ordinance No. 2015-__-__-____, passed and approved on the ___ day of _____, 2015 and Big Tex Lawn Service, ("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 Development Services Department.

1.4 "Debris" shall be categorized and defined as set out below:

a. Light Debris – Shall include, but not be limited to, grass clippings, high weeds (more than 12 inches in height), leaves, paper and plastic litter items, and discarded clothing and textiles of all sorts.

b. Moderate Debris – Shall include, but not be limited to, trash items, including, but not limited to the following: aluminum or tin cans, toys, bottles, household items (e.g., dishes, tableware, pots and pans, etc.,) etc.

c. Heavy Debris – Shall include, but not be limited to, appliances, toilets, furniture, tires, tree trunks, tree limbs, branches, etc.

d. Extra Heavy Debris – Shall include, but not be limited to, discarded lumber, construction building materials, bricks, gravel, dirt mounts, big rocks, 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 June 30, 2016.

2.2. At City's option, the City reserves the right to renew the contract period for one (1) additional one (1) year period based on the initial bid submitted. Renewals shall be in writing and signed by the parties. The City Manager, her designee, 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 additionally 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 Required Equipment. Contractor is required to maintain or obtain, at a minimum, the equipment listed below, as needed for the performance of the work required by this contract. All equipment must be equipped with safe guards as outlined by American National Standards Institute (ANSI) and Occupational Safety & Health Administration (OSHA). Equipment shall be the size and type customarily used in work of this kind and no equipment shall be used which is harmful to the areas being serviced. All equipment must be in good working condition at all times. Contractor may rent or lease equipment if not owned. Equipment shall be available at the start of the contract and throughout the contract term. The City will not be responsible for costs associated with the purchase, upkeep or rental of equipment to satisfy contract work.

Tractor, 19 hp & less	Edger
Tractor, greater than 19 hp	String Trimmer
Commercial ride-on mower	Leaf Blower
Commercial stand-on mower	Refuse Trailer
Dump Truck	Front End Loader
Chainsaw	15' Batwing Mower

3.2 Tree Maintenance License. Contractor shall have a valid City Tree Maintenance License for the entirety of this Contract.

3.3 Delivery of Services. Contractor agrees:

3.3.1 To provide city-wide lot clearing and securing of structures service twenty-four (24) hours a day, seven (7) days a week, 365-days a year, including holidays, for the duration of the Contract.

3.3.2 That normal work hours will be Monday – Friday, 6:30 AM to 5:00 PM.

3.3.3 That any emergency services requested will be billed at the normal rate plus the emergency mobilization fee specified in Exhibit A.

3.3.4 That non-emergency work will be completed during normal work hours, unless written permission is received from the City of San Antonio, DSD Supervisor or DSD Officer to extend the non-emergency work beyond normal work hours.

3.3.5 To give "priority" service to any call for services in the City.

3.3.6 That response times for lot clearing and securing of structures services not considered by the City as an "emergency" will be completed within three (3) business days of receiving the call.

3.3.7 That the City, DSD Supervisor or DSD/Code Enforcement Officer shall have the authority to designate a matter as an emergency response for a matter of public or personal safety. The City reserves the right to determine when a call is considered an "emergency".

3.3.8 That a call for emergency services must be answered within two (2) hours of receiving such call.

3.3.9 That work that cannot be completed within the mutually agreed upon time frame must be approved in advance by the City, DSD Supervisor or DSD/Code Enforcement Officer. The City, or its designee, reserves the right to terminate the Work Order with the Contractor and solicit outside quotes if the required time frame cannot be met.

3.3.10 That all unique requirements and or regulations for each location shall be strictly followed by the Contractor and its employees. Contractor agrees that Contractor's personnel shall make contact with the DSD Supervisor, or authorized representative to inform them of their presence, and the purpose of their visit prior to performing any work.

3.3.11 That the City shall review and test Contractor's work and confirm it is acceptable and in compliance with the Contract. The determination of acceptance shall be within the sole discretion of the City.

3.4 Services. Contractor agrees that it will provide the services described and set out below:

3.4.1 Clearing Parcels.

a. Contractor will pick up and legally dispose of any and all size of brush, tree limbs, trees, leaves, grass/weed clippings, trash, and rubbish within the assigned work location. Contractor will remove and legally dispose of all rocks, bricks, gravel piles, or dirt mounds within the assigned work area. These materials shall not be left on site. Contract price will include all charges for labor related to removing these items from a location.

b. Assigned work locations shall be cleared from the middle of the alley to the curb line of the street and from side property line to side property line.

c. Dead trees and/or limbs will be cut, trimmed and removed from a property consistent with the recommendation of the Code Officer and Supervisor, and approval by City Arborist.

d. Lots three (3) acres and less will be cut, and debris will be removed, completely unless otherwise specified by the Code Officer or Supervisor.

e. Lots larger than three (3) acres will be cut, and debris will be removed, according to the Code Officer's specifications.

3.4.2 Mowing and Tree Removal.

a. Mowing height shall be less than three inches (3"). Plant material & grass clippings that result from mowing /trimming must be removed. All paved areas, including sidewalks; curbs, gutters, and streets must be free of all plant material & clippings. Extreme care must be taken to prevent injury and damage to property. All areas must be left in a clean condition.

b. Tree(s) may not be removed unless prior written authorization has been provided by the Code Officer and City Arborist.

3.4.3 Securing Structures.

a. Any accessible doors or windows shall be boarded and secured, including windows and doors with burglar bars, unless otherwise specified on work order.

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

c. Plywood shall extend past jambs and have bolts and nails at 6" spacing around the outside of the opening.

d. Plywood on the front door opening will not include bolts, but will include only nails at 6" spacing around the outside of the opening.

e. All first floor openings 4' X 8' or smaller require a solid sheet of plywood (no splicing) unless specified otherwise on the work order. All plywood shall be painted solid white or gray.

f. Only first floor openings larger than 4' X 8' shall be considered for splicing, all splicing shall use only lumber, plywood, bolts & nails, and all splices shall be fastened as approved by the City. All lumber and plywood shall be painted solid white or gray.

3.4.4 Graffiti Abatement.

a. All structures, objects and/ or fences that have been vandalized with graffiti shall be painted as indicated in the Work Orders.

b. The following material shall be used 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; Exterior latex paint suitable for various exterior surfaces.

3.5 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.

3.6 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.

3.7 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.

3.8 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.

3.9 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 (as defined by the Texas Administrative Code). 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 Texas Commission of Environmental. Quality (TCEQ) or U.S. Environmental Protection Agency (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.

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

3.11 At its own expense, Contractor shall conduct and coordinate statewide criminal background checks on all employees responsible for performing contractual services prior to beginning work. Contractor employees must not have had any criminal convictions within the past 3 years for a felony, or a crime of moral turpitude. Contractor is required to maintain the proof of background checks. Contractor shall obtain proof that all personnel assigned to City facilities have had a criminal background check prior to their assignment. The proof shall be provided to the Development Services Department upon request. Contractor shall remove an employee from service under this contract should Contractor become aware that the employee has been convicted of a crime as described above. Contractor shall retain all employee records, including criminal background checks, for the retention period set out within this contract.

3.12 <u>Performance Requirements.</u>

a. Contractor shall be notified via email of pending work orders. Work must be completed within three (3) business days from receipt of work order(s), weather permitting. Contractor must communicate any anticipated delays with assigned Code Officer. Under normal circumstances, if work is not completed in three (3) business days, penalties in the form of demerits shall be issued according to the current Development Services Department policy.

b. All Code Enforcement Officers are required to take "Before" and "After" photos for lot abatements. Contractor must communicate via email or phone with Code Officer for pictures. If no communication is established, penalties in the form of demerits shall be issued according to the current Department policy.

c. Unsatisfactory work shall be redone at the Contractor's expense. Continued unacceptable work is cause for suspension or permanent removal of the contractor.

3.13 The contract price for removal of debris in the categories identified in this contract will include all charges for labor related to clearing these items from a location. No additional fees for labor will be accepted or paid.

3.14 Contractor agrees that the City shall be the sole judge of contractor performance and its decision shall be final.

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 – Dangerous Premises Rate Matrix, which is attached hereto and incorporated herein for all purposes. All payments made hereunder are subject to and contingent upon appropriations by the San Antonio City Council. Contractor agrees that failure to appropriate sufficient funds for this contract shall not be considered a breach of this contract. In the event that sufficient funds are not appropriated for the contract, this contract shall immediately terminate.

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 completed 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 – Rate Matrix. Total payments to Contractor cannot exceed that amount set forth in Exhibit A – Rate Matrix, 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. OWNERSHIP AND LICENSES

6.1 In accordance with Texas law, Contractor acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of Contractor pursuant to this Contract shall be the subject of any copyright or proprietary claim by Contractor.

6.2 The term "local government record" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

6.3 Contractor acknowledges and agrees that all local government records, as described in herein, produced in the course of the work required by any contract awarded pursuant to this RFP, will belong to and be the property of City. Contractor, if awarded this contract, will be required to turn over to City, all such records as required by said contract. Contractor, if awarded this contract, shall not, under any circumstances, release any records created during the course of performance of the contract to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.

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 a material breach of its terms upon 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. Additionally, the commencement of any criminal investigation or the prosecution of any employee of the Contractor, or of the Contractor itself, by a local, state or federal law enforcement or regulatory agency shall be considered a material breach of this Contract.

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 Development Services Department
Development Services Dept.
P.O. Box 839966
San Antonio, TX 89283-3966.

If intended for CONTRACTOR, to:

Insert Contractor contact information
_____
_____
_____

IX. [Reserved]

X. INSURANCE

A. Prior to the commencement of any work under this Contract, Contractor shall furnish a completed Certificate(s) of Insurance to the **City's Office of Risk Management** which shall be clearly labeled "**Dangerous Premises Abatement - Lot Clearing and Securing of Structures**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon, containing all required information referenced or indicated thereon. The Certificate(s) or form must have the agent's signature and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under said Agreement until such Certificate shall have been delivered to the City's Office of Risk Management, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B. The City reserves the right to review these insurance requirements during the effective period of the Contract 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 Contract, but in no instance will City allow modification whereupon City may incur increased risk.

C. The Contractor's financial integrity is of interest to the City, and, therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect, for the duration of the Agreement, and any extension thereof, at Contractor'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. Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the City as an additional insured. Contractor 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. Contractor 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. Contractor shall pay any costs incurred resulting from said changes.

City of San Antonio
Finance Department
P.O. Box 839966
San Antonio, Texas 78283-3966

F. Contractor 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 policies;

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 Contractor'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 Contractor'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 Contractor to stop work under the Agreement, and/or withhold any payment(s) which become due to Contractor there under until Contractor demonstrates compliance with the requirements hereof.

I. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under the Agreement. It is agreed that Contractor'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 Contractor'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. Contractor 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, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and 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 Agreement, 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 the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

11.2 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 AGREEMENT 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.

11.3 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.

11.4 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 respondeat 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 B. 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 inspection by City or its authorized agent at all reasonable times. Should City find that Contractor is not in compliance with this article, City shall give notice of non-compliance to Contractor. Contractor shall have 15 calendar days after notice of non-compliance to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a material breach of this Contract, for which this Contract may be terminated in accordance with Article VII. Termination.

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 – Rate Matrix; Exhibit B –Contractor's SBEDA plan and SBEDA Guidelines.

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	*Contractor*
_____	_____
Printed Name: _____	Printed Name: Jesse Moreno III
Title: _____	Title: OWNER
Date: _____	Date: 10-3-15

Approved as to Form:

DBA – Big Tex Lawn Service

_____

City Attorney

DANGEROUS PREMISES RATE MATRIX

BIG TEX LAWN SERVICE

DEBRIS		WEED AND GRASS HEIGHT					
		Less Than 48 Inches And Greater Than 12 Inches	Greater or Equal To 48 Inches	Less Than 48 Inches And Greater Than 12 Inches	Greater or Equal To 48 Inches	Less Than 48 Inches And Greater Than 12 Inches	Greater or Equal To 48 Inches
CUT/CLEAN AND/OR EXTRA HEAVY DEBRIS	E	$135.00	$190.00	$165.00	$260.00	$190.00	$325.00
CUT/CLEAN AND/OR HEAVY DEBRIS	D	$90.00	$175.00	$125.00	$220.00	$145.00	$285.00
CUT/CLEAN AND/OR MODERATE DEBRIS	C	$75.00	$155.00	$100.00	$198.00	$128.00	$260.00
CUT/CLEAN AND/OR LIGHT DEBRIS	B	$60.00	$125.00	$75.00	$155.00	$100.00	$203.00
CUT/CLEAN AND/OR NO DEBRIS	A	$45.00	$75.00	$60.00	$128.00	$80.00	$155.00
		1a	1b	2a	2b	3a	3b
SIZE OF PROPERTY (SQ FT)		0 to 7,500	0 to 7,500	7,501 to 15,000	7,501 to 15,000	15,001 to 22,500	15,001 to 22,500

SECURE TYPE	RATE
Door – Standard Size (3' X 7') or Less	$45.00
Window – Standard Size (3' X 5') or Less	$45.00

EMERGENCY MOBILIZATION	
Fee per event	$60.00

GRAFITTI ABATEMENT	RATE
Paint over Graffiti Structure	$35.00

Debris Definitions (not exclusive):

Light Debris - Examples include grass clippings, high weeds (more than 12 inches in height), leaves, paper and plastic litter items, and discarded textiles of all sorts.

Moderate Debris - Examples include trash items such as aluminum/tin cans, toys, bottles, and household items (e.g., dishes, tableware, pots and pans, etc.)

Heavy Debris - Examples include appliances, toilets, furniture, tires, tree trunks, tree limbs and branches.

Extra Heavy Debris - Examples include discarded lumber, construction building materials and bricks.

EXHIBIT B
SBEDA Guidelines

A. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development (EDD) website page and is also available in hard copy form upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

B. Definitions

Affirmative Procurement Initiatives (API) – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise ("S/M/WBE") Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

Certification or "Certified" – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in the City's SBEDA Ordinance.

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein the City requires all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by CONTRACTOR to perform such "pass-through" or "conduit" functions that are <u>not</u> commercially useful shall be viewed by the CITY as fraudulent if CONTRACTOR attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the CONTRACTOR and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Evaluation Preference – an API that may be applied by the Goal Setting Committee ("GSC") to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime CONTRACTORs or Respondents.

Good Faith Efforts – documentation of the CONTRACTOR's or Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations

with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of CONTRACTOR's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual – an adult person that is of legal majority age.

Industry Categories – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as "business categories."

Minority/Women Business Enterprise (M/WBE) – firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

M/WBE Directory – a listing of minority- and women-owned businesses that have been certified for participation in the City's M/WBE Program APIs.

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the CITY. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term "MBE" as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

Minority Group Members – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as

defined below:

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – the CITY department or authorized representative of the CITY which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to CONTRACTORS and/or Subcontractors and vendors for CITY contracted goods and/or services.

Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City. For purposes of this agreement, this term refers to the CONTRACTOR.

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this agreement, CONTRACTOR is the Respondent.

Responsible – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

San Antonio Metropolitan Statistical Area (SAMSA) – also known as the Relevant Marketplace, the geographic market area from which the CITY's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

SBE Directory - a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Office (SBO) – the office within the Economic Development Department (EDD) of the CITY that is primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Business Office Manager – the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

Small Minority Women Business Enterprise Program (S/M/WBE Program) – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor or CONTRACTOR in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between the CONTRACTOR and its subcontractors shall be submitted to the CITY prior to execution of this contract agreement and any contract modification agreement.

Suspension – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in the CITY's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth

in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of CONTRACTOR's and/or S/M/WBE firm's performance and payment under CITY contracts due to the CITY's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

Subcontractor/Supplier Utilization Plan – a binding part of this contract agreement which states the CONTRACTOR's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of CONTRACTOR's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Agreement is not inclusive of MBEs.

C. SBEDA Program Compliance – General Provisions

As CONTRACTOR acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and, moreover, that such terms are part of CONTRACTOR's scope of work as referenced in the CITY's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the

SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;

2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its Subcontractors or suppliers;

3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;

4. CONTRACTOR shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.

6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.

7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONTRACTOR and each of its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and CONTRACTOR has represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this contract.

D. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiatives to this contract. CONTRACTOR hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 7. (a), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, CONTRACTOR affirms that if it is presently certified as an SBE, CONTRACTOR agrees not to subcontract more than 49% of the contract value to a non-SBE firm.

E. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that

have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

F. Prompt Payment

Upon execution of this contract by CONTRACTOR, CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

G. Violations, Sanctions and Penalties

In addition to the above terms, CONTRACTOR acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;

3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;

4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and

5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;

2. Withholding of funds;

3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;

4. Refusal to accept a response or proposal; and

5. Disqualification of CONTRACTOR or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

ATTACHMENT II

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 Development Services Department (DSD) pursuant to Ordinance No. 2015-__-__-____, passed and approved on the ___ day of _____, 2015 and Daniel Gomez, d/b/a Gomez Shredding, ("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 Development Services Department.

1.4 "Debris" shall be categorized and defined as set out below:

a. Light Debris – Shall include, but not be limited to, grass clippings, high weeds (more than 12 inches in height), leaves, paper and plastic litter items, and discarded clothing and textiles of all sorts.

b. Moderate Debris – Shall include, but not be limited to, trash items, including, but not limited to the following: aluminum or tin cans, toys, bottles, household items (e.g., dishes, tableware, pots and pans, etc.,) etc.

c. Heavy Debris – Shall include, but not be limited to, appliances, toilets, furniture, tires, tree trunks, tree limbs, branches, etc.

d. Extra Heavy Debris – Shall include, but not be limited to, discarded lumber, construction building materials, bricks, gravel, dirt mounts, big rocks, 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 June 30, 2016.

2.2. At City's option, the City reserves the right to renew the contract period for one (1) additional one (1) year period based on the initial bid submitted. Renewals shall be in writing and signed by the parties. The City Manager, her designee, 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 additionally 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 Required Equipment. Contractor is required to maintain or obtain, at a minimum, the equipment listed below, as needed for the performance of the work required by this contract. All equipment must be equipped with safe guards as outlined by American National Standards Institute (ANSI) and Occupational Safety & Health Administration (OSHA). Equipment shall be the size and type customarily used in work of this kind and no equipment shall be used which is harmful to the areas being serviced. All equipment must be in good working condition at all times. Contractor may rent or lease equipment if not owned. Equipment shall be available at the start of the contract and throughout the contract term. The City will not be responsible for costs associated with the purchase, upkeep or rental of equipment to satisfy contract work.

Tractor, 19 hp & less	Edger
Tractor, greater than 19 hp	String Trimmer
Commercial ride-on mower	Leaf Blower
Commercial stand-on mower	Refuse Trailer
Dump Truck	Front End Loader
Chainsaw	15' Batwing Mower

3.2 Tree Maintenance License. Contractor shall have a valid City Tree Maintenance License for the entirety of this Contract.

3.3 Delivery of Services. Contractor agrees:

3.3.1 To provide city-wide lot clearing and securing of structures service twenty-four (24) hours a day, seven (7) days a week, 365-days a year, including holidays, for the duration of the Contract.

3.3.2 That normal work hours will be Monday – Friday, 6:30 AM to 5:00 PM.

3.3.3 That any emergency services requested will be billed at the normal rate plus the emergency mobilization fee specified in Exhibit A.

3.3.4 That non-emergency work will be completed during normal work hours, unless written permission is received from the City of San Antonio, DSD Supervisor or DSD Officer to extend the non-emergency work beyond normal work hours.

3.3.5 To give "priority" service to any call for services in the City.

3.3.6 That response times for lot clearing and securing of structures services not considered by the City as an "emergency" will be completed within three (3) business days of receiving the call.

3.3.7 That the City, DSD Supervisor or DSD/Code Enforcement Officer shall have the authority to designate a matter as an emergency response for a matter of public or personal safety. The City reserves the right to determine when a call is considered an "emergency".

3.3.8 That a call for emergency services must be answered within two (2) hours of receiving such call.

3.3.9 That work that cannot be completed within the mutually agreed upon time frame must be approved in advance by the City, DSD Supervisor or DSD/Code Enforcement Officer. The City, or its designee, reserves the right to terminate the Work Order with the Contractor and solicit outside quotes if the required time frame cannot be met.

3.3.10 That all unique requirements and or regulations for each location shall be strictly followed by the Contractor and its employees. Contractor agrees that Contractor's personnel shall make contact with the DSD Supervisor, or authorized representative to inform them of their presence, and the purpose of their visit prior to performing any work.

3.3.11 That the City shall review and test Contractor's work and confirm it is acceptable and in compliance with the Contract. The determination of acceptance shall be within the sole discretion of the City.

3.4 Services. Contractor agrees that it will provide the services described and set out below:

3.4.1 Clearing Parcels.

a. Contractor will pick up and legally dispose of any and all size of brush, tree limbs, trees, leaves, grass/weed clippings, trash, and rubbish within the assigned work location. Contractor will remove and legally dispose of all rocks, bricks, gravel piles, or dirt mounds within the assigned work area. These materials shall not be left on site. Contract price will include all charges for labor related to removing these items from a location.

b. Assigned work locations shall be cleared from the middle of the alley to the curb line of the street and from side property line to side property line.

c. Dead trees and/or limbs will be cut, trimmed and removed from a property consistent with the recommendation of the Code Officer and Supervisor, and approval by City Arborist.

d. Lots three (3) acres and less will be cut, and debris will be removed, completely unless otherwise specified by the Code Officer or Supervisor.

e. Lots larger than three (3) acres will be cut, and debris will be removed, according to the Code Officer's specifications.

3.4.2 Mowing and Tree Removal.

a. Mowing height shall be less than three inches (3"). Plant material & grass clippings that result from mowing /trimming must be removed. All paved areas, including sidewalks; curbs, gutters, and streets must be free of all plant material & clippings. Extreme care must be taken to prevent injury and damage to property. All areas must be left in a clean condition.

b. Tree(s) may not be removed unless prior written authorization has been provided by the Code Officer and City Arborist.

3.4.3 Securing Structures.

a. Any accessible doors or windows shall be boarded and secured, including windows and doors with burglar bars, unless otherwise specified on work order.

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

c. Plywood shall extend past jambs and have bolts and nails at 6" spacing around the outside of the opening.

d. Plywood on the front door opening will not include bolts, but will include only nails at 6" spacing around the outside of the opening.

e. All first floor openings 4' X 8' or smaller require a solid sheet of plywood (no splicing) unless specified otherwise on the work order. All plywood shall be painted solid white or gray.

f. Only first floor openings larger than 4' X 8' shall be considered for splicing, all splicing shall use only lumber, plywood, bolts & nails, and all splices shall be fastened as approved by the City. All lumber and plywood shall be painted solid white or gray.

3.4.4 Graffiti Abatement.

a. All structures, objects and/ or fences that have been vandalized with graffiti shall be painted as indicated in the Work Orders.

b. The following material shall be used 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; Exterior latex paint suitable for various exterior surfaces.

3.5 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.

3.6 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.

3.7 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.

3.8 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.

3.9 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 (as defined by the Texas Administrative Code). 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 Texas Commission of Environmental. Quality (TCEQ) or U.S. Environmental Protection Agency (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.

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

3.11 At its own expense, Contractor shall conduct and coordinate statewide criminal background checks on all employees responsible for performing contractual services prior to beginning work. Contractor employees must not have had any criminal convictions within the past 3 years for a felony, or a crime of moral turpitude. Contractor is required to maintain the proof of background checks. Contractor shall obtain proof that all personnel assigned to City facilities have had a criminal background check prior to their assignment. The proof shall be provided to the Development Services Department upon request. Contractor shall remove an employee from service under this contract should Contractor become aware that the employee has been convicted of a crime as described above. Contractor shall retain all employee records, including criminal background checks, for the retention period set out within this contract.

3.12 <u>Performance Requirements.</u>

a. Contractor shall be notified via email of pending work orders. Work must be completed within three (3) business days from receipt of work order(s), weather permitting. Contractor must communicate any anticipated delays with assigned Code Officer. Under normal circumstances, if work is not completed in three (3) business days, penalties in the form of demerits shall be issued according to the current Development Services Department policy.

b. All Code Enforcement Officers are required to take "Before" and "After" photos for lot abatements. Contractor must communicate via email or phone with Code Officer for pictures. If no communication is established, penalties in the form of demerits shall be issued according to the current Department policy.

c. Unsatisfactory work shall be redone at the Contractor's expense. Continued unacceptable work is cause for suspension or permanent removal of the contractor.

3.13 The contract price for removal of debris in the categories identified in this contract will include all charges for labor related to clearing these items from a location. No additional fees for labor will be accepted or paid.

3.14 Contractor agrees that the City shall be the sole judge of contractor performance and its decision shall be final.

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 – Dangerous Premises Rate Matrix, which is attached hereto and incorporated herein for all purposes. All payments made hereunder are subject to and contingent upon appropriations by the San Antonio City Council. Contractor agrees that failure to appropriate sufficient funds for this contract shall not be considered a breach of this contract. In the event that sufficient funds are not appropriated for the contract, this contract shall immediately terminate.

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 completed 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 – Rate Matrix. Total payments to Contractor cannot exceed that amount set forth in Exhibit A – Rate Matrix, 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. OWNERSHIP AND LICENSES

6.1 In accordance with Texas law, Contractor acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of Contractor pursuant to this Contract shall be the subject of any copyright or proprietary claim by Contractor.

6.2 The term "local government record" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

6.3 Contractor acknowledges and agrees that all local government records, as described in herein, produced in the course of the work required by any contract awarded pursuant to this RFP, will belong to and be the property of City. Contractor, if awarded this contract, will be required to turn over to City, all such records as required by said contract. Contractor, if awarded this contract, shall not, under any circumstances, release any records created during the course of performance of the contract to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.

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 a material breach of its terms upon 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. Additionally, the commencement of any criminal investigation or the prosecution of any employee of the Contractor, or of the Contractor itself, by a local, state or federal law enforcement or regulatory agency shall be considered a material breach of this Contract.

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 Development Services Department
Development Services Dept.
P.O. Box 839966
San Antonio, TX 89283-3966.

If intended for CONTRACTOR, to:

Insert Contractor contact information
_____
_____
_____

IX. [Reserved]

X. INSURANCE

A. Prior to the commencement of any work under this Contract, Contractor shall furnish a completed Certificate(s) of Insurance to the **City's Office of Risk Management** which shall be clearly labeled **"Dangerous Premises Abatement - Lot Clearing and Securing of Structures"** in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon, containing all required information referenced or indicated thereon. The Certificate(s) or form must have the agent's signature and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under said Agreement until such Certificate shall have been delivered to the City's Office of Risk Management, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B. The City reserves the right to review these insurance requirements during the effective period of the Contract 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 Contract, but in no instance will City allow modification whereupon City may incur increased risk.

C. The Contractor's financial integrity is of interest to the City, and, therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect, for the duration of the Agreement, and any extension thereof, at Contractor'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	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence; or its equivalent in Umbrella or

c. Hired Vehicles	Excess Liability Coverage

D. Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the City as an additional insured. Contractor 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. Contractor 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. Contractor shall pay any costs incurred resulting from said changes.

City of San Antonio
Finance Department
P.O. Box 839966
San Antonio, Texas 78283-3966

F. Contractor 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 policies;

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 Contractor'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 Contractor'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 Contractor to stop work under the Agreement, and/or withhold any payment(s) which become due to Contractor there under until Contractor demonstrates compliance with the requirements hereof.

I. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under the Agreement. It is agreed that Contractor'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 Contractor'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. Contractor 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, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and 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 Agreement, 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 the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

11.2 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 AGREEMENT 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.

11.3 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.

11.4 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 respondeat 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 B. 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 inspection by City or its authorized agent at all reasonable times. Should City find that Contractor is not in compliance with this article, City shall give notice of non-compliance to Contractor. Contractor shall have 15 calendar days after notice of non-compliance to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a

material breach of this Contract, for which this Contract may be terminated in accordance with Article VII. Termination.

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 – Rate Matrix; Exhibit B –Contractor's SBEDA plan and SBEDA Guidelines.

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	*Contractor*
Printed Name:	Printed Name: DANIEL GOMEZ JR
Title:	Title: OWNER
Date:	Date: 6-2-2015

Approved as to Form:

City Attorney

DANGEROUS PREMISES RATE MATRIX

			WEED AND GRASS HEIGHT					
			Less Than 48 Inches And Greater Than 12 Inches	Greater or Equal To 48 Inches	Less Than 48 Inches And Greater Than 12 Inches	Greater or Equal To 48 Inches	Less Than 48 Inches And Greater Than 12 Inches	Greater or Equal To 48 Inches
DEBRIS	CUT/CLEAN AND/OR EXTRA HEAVY DEBRIS	E	$139.00	$192.00	$171.00	$267.00	$192.00	$331.00
DEBRIS	CUT/CLEAN AND/OR HEAVY DEBRIS	D	$96.00	$181.00	$128.00	$224.00	$149.00	$288.00
DEBRIS	CUT/CLEAN AND/OR MODERATE DEBRIS	C	$80.00	$160.00	$107.00	$203.00	$133.00	$267.00
DEBRIS	CUT/CLEAN AND/OR LIGHT DEBRIS	B	$64.00	$128.00	$80.00	$160.00	$107.00	$208.00
DEBRIS	CUT/CLEAN AND/OR NO DEBRIS	A	$48.00	$80.00	$64.00	$133.00	$85.00	$160.00
			1a	1b	2a	2b	3a	3b
	SIZE OF PROPERTY (SQ FT)		0 to 7,500	0 to 7,500	7,501 to 15,000	7,501 to 15,000	15,001 to 22,500	15,001 to 22,500

SECURE TYPE	RATE
Door – Standard Size (3' X 7') or Less	$48.00
Window – Standard Size (3' X 5') or Less	$48.00

GRAFITTI ABATEMENT	RATE
Paint over Graffiti Structure	$38.00

EMERGENCY MOBILIZATION	
Fee per event	$100.00

Debris Definitions (not exclusive):

Light Debris - Examples include grass clippings, high weeds (more than 12 inches in height), leaves, paper and plastic litter items, and discarded textiles of all sorts.

Moderate Debris - Examples include trash items such as aluminum/tin cans, toys, bottles, and household items (e.g., dishes, tableware, pots and pans, etc.)

Heavy Debris - Examples include appliances, toilets, furniture, tires, tree trunks, tree limbs and branches.

Extra Heavy Debris - Examples include discarded lumber, construction building materials and bricks.

EXHIBIT B
SBEDA Guidelines

A. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development (EDD) website page and is also available in hard copy form upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

B. Definitions

Affirmative Procurement Initiatives (API) – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise ("S/M/WBE") Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

Certification or "Certified" – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in the City's SBEDA Ordinance.

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein the City requires all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by CONTRACTOR to perform such "pass-through" or "conduit" functions that are <u>not</u> commercially useful shall be viewed by the CITY as fraudulent if CONTRACTOR attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the CONTRACTOR and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Evaluation Preference – an API that may be applied by the Goal Setting Committee ("GSC") to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime CONTRACTORs or Respondents.

Good Faith Efforts – documentation of the CONTRACTOR's or Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations

with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of CONTRACTOR's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual – an adult person that is of legal majority age.

Industry Categories – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as "business categories."

Minority/Women Business Enterprise (M/WBE) – firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

M/WBE Directory – a listing of minority- and women-owned businesses that have been certified for participation in the City's M/WBE Program APIs.

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the CITY. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term "MBE" as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

Minority Group Members – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as

defined below:

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – the CITY department or authorized representative of the CITY which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to CONTRACTORS and/or Subcontractors and vendors for CITY contracted goods and/or services.

Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City. For purposes of this agreement, this term refers to the CONTRACTOR.

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this agreement, CONTRACTOR is the Respondent.

Responsible – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

San Antonio Metropolitan Statistical Area (SAMSA) – also known as the Relevant Marketplace, the geographic market area from which the CITY's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

SBE Directory - a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Office (SBO) – the office within the Economic Development Department (EDD) of the CITY that is primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Business Office Manager – the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

Small Minority Women Business Enterprise Program (S/M/WBE Program) – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor or CONTRACTOR in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between the CONTRACTOR and its subcontractors shall be submitted to the CITY prior to execution of this contract agreement and any contract modification agreement.

Suspension – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in the CITY's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth

in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of CONTRACTOR's and/or S/M/WBE firm's performance and payment under CITY contracts due to the CITY's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

Subcontractor/Supplier Utilization Plan – a binding part of this contract agreement which states the CONTRACTOR's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of CONTRACTOR's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Agreement is not inclusive of MBEs.

C. SBEDA Program Compliance – General Provisions

As CONTRACTOR acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and, moreover, that such terms are part of CONTRACTOR's scope of work as referenced in the CITY's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the

SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;

2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its Subcontractors or suppliers;

3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;

4. CONTRACTOR shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.

6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.

7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONTRACTOR and each of its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and CONTRACTOR has represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this contract.

D. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiatives to this contract. CONTRACTOR hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 7. (a), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, CONTRACTOR affirms that if it is presently certified as an SBE, CONTRACTOR agrees not to subcontract more than 49% of the contract value to a non-SBE firm.

E. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that

have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

F. Prompt Payment

Upon execution of this contract by CONTRACTOR, CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

G. Violations, Sanctions and Penalties

In addition to the above terms, CONTRACTOR acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;

3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;

4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and

5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;

2. Withholding of funds;

3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;

4. Refusal to accept a response or proposal; and

5. Disqualification of CONTRACTOR or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

ATTACHMENT III

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 Development Services Department (DSD) pursuant to Ordinance No. 2015-__-__-____, passed and approved on the ___ day of _____, 2015 and La Med Facility Maintenance, ("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 Development Services Department.

1.4 "Debris" shall be categorized and defined as set out below:

a. Light Debris – Shall include, but not be limited to, grass clippings, high weeds (more than 12 inches in height), leaves, paper and plastic litter items, and discarded clothing and textiles of all sorts.

b. Moderate Debris – Shall include, but not be limited to, trash items, including, but not limited to the following: aluminum or tin cans, toys, bottles, household items (e.g., dishes, tableware, pots and pans, etc.,) etc.

c. Heavy Debris – Shall include, but not be limited to, appliances, toilets, furniture, tires, tree trunks, tree limbs, branches, etc.

d. Extra Heavy Debris – Shall include, but not be limited to, discarded lumber, construction building materials, bricks, gravel, dirt mounts, big rocks, 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 June 30, 2016.

2.2. At City's option, the City reserves the right to renew the contract period for one (1) additional one (1) year period based on the initial bid submitted. Renewals shall be in writing and signed by the parties. The City Manager, her designee, 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 additionally 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 Required Equipment. Contractor is required to maintain or obtain, at a minimum, the equipment listed below, as needed for the performance of the work required by this contract. All equipment must be equipped with safe guards as outlined by American National Standards Institute (ANSI) and Occupational Safety & Health Administration (OSHA). Equipment shall be the size and type customarily used in work of this kind and no equipment shall be used which is harmful to the areas being serviced. All equipment must be in good working condition at all times. Contractor may rent or lease equipment if not owned. Equipment shall be available at the start of the contract and throughout the contract term. The City will not be responsible for costs associated with the purchase, upkeep or rental of equipment to satisfy contract work.

Tractor, 19 hp & less	Edger
Tractor, greater than 19 hp	String Trimmer
Commercial ride-on mower	Leaf Blower
Commercial stand-on mower	Refuse Trailer
Dump Truck	Front End Loader
Chainsaw	15' Batwing Mower

3.2 Tree Maintenance License. Contractor shall have a valid City Tree Maintenance License for the entirety of this Contract.

3.3 Delivery of Services. Contractor agrees:

3.3.1 To provide city-wide lot clearing and securing of structures service twenty-four (24) hours a day, seven (7) days a week, 365-days a year, including holidays, for the duration of the Contract.

3.3.2 That normal work hours will be Monday – Friday, 6:30 AM to 5:00 PM.

3.3.3 That any emergency services requested will be billed at the normal rate plus the emergency mobilization fee specified in Exhibit A.

3.3.4 That non-emergency work will be completed during normal work hours, unless written permission is received from the City of San Antonio, DSD Supervisor or DSD Officer to extend the non-emergency work beyond normal work hours.

3.3.5 To give "priority" service to any call for services in the City.

3.3.6 That response times for lot clearing and securing of structures services not considered by the City as an "emergency" will be completed within three (3) business days of receiving the call.

3.3.7 That the City, DSD Supervisor or DSD/Code Enforcement Officer shall have the authority to designate a matter as an emergency response for a matter of public or personal safety. The City reserves the right to determine when a call is considered an "emergency".

3.3.8 That a call for emergency services must be answered within two (2) hours of receiving such call.

3.3.9 That work that cannot be completed within the mutually agreed upon time frame must be approved in advance by the City, DSD Supervisor or DSD/Code Enforcement Officer. The City, or its designee, reserves the right to terminate the Work Order with the Contractor and solicit outside quotes if the required time frame cannot be met.

3.3.10 That all unique requirements and or regulations for each location shall be strictly followed by the Contractor and its employees. Contractor agrees that Contractor's personnel shall make contact with the DSD Supervisor, or authorized representative to inform them of their presence, and the purpose of their visit prior to performing any work.

3.3.11 That the City shall review and test Contractor's work and confirm it is acceptable and in compliance with the Contract. The determination of acceptance shall be within the sole discretion of the City.

3.4 Services. Contractor agrees that it will provide the services described and set out below:

3.4.1 Clearing Parcels.

a. Contractor will pick up and legally dispose of any and all size of brush, tree limbs, trees, leaves, grass/weed clippings, trash, and rubbish within the assigned work location. Contractor will remove and legally dispose of all rocks, bricks, gravel piles, or dirt mounds within the assigned work area. These materials shall not be left on site. Contract price will include all charges for labor related to removing these items from a location.

b. Assigned work locations shall be cleared from the middle of the alley to the curb line of the street and from side property line to side property line.

c. Dead trees and/or limbs will be cut, trimmed and removed from a property consistent with the recommendation of the Code Officer and Supervisor, and approval by City Arborist.

d. Lots three (3) acres and less will be cut, and debris will be removed, completely unless otherwise specified by the Code Officer or Supervisor.

e. Lots larger than three (3) acres will be cut, and debris will be removed, according to the Code Officer's specifications.

3.4.2 Mowing and Tree Removal.

a. Mowing height shall be less than three inches (3"). Plant material & grass clippings that result from mowing /trimming must be removed. All paved areas, including sidewalks; curbs, gutters, and streets must be free of all plant material & clippings. Extreme care must be taken to prevent injury and damage to property. All areas must be left in a clean condition.

b. Tree(s) may not be removed unless prior written authorization has been provided by the Code Officer and City Arborist.

3.4.3 Securing Structures.

a. Any accessible doors or windows shall be boarded and secured, including windows and doors with burglar bars, unless otherwise specified on work order.

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

c. Plywood shall extend past jambs and have bolts and nails at 6" spacing around the outside of the opening.

d. Plywood on the front door opening will not include bolts, but will include only nails at 6" spacing around the outside of the opening.

e. All first floor openings 4' X 8' or smaller require a solid sheet of plywood (no splicing) unless specified otherwise on the work order. All plywood shall be painted solid white or gray.

f. Only first floor openings larger than 4' X 8' shall be considered for splicing, all splicing shall use only lumber, plywood, bolts & nails, and all splices shall be fastened as approved by the City. All lumber and plywood shall be painted solid white or gray.

3.4.4 Graffiti Abatement.

a. All structures, objects and/ or fences that have been vandalized with graffiti shall be painted as indicated in the Work Orders.

b. The following material shall be used 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; Exterior latex paint suitable for various exterior surfaces.

3.5 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.

3.6 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.

3.7 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.

3.8 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.

3.9 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 (as defined by the Texas Administrative Code). 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 Texas Commission of Environmental. Quality (TCEQ) or U.S. Environmental Protection Agency (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.

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

3.11 At its own expense, Contractor shall conduct and coordinate statewide criminal background checks on all employees responsible for performing contractual services prior to beginning work. Contractor employees must not have had any criminal convictions within the past 3 years for a felony, or a crime of moral turpitude. Contractor is required to maintain the proof of background checks. Contractor shall obtain proof that all personnel assigned to City facilities have had a criminal background check prior to their assignment. The proof shall be provided to the Development Services Department upon request. Contractor shall remove an employee from service under this contract should Contractor become aware that the employee has been convicted of a crime as described above. Contractor shall retain all employee records, including criminal background checks, for the retention period set out within this contract.

3.12 <u>Performance Requirements.</u>

a. Contractor shall be notified via email of pending work orders. Work must be completed within three (3) business days from receipt of work order(s), weather permitting. Contractor must communicate any anticipated delays with assigned Code Officer. Under normal circumstances, if work is not completed in three (3) business days, penalties in the form of demerits shall be issued according to the current Development Services Department policy.

b. All Code Enforcement Officers are required to take "Before" and "After" photos for lot abatements. Contractor must communicate via email or phone with Code Officer for pictures. If no communication is established, penalties in the form of demerits shall be issued according to the current Department policy.

c. Unsatisfactory work shall be redone at the Contractor's expense. Continued unacceptable work is cause for suspension or permanent removal of the contractor.

3.13 The contract price for removal of debris in the categories identified in this contract will include all charges for labor related to clearing these items from a location. No additional fees for labor will be accepted or paid.

3.14 Contractor agrees that the City shall be the sole judge of contractor performance and its decision shall be final.

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 – Dangerous Premises Rate Matrix, which is attached hereto and incorporated herein for all purposes. All payments made hereunder are subject to and contingent upon appropriations by the San Antonio City Council. Contractor agrees that failure to appropriate sufficient funds for this contract shall not be considered a breach of this contract. In the event that sufficient funds are not appropriated for the contract, this contract shall immediately terminate.

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 completed 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 – Rate Matrix. Total payments to Contractor cannot exceed that amount set forth in Exhibit A – Rate Matrix, 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. OWNERSHIP AND LICENSES

6.1 In accordance with Texas law, Contractor acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of Contractor pursuant to this Contract shall be the subject of any copyright or proprietary claim by Contractor.

6.2 The term "local government record" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

6.3 Contractor acknowledges and agrees that all local government records, as described in herein, produced in the course of the work required by any contract awarded pursuant to this RFP, will belong to and be the property of City. Contractor, if awarded this contract, will be required to turn over to City, all such records as required by said contract. Contractor, if awarded this contract, shall not, under any circumstances, release any records created during the course of performance of the contract to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.

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 a material breach of its terms upon 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. Additionally, the commencement of any criminal investigation or the prosecution of any employee of the Contractor, or of the Contractor itself, by a local, state or federal law enforcement or regulatory agency shall be considered a material breach of this Contract.

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 Development Services Department
Development Services Dept.
P.O. Box 839966
San Antonio, TX 89283-3966.

If intended for CONTRACTOR, to:

Insert Contractor contact information
_____
_____
_____

IX. [Reserved]

X. INSURANCE

A. Prior to the commencement of any work under this Contract, Contractor shall furnish a completed Certificate(s) of Insurance to the **City's Office of Risk Management** which shall be clearly labeled "**Dangerous Premises Abatement - Lot Clearing and Securing of Structures**" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon, containing all required information referenced or indicated thereon. The Certificate(s) or form must have the agent's signature and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under said Agreement until such Certificate shall have been delivered to the City's Office of Risk Management, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B. The City reserves the right to review these insurance requirements during the effective period of the Contract 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 Contract, but in no instance will City allow modification whereupon City may incur increased risk.

C. The Contractor's financial integrity is of interest to the City, and, therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect, for the duration of the Agreement, and any extension thereof, at Contractor'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	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence; or its equivalent in Umbrella or

c. Hired Vehicles	Excess Liability Coverage

D. Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the City as an additional insured. Contractor 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. Contractor 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. Contractor shall pay any costs incurred resulting from said changes.

City of San Antonio
Finance Department
P.O. Box 839966
San Antonio, Texas 78283-3966

F. Contractor 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 policies;

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 Contractor'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 Contractor'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 Contractor to stop work under the Agreement, and/or withhold any payment(s) which become due to Contractor there under until Contractor demonstrates compliance with the requirements hereof.

I. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under the Agreement. It is agreed that Contractor'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 Contractor'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. Contractor 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, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and 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 Agreement, 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 the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

11.2 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 AGREEMENT 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.

11.3 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.

11.4 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 respondeat 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 B. 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 inspection by City or its authorized agent at all reasonable times. Should City find that Contractor is not in compliance with this article, City shall give notice of non-compliance to Contractor. Contractor shall have 15 calendar days after notice of non-compliance to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a

material breach of this Contract, for which this Contract may be terminated in accordance with Article VII. Termination.

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 – Rate Matrix; Exhibit B –Contractor's SBEDA plan and SBEDA Guidelines.

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	*Contractor*
Printed Name:	Printed Name: Eduardo Tijerina Jr.
Title:	Title: CEO
Date:	Date: 6-2-15

Approved as to Form:

City Attorney

DANGEROUS PREMISES RATE MATRIX

DEBRIS		WEED AND GRASS HEIGHT					
		Less Than 48 Inches And Greater Than 12 Inches	Greater or Equal To 48 Inches	Less Than 48 Inches And Greater Than 12 Inches	Greater or Equal To 48 Inches	Less Than 48 Inches And Greater Than 12 Inches	Greater or Equal To 48 Inches
CUT/CLEAN AND/OR EXTRA HEAVY DEBRIS	E	$139.00	$192.00	$171.00	$267.00	$192.00	$331.00
CUT/CLEAN AND/OR HEAVY DEBRIS	D	$96.00	$181.00	$128.00	$224.00	$149.00	$288.00
CUT/CLEAN AND/OR MODERATE DEBRIS	C	$80.00	$160.00	$107.00	$203.00	$133.00	$267.00
CUT/CLEAN AND/OR LIGHT DEBRIS	B	$64.00	$128.00	$80.00	$160.00	$107.00	$208.00
CUT/CLEAN AND/OR NO DEBRIS	A	$48.00	$80.00	$64.00	$133.00	$85.00	$160.00
		1a	1b	2a	2b	3a	3b
SIZE OF PROPERTY (SQ FT)		0 to 7,500	0 to 7,500	7,501 to 15,000	7,501 to 15,000	15,001 to 22,500	15,001 to 22,500

SECURE TYPE	RATE
Door – Standard Size (3' X 7') or Less	$48.00
Window – Standard Size (3' X 5') or Less	$48.00

GRAFITTI ABATEMENT	RATE
Paint over Graffiti Structure	$38.00

EMERGENCY MOBILIZATION	
Fee per event	$100.00

Debris Definitions (not exclusive):

Light Debris - Examples include grass clippings, high weeds (more than 12 inches in height), leaves, paper and plastic litter items, and discarded textiles of all sorts.

Moderate Debris - Examples include trash items such as aluminum/tin cans, toys, bottles, and household items (e.g., dishes, tableware, pots and pans, etc.)

Heavy Debris - Examples include appliances, toilets, furniture, tires, tree trunks, tree limbs and branches.

Extra Heavy Debris - Examples include discarded lumber, construction building materials and bricks.

EXHIBIT B
SBEDA Guidelines

A. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development (EDD) website page and is also available in hard copy form upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

B. Definitions

Affirmative Procurement Initiatives (API) – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise ("S/M/WBE") Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

Certification or "Certified" – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in the City's SBEDA Ordinance.

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein the City requires all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by CONTRACTOR to perform such "pass-through" or "conduit" functions that are <u>not</u> commercially useful shall be viewed by the CITY as fraudulent if CONTRACTOR attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the CONTRACTOR and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Evaluation Preference – an API that may be applied by the Goal Setting Committee ("GSC") to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime CONTRACTORs or Respondents.

Good Faith Efforts – documentation of the CONTRACTOR's or Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations

with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of CONTRACTOR's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual – an adult person that is of legal majority age.

Industry Categories – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as "business categories."

Minority/Women Business Enterprise (M/WBE) – firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

M/WBE Directory – a listing of minority- and women-owned businesses that have been certified for participation in the City's M/WBE Program APIs.

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the CITY. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term "MBE" as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

Minority Group Members – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as

defined below:

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – the CITY department or authorized representative of the CITY which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to CONTRACTORS and/or Subcontractors and vendors for CITY contracted goods and/or services.

Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City. For purposes of this agreement, this term refers to the CONTRACTOR.

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this agreement, CONTRACTOR is the Respondent.

Responsible – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

San Antonio Metropolitan Statistical Area (SAMSA) – also known as the Relevant Marketplace, the geographic market area from which the CITY's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

SBE Directory - a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Office (SBO) – the office within the Economic Development Department (EDD) of the CITY that is primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Business Office Manager – the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

Small Minority Women Business Enterprise Program (S/M/WBE Program) – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor or CONTRACTOR in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between the CONTRACTOR and its subcontractors shall be submitted to the CITY prior to execution of this contract agreement and any contract modification agreement.

Suspension – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in the CITY's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth

in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of CONTRACTOR's and/or S/M/WBE firm's performance and payment under CITY contracts due to the CITY's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

Subcontractor/Supplier Utilization Plan – a binding part of this contract agreement which states the CONTRACTOR's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of CONTRACTOR's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Agreement is not inclusive of MBEs.

C. SBEDA Program Compliance – General Provisions

As CONTRACTOR acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and, moreover, that such terms are part of CONTRACTOR's scope of work as referenced in the CITY's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the

SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;

2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its Subcontractors or suppliers;

3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;

4. CONTRACTOR shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.

6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.

7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONTRACTOR and each of its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and CONTRACTOR has represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this contract.

D. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiatives to this contract. CONTRACTOR hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 7. (a), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, CONTRACTOR affirms that if it is presently certified as an SBE, CONTRACTOR agrees not to subcontract more than 49% of the contract value to a non-SBE firm.

E. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that

have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

F. Prompt Payment

Upon execution of this contract by CONTRACTOR, CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

G. Violations, Sanctions and Penalties

In addition to the above terms, CONTRACTOR acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;

3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;

4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and

5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;

2. Withholding of funds;

3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;

4. Refusal to accept a response or proposal; and

5. Disqualification of CONTRACTOR or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

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 Development Services Department (DSD) pursuant to Ordinance No. 2015-__-__-____, passed and approved on the ___ day of _____, 2015 and Raul Landscape Service, ("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 Development Services Department.

1.4 "Debris" shall be categorized and defined as set out below:

a. Light Debris – Shall include, but not be limited to, grass clippings, high weeds (more than 12 inches in height), leaves, paper and plastic litter items, and discarded clothing and textiles of all sorts.

b. Moderate Debris – Shall include, but not be limited to, trash items, including, but not limited to the following: aluminum or tin cans, toys, bottles, household items (e.g., dishes, tableware, pots and pans, etc.,) etc.

c. Heavy Debris – Shall include, but not be limited to, appliances, toilets, furniture, tires, tree trunks, tree limbs, branches, etc.

d. Extra Heavy Debris – Shall include, but not be limited to, discarded lumber, construction building materials, bricks, gravel, dirt mounts, big rocks, 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 June 30, 2016.

2.2. At City's option, the City reserves the right to renew the contract period for one (1) additional one (1) year period based on the initial bid submitted. Renewals shall be in writing and signed by the parties. The City Manager, her designee, 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 additionally 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 Required Equipment. Contractor is required to maintain or obtain, at a minimum, the equipment listed below, as needed for the performance of the work required by this contract. All equipment must be equipped with safe guards as outlined by American National Standards Institute (ANSI) and Occupational Safety & Health Administration (OSHA). Equipment shall be the size and type customarily used in work of this kind and no equipment shall be used which is harmful to the areas being serviced. All equipment must be in good working condition at all times. Contractor may rent or lease equipment if not owned. Equipment shall be available at the start of the contract and throughout the contract term. The City will not be responsible for costs associated with the purchase, upkeep or rental of equipment to satisfy contract work.

Tractor, 19 hp & less	Edger
Tractor, greater than 19 hp	String Trimmer
Commercial ride-on mower	Leaf Blower
Commercial stand-on mower	Refuse Trailer
Dump Truck	Front End Loader
Chainsaw	15' Batwing Mower

3.2 Tree Maintenance License. Contractor shall have a valid City Tree Maintenance License for the entirety of this Contract.

3.3 Delivery of Services. Contractor agrees:

3.3.1 To provide city-wide lot clearing and securing of structures service twenty-four (24) hours a day, seven (7) days a week, 365-days a year, including holidays, for the duration of the Contract.

3.3.2 That normal work hours will be Monday – Friday, 6:30 AM to 5:00 PM.

3.3.3 That any emergency services requested will be billed at the normal rate plus the emergency mobilization fee specified in Exhibit A.

3.3.4 That non-emergency work will be completed during normal work hours, unless written permission is received from the City of San Antonio, DSD Supervisor or DSD Officer to extend the non-emergency work beyond normal work hours.

3.3.5 To give "priority" service to any call for services in the City.

3.3.6 That response times for lot clearing and securing of structures services not considered by the City as an "emergency" will be completed within three (3) business days of receiving the call.

3.3.7 That the City, DSD Supervisor or DSD/Code Enforcement Officer shall have the authority to designate a matter as an emergency response for a matter of public or personal safety. The City reserves the right to determine when a call is considered an "emergency".

3.3.8 That a call for emergency services must be answered within two (2) hours of receiving such call.

3.3.9 That work that cannot be completed within the mutually agreed upon time frame must be approved in advance by the City, DSD Supervisor or DSD/Code Enforcement Officer. The City, or its designee, reserves the right to terminate the Work Order with the Contractor and solicit outside quotes if the required time frame cannot be met.

3.3.10 That all unique requirements and or regulations for each location shall be strictly followed by the Contractor and its employees. Contractor agrees that Contractor's personnel shall make contact with the DSD Supervisor, or authorized representative to inform them of their presence, and the purpose of their visit prior to performing any work.

3.3.11 That the City shall review and test Contractor's work and confirm it is acceptable and in compliance with the Contract. The determination of acceptance shall be within the sole discretion of the City.

3.4 Services. Contractor agrees that it will provide the services described and set out below:

3.4.1 Clearing Parcels.

a. Contractor will pick up and legally dispose of any and all size of brush, tree limbs, trees, leaves, grass/weed clippings, trash, and rubbish within the assigned work location. Contractor will remove and legally dispose of all rocks, bricks, gravel piles, or dirt mounds within the assigned work area. These materials shall not be left on site. Contract price will include all charges for labor related to removing these items from a location.

b. Assigned work locations shall be cleared from the middle of the alley to the curb line of the street and from side property line to side property line.

c. Dead trees and/or limbs will be cut, trimmed and removed from a property consistent with the recommendation of the Code Officer and Supervisor, and approval by City Arborist.

d. Lots three (3) acres and less will be cut, and debris will be removed, completely unless otherwise specified by the Code Officer or Supervisor.

e. Lots larger than three (3) acres will be cut, and debris will be removed, according to the Code Officer's specifications.

3.4.2 Mowing and Tree Removal.

a. Mowing height shall be less than three inches (3"). Plant material & grass clippings that result from mowing /trimming must be removed. All paved areas, including sidewalks; curbs, gutters, and streets must be free of all plant material & clippings. Extreme care must be taken to prevent injury and damage to property. All areas must be left in a clean condition.

b. Tree(s) may not be removed unless prior written authorization has been provided by the Code Officer and City Arborist.

3.4.3 Securing Structures.

a. Any accessible doors or windows shall be boarded and secured, including windows and doors with burglar bars, unless otherwise specified on work order.

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

c. Plywood shall extend past jambs and have bolts and nails at 6" spacing around the outside of the opening.

d. Plywood on the front door opening will not include bolts, but will include only nails at 6" spacing around the outside of the opening.

e. All first floor openings 4' X 8' or smaller require a solid sheet of plywood (no splicing) unless specified otherwise on the work order. All plywood shall be painted solid white or gray.

f. Only first floor openings larger than 4' X 8' shall be considered for splicing, all splicing shall use only lumber, plywood, bolts & nails, and all splices shall be fastened as approved by the City. All lumber and plywood shall be painted solid white or gray.

3.4.4 Graffiti Abatement.

a. All structures, objects and/ or fences that have been vandalized with graffiti shall be painted as indicated in the Work Orders.

b. The following material shall be used 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; Exterior latex paint suitable for various exterior surfaces.

3.5 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.

3.6 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.

3.7 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.

3.8 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.

3.9 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 (as defined by the Texas Administrative Code). 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 Texas Commission of Environmental. Quality (TCEQ) or U.S. Environmental Protection Agency (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.

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

3.11 At its own expense, Contractor shall conduct and coordinate statewide criminal background checks on all employees responsible for performing contractual services prior to beginning work. Contractor employees must not have had any criminal convictions within the past 3 years for a felony, or a crime of moral turpitude. Contractor is required to maintain the proof of background checks. Contractor shall obtain proof that all personnel assigned to City facilities have had a criminal background check prior to their assignment. The proof shall be provided to the Development Services Department upon request. Contractor shall remove an employee from service under this contract should Contractor become aware that the employee has been convicted of a crime as described above. Contractor shall retain all employee records, including criminal background checks, for the retention period set out within this contract.

3.12 <u>Performance Requirements.</u>

a. Contractor shall be notified via email of pending work orders. Work must be completed within three (3) business days from receipt of work order(s), weather permitting. Contractor must communicate any anticipated delays with assigned Code Officer. Under normal circumstances, if work is not completed in three (3) business days, penalties in the form of demerits shall be issued according to the current Development Services Department policy.

b. All Code Enforcement Officers are required to take "Before" and "After" photos for lot abatements. Contractor must communicate via email or phone with Code Officer for pictures. If no communication is established, penalties in the form of demerits shall be issued according to the current Department policy.

c. Unsatisfactory work shall be redone at the Contractor's expense. Continued unacceptable work is cause for suspension or permanent removal of the contractor.

3.13 The contract price for removal of debris in the categories identified in this contract will include all charges for labor related to clearing these items from a location. No additional fees for labor will be accepted or paid.

3.14 Contractor agrees that the City shall be the sole judge of contractor performance and its decision shall be final.

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 – Dangerous Premises Rate Matrix, which is attached hereto and incorporated herein for all purposes. All payments made hereunder are subject to and contingent upon appropriations by the San Antonio City Council. Contractor agrees that failure to appropriate sufficient funds for this contract shall not be considered a breach of this contract. In the event that sufficient funds are not appropriated for the contract, this contract shall immediately terminate.

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 completed 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 – Rate Matrix. Total payments to Contractor cannot exceed that amount set forth in Exhibit A – Rate Matrix, 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. OWNERSHIP AND LICENSES

6.1 In accordance with Texas law, Contractor acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of Contractor pursuant to this Contract shall be the subject of any copyright or proprietary claim by Contractor.

6.2 The term "local government record" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

6.3 Contractor acknowledges and agrees that all local government records, as described in herein, produced in the course of the work required by any contract awarded pursuant to this RFP, will belong to and be the property of City. Contractor, if awarded this contract, will be required to turn over to City, all such records as required by said contract. Contractor, if awarded this contract, shall not, under any circumstances, release any records created during the course of performance of the contract to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.

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 a material breach of its terms upon 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. Additionally, the commencement of any criminal investigation or the prosecution of any employee of the Contractor, or of the Contractor itself, by a local, state or federal law enforcement or regulatory agency shall be considered a material breach of this Contract.

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 Development Services Department
Development Services Dept.
P.O. Box 839966
San Antonio, TX 89283-3966.

If intended for CONTRACTOR, to:

Insert Contractor contact information

_____

_____

_____

IX. [Reserved]

X. INSURANCE

A. Prior to the commencement of any work under this Contract, Contractor shall furnish a completed Certificate(s) of Insurance to the **City's Office of Risk Management** which shall be clearly labeled **"Dangerous Premises Abatement - Lot Clearing and Securing of Structures"** in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon, containing all required information referenced or indicated thereon. The Certificate(s) or form must have the agent's signature and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under said Agreement until such Certificate shall have been delivered to the City's Office of Risk Management, and no officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B. The City reserves the right to review these insurance requirements during the effective period of the Contract 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 Contract, but in no instance will City allow modification whereupon City may incur increased risk.

C. The Contractor's financial integrity is of interest to the City, and, therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect, for the duration of the Agreement, and any extension thereof, at Contractor'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	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence; or its equivalent in Umbrella or

c. Hired Vehicles	Excess Liability Coverage

D. Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the City as an additional insured. Contractor 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. Contractor 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. Contractor shall pay any costs incurred resulting from said changes.

City of San Antonio
Finance Department
P.O. Box 839966
San Antonio, Texas 78283-3966

F. Contractor 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 policies;

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 Contractor'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 Contractor'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 Contractor to stop work under the Agreement, and/or withhold any payment(s) which become due to Contractor there under until Contractor demonstrates compliance with the requirements hereof.

I. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under the Agreement. It is agreed that Contractor'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 Contractor'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. Contractor 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, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and 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 Agreement, 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 the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

11.2 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 AGREEMENT 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.

11.3 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.

11.4 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 respondeat 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 B. 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 inspection by City or its authorized agent at all reasonable times. Should City find that Contractor is not in compliance with this article, City shall give notice of non-compliance to Contractor. Contractor shall have 15 calendar days after notice of non-compliance to correct any and all deficiencies in compliance with this article. Failure to comply with this article and/or to correct any deficiencies within the time allotted shall be considered a

material breach of this Contract, for which this Contract may be terminated in accordance with Article VII. Termination.

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 – Rate Matrix; Exhibit B –Contractor's SBEDA plan and SBEDA Guidelines.

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		*Contractor*	
		Raul Ceda	
Printed Name:		Printed Name:	RAUL CEDA
Title:		Title:	OWNER
Date:		Date:	6-2-15

Approved as to Form:

City Attorney

DANGEROUS PREMISES RATE MATRIX

DEBRIS		WEED AND GRASS HEIGHT					
		Less Than 48 Inches And Greater Than 12 Inches	Greater or Equal To 48 Inches	Less Than 48 Inches And Greater Than 12 Inches	Greater or Equal To 48 Inches	Less Than 48 Inches And Greater Than 12 Inches	Greater or Equal To 48 Inches
CUT/CLEAN AND/OR EXTRA HEAVY DEBRIS	E	$139.00	$192.00	$171.00	$267.00	$192.00	$331.00
CUT/CLEAN AND/OR HEAVY DEBRIS	D	$96.00	$181.00	$128.00	$224.00	$149.00	$288.00
CUT/CLEAN AND/OR MODERATE DEBRIS	C	$80.00	$160.00	$107.00	$203.00	$133.00	$267.00
CUT/CLEAN AND/OR LIGHT DEBRIS	B	$64.00	$128.00	$80.00	$160.00	$107.00	$208.00
CUT/CLEAN AND/OR NO DEBRIS	A	$48.00	$80.00	$64.00	$133.00	$85.00	$160.00
		1a	1b	2a	2b	3a	3b
SIZE OF PROPERTY (SQ FT)		0 to 7,500	0 to 7,500	7,501 to 15,000	7,501 to 15,000	15,001 to 22,500	15,001 to 22,500

SECURE TYPE	RATE
Door – Standard Size (3' X 7') or Less	$48.00
Window – Standard Size (3' X 5') or Less	$48.00

GRAFITTI ABATEMENT	RATE
Paint over Graffiti Structure	$38.00

EMERGENCY MOBILIZATION	
Fee per event	$100.00

Debris Definitions (not exclusive):

Light Debris - Examples include grass clippings, high weeds (more than 12 inches in height), leaves, paper and plastic litter items, and discarded textiles of all sorts.

Moderate Debris - Examples include trash items such as aluminum/tin cans, toys, bottles, and household items (e.g., dishes, tableware, pots and pans, etc.)

Heavy Debris - Examples include appliances, toilets, furniture, tires, tree trunks, tree limbs and branches.

Extra Heavy Debris - Examples include discarded lumber, construction building materials and bricks.

EXHIBIT B
SBEDA Guidelines

A. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development (EDD) website page and is also available in hard copy form upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

B. Definitions

Affirmative Procurement Initiatives (API) – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise ("S/M/WBE") Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

Certification or "Certified" – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in the City's SBEDA Ordinance.

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein the City requires all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by CONTRACTOR to perform such "pass-through" or "conduit" functions that are <u>not</u> commercially useful shall be viewed by the CITY as fraudulent if CONTRACTOR attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the CONTRACTOR and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Evaluation Preference – an API that may be applied by the Goal Setting Committee ("GSC") to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime CONTRACTORs or Respondents.

Good Faith Efforts – documentation of the CONTRACTOR's or Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations

with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of CONTRACTOR's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual – an adult person that is of legal majority age.

Industry Categories – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as "business categories."

Minority/Women Business Enterprise (M/WBE) – firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

M/WBE Directory – a listing of minority- and women-owned businesses that have been certified for participation in the City's M/WBE Program APIs.

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the CITY. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term "MBE" as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

Minority Group Members – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as

defined below:

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – the CITY department or authorized representative of the CITY which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to CONTRACTORS and/or Subcontractors and vendors for CITY contracted goods and/or services.

Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City. For purposes of this agreement, this term refers to the CONTRACTOR.

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this agreement, CONTRACTOR is the Respondent.

Responsible – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

San Antonio Metropolitan Statistical Area (SAMSA) – also known as the Relevant Marketplace, the geographic market area from which the CITY's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

SBE Directory - a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Office (SBO) – the office within the Economic Development Department (EDD) of the CITY that is primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Business Office Manager – the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

Small Minority Women Business Enterprise Program (S/M/WBE Program) – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor or CONTRACTOR in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between the CONTRACTOR and its subcontractors shall be submitted to the CITY prior to execution of this contract agreement and any contract modification agreement.

Suspension – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in the CITY's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth

in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of CONTRACTOR's and/or S/M/WBE firm's performance and payment under CITY contracts due to the CITY's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

Subcontractor/Supplier Utilization Plan – a binding part of this contract agreement which states the CONTRACTOR's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of CONTRACTOR's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Agreement is not inclusive of MBEs.

C. SBEDA Program Compliance – General Provisions

As CONTRACTOR acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and, moreover, that such terms are part of CONTRACTOR's scope of work as referenced in the CITY's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the

SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;

2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its Subcontractors or suppliers;

3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;

4. CONTRACTOR shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.

6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.

7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONTRACTOR and each of its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and CONTRACTOR has represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this contract.

D. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiatives to this contract. CONTRACTOR hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 7. (a), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, CONTRACTOR affirms that if it is presently certified as an SBE, CONTRACTOR agrees not to subcontract more than 49% of the contract value to a non-SBE firm.

E. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that

have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

F. Prompt Payment

Upon execution of this contract by CONTRACTOR, CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

G. Violations, Sanctions and Penalties

In addition to the above terms, CONTRACTOR acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;

3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;

4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and

5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;

2. Withholding of funds;

3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;

4. Refusal to accept a response or proposal; and

5. Disqualification of CONTRACTOR or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).