**CITY OF SAN ANTONIO**
**REQUEST FOR PROPOSAL (RFP)**
**FOR**
**CONSTRUCTION AND OPERATION OF KENNEL FACILITY**
**FOR ANIMAL CARE SERVICES**

**AMENDMENT NO. 3**

**March 8, 2013**

## I. REVISIONS TO THE RFP AND SOLICITATION DOCUMENTS

1. RFP submittal deadline and any reference to this deadline has been **revised** to **10:00 a.m. on MARCH 15, 2013.**

2. Funding Agreement and General Conditions indexed as Tab "6" on Form 2-Submittal Checklist and Table of Contents is attached hereto and posted to the City's website.

**END OF REVISIONS**

**STATE OF TEXAS** §
§ **FUNDING AGREEMENT**
**COUNTY OF BEXAR** §

This Agreement is hereby made and entered into by and between the City of San Antonio (hereinafter referred to as "City" or "Grantor"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, and _____ (hereafter referred to as "Grantee"), a Texas Non-profit Corporation, acting by and through its board and/or officers, hereto duly authorized.

WHEREAS, City held a Bond Election on May 12, 2012 and received approval from the voters to fund a variety of capital improvement projects to meet community infrastructure needs and improve the overall quality of life in San Antonio; and

WHEREAS, as part of the 2012-2017 Bond Program, Animal Care Services (hereafter referred to as "ACS") was allocated General Obligation Bond Funds for the construction of new animal kennels or the renovation of existing kennel facilities to increase City's capacity to house stray animals; and

WHEREAS, the official brochure for the Bond Election described this project as follows: "Stray Animal Kennels"; and

WHEREAS, City is bound to comply with the terms and conditions contained in the official brochure as presented to the voters; and

WHEREAS, City has identified Grantee as the appropriate party with which to contract for the fulfillment of the public purpose identified in the official 2012-2017 Bond Program brochure, in accordance with all applicable laws of public funding and the authorizing instruments for the public funding; and

WHEREAS, City shall enter into a long-term lease with Grantee for that portion of Grantee's real property owned/leased by Grantee, located at _____ upon which the new kennel facility will be constructed; and

WHEREAS, following Grantee's design and construction of the kennel facility, Grantee shall enter into a long-term lease with City for operation, care and maintenance of the City-owned kennel facility; and

WHEREAS, the public benefit to be gained from the project is the construction of a high volume rescue facility within City limits that will increase the number of animals taken from ACS and guarantee live outcomes.

NOW THEREFORE, 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. TERM

The term of this Agreement shall commence upon execution of the Agreement by the San Antonio City Manager or designee and continue for twenty-five (25) years.

## II. GENERAL RESPONSIBILITIES OF GRANTEE

2.01 Provided Grantee receives the funding described in this Agreement, Grantee hereby accepts full responsibility for the performance of all services and activities described in this Agreement to complete the construction of the Stray Animal Kennels Project by _____, 20___. The Project shall include, but not be limited to, the facility's design, construction, construction management, budget controls, scheduling, administration, construction engineering and inspection, quality assurance, drawing submittal review and approval coordination, project record keeping and close-out documents (hereafter referred to as "Project Scope").

2.02 Current budget estimates of the Project are $2.134 million, which represents City's total commitment to the Project. Grantee shall provide all necessary funding for the Project beyond City's total commitment contained herein and provide evidence to City that all Project funds in excess of City's total commitment have been secured. In the event the scope of the project is adjusted downward by Grantee, City shall have the option of adjusting its commitment downward accordingly.

2.03 Unless written notification by Grantee to the contrary is received and approved by City, Grantee's _____ shall be Grantee designated representative responsible for the management of this Agreement.

2.04 The Director of the Capital Improvements Management Services (hereafter referred to as "CIMS") or his/her designee shall be responsible for the administration of this Agreement on behalf of City until the completion of the design and construction phases of this Project; thereafter, the Director of ACS or his/her designee shall be responsible for the administration of this Agreement on behalf of City.

2.05 Communications between City and Grantee shall be directed to the designated representatives of each as set forth in **Section 2.03** and **Section 2.04** herein.

2.06 Grantee shall provide to City its plans and specifications for the Project (hereafter referred to as "Plans") and such Plans shall be subject to the review and approval of City, acting in its capacity as Grantor under this Agreement. After approval by City, Grantee shall not make any substantial changes to the Plans without the prior written approval of City. The approvals given in this **Article II** do not relieve Grantee of the burden of obtaining all necessary governmental approvals, including those provided by City through its relevant development departments and relevant boards and commissions.

2.07 After approval of the Plans by the City, Grantee shall submit any proposed design changes to the CIMS Director or his/her designee for review and approval to ensure their compatibility with the Plans.

2.08 City shall have authority to inspect the Project throughout the construction process to ensure compliance with the Plans. Grantee shall cause its design professional(s) to provide periodic certifications of construction, certifying that construction has been conducted in compliance with the Plans. Grantee shall submit said certification to the CIMS Director or his/her designee at the completion of the Project construction. City shall have the right to withhold funding until such certifications are provided.

2.09 Beginning on _____, 2013, and on each succeeding January 31st, throughout the term of the Agreement, Grantee shall provide to City an annual report (hereafter referred to as the "Annual Report"). The Annual Report shall include the following:

2.09.1 The number of cats and dogs for which Grantee provided care that year; the outcome of animal under Grantee's care that year; the average length of stay for the animals under Grantee's care that year; the number of dog and cat kennels Grantee currently has available; the criteria in use by Grantee to determine if a pet must be euthanized; and Grantee's then current overall kennel capacity.

2.09.2 Evidence of insurance coverages, with City listed as an additional insured, as outlined in **Article XII** herein.

2.09.3 Description of all maintenance activities, including routine, capital and any deferred maintenance, for the previous calendar year and planned maintenance activities for the upcoming calendar year.

2.10 Grantee hereby accepts full responsibility for the performance of all services and activities described in this Contract to complete the design and construction of the Project not later than _____ months from the date of execution of this Contract.

## III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

3.01 Grantee warrants and represents that it will comply with all Federal, State and Local laws and regulations and will use all reasonable efforts to ensure said compliance by any and all Consultants, Sub-Consultants, Contractors and Subcontractors that may work on the Project.

3.02 To the extent applicable, Grantee agrees to abide by Chapters 252, and 271 of the Texas Local Government Code, Chapters 2254 and 2267 of the Texas Government Code or other competitive contracting processes allowed for as express exceptions to these laws.

3.03 Plans must conform to Americans with Disabilities Act requirements and must be approved by the Texas Department of Licensing and Regulation before construction may begin. Inspections and final approval shall be the responsibility of Grantee.

3.04 **PREVAILING WAGE RATE AND LABOR STANDARD PROVISIONS.**

A. The requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," shall apply to this agreement. Grantee agrees that its construction contractor will comply with City Ordinance No. 71312 and its successors such as Ordinance No. 2008-11-20-1045 and will require subcontractors to comply with City Ordinance 71312 and its successors such as Ordinance No. 2008-11-20-1045 and shall not accept affidavits.

B. In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, Grantee shall request, upon advertisement of construction bids, and City shall provide Grantee with the appropriate and applicable wage determination, which includes the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform the construction work. Grantee is required, and shall require its Consultants, Sub-Consultants, Construction Contractor (hereafter referred to as "Contractor") and all Subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time Grantee calls for bids for construction of a given phase. Grantee further is required to cause the latest prevailing wage determination decision to be included in bids and contracts with Grantee's Contractor and all Subcontractors for construction of each Phase. Grantee is responsible for and shall collect and monitor weekly certified payrolls and perform site visits to ensure the prevailing wage is being paid to all workmen. City will audit certified payroll records as necessary in accordance with this Agreement.

C. Upon audit of the records and certified payrolls under this section, should City or its auditors find any violations, Grantee shall cause its Contractor to forfeit as a penalty to City $60.00 for each laborer, workman or mechanic employed for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by Grantee's Contractor or any Subcontractor. The establishment of prevailing wage rates, in accordance with Chapter 2258, Texas Government Code, shall not be construed to relieve Grantee from its obligation under any federal or state law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed under this Agreement.

3.05 **ENVIRONMENTAL**

Construction shall be in accordance with the all state and federal environmental requirements including all City applicable construction and development regulations.

### 3.06 SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM

*This Section 3.06 is subject to change, once the Project scope if known*

City, through City Ordinance No. 2010-06-17-0531, and as amended, has adopted and implemented a Small Business Economic Development Advocacy (hereafter referred to as "SBEDA") Program. Information regarding the SBEDA Ordinance may be found on City's Economic Development Department (EDD) website and is also available in hard copy form upon request to City. Grantee understands and agrees that, for portions of the Project undertaken by Grantee in the award of contracts, subcontracts and other opportunities for design, construction and operation of the kennel facility, this Agreement shall be subject to the SBEDA Affirmative Procurement Initiative and goal as determined by the applicable SBEDA Goal Setting Committee. **IMMEDIATELY UPON THE COMPLETION OF THE SCOPE OF WORK FOR THE DESIGN AND CONSTRUCTION OF THE KENNEL FACILITY AND PRIOR TO ISSUING BIDS OR SOLICITATIONS FOR ANY PRIME OR SUBCONTRACTORS,** Grantee shall submit a copy of the Project's scope of work to EDD's Small Business Office (hereafter referred to as the "SBO"). The SBO shall submit information related to the completed scope of work to the Goal Setting Committee for determination regarding the applicability of an Affirmative Procurement Initiative (hereafter referred to as "API"), relative goal and required date for return of a Subcontractor/Supplier Utilization Plan (hereafter referred to as the "Plan"). The applied API, goal and Plan shall be attached to and become a binding part of this Agreement.

## IV. OWNERSHIP, USE OPERATIONS

4.01 Grantee hereby acknowledges that it will construct the Project in a manner consistent with use by the general public and to the highest standard for the operation of animal kennels. Grantee hereby agrees that the operating hours of the facility will facilitate frequent use by the general public and that the scheduling of use, rules, regulations and other operational practices will not unreasonably limit access by the general public to use and enjoy the Project improvements. Further, Grantee shall not employ, nor allow others to employ, discriminatory practices in the use of the Project improvements. Except for special events, no admission fees shall be charged to the general public for the use of the Project facility. Grantee hereby agrees that the programs and use described above will continue for the term of this Agreement.

4.02 Grantee shall provide the following services from the completed Project throughout the term of this agreement:

- No less than _____ rescue animals taken from ACS thus increasing the City's shelter capacity.
- A _____ percentage increase in guaranteed live Outcomes for rescued animals; and
- _____ animals annually housed for reclaim or rescue.

4.03 Grantee shall be responsible for the operation of the Project facility and all associated costs will be the responsibility of Grantee.

4.04 The Project improvements shall be used for animal kennel facilities during the entire term of Grantee's Lease of the facility from City and the term of the Bonds in connection therewith.

4.05 Following the construction of the kennel facility, Grantee shall be given the ability to utilize its own fee schedule to cover operational costs for animals in its care. Facility operations shall be funded through revenues on site and Grantee shall be allowed to identify its own fee schedule, upon review and written approval of the ACS Director. Grantee shall retain all income generated as a result of the operation of the kennel facility.

## V. FUNDING AND ASSISTANCE BY CITY

5.01 City shall reimburse Grantee for all eligible expenses incurred hereunder. Grantee understands and accepts that City funds under this Agreement only may be utilized for "brick and mortar" construction or renovation that solely increases City's kennel capacity at Grantee's location, thus ensuring ACS's increased capacity. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City hereunder shall not exceed $2,134,000.00, reflecting City's total funding of the Project.

5.02 City shall not be obligated or liable under this Agreement to any party, other than Grantee and CIMS, for payment of any monies or for providing any goods or services.

5.03 Funding shall consist of reimbursements paid to Grantee for allowable "brick and mortar" construction costs of the Project, not to exceed $2,134,000.00 to be paid to Grantee on a cost-reimbursement basis and paid by City in phases of construction.

5.04 If, at the end of Grantee's 25-year lease of the new kennel facility from City, Grantee has successfully operated the kennel facility and if the ACS Director determines that Grantee has met the requirements of its submitted rescue and care plan on an annual basis throughout the duration of its 25-year term of its lease, City shall transfer ownership of the kennel facility to Grantee at no additional cost to Grantee.

5.05 In the event Grantee is unable to meet its annual animal rescue commitment and/or other contractual obligations at any time during it lease term, Grantee shall be required to, at City's option:

A. reimburse City in an amount calculated as follows:

$$\frac{\text{(\# of Annual Rescue Commitment)} - \text{(\# of Animal Actually Rescued)}}{\text{\# of Annual Rescue Commitment}}$$

$$\frac{\text{Total Contract Dollar Amount}}{\text{Length of Contract}}$$

or

B. At City's option, grant City to right to operate the kennel facility (either directly or indirectly through a third party) for the remainder of Grantee's lease term.

## VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE

6.01 Grantee agrees to maintain readily identifiable records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this Agreement. Grantee further agrees:

(A) That maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting practices; and

(B) That Grantee's record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

6.02 Grantee agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials (hereafter referred to as "Records") pertaining to activities pertinent to this Agreement for a minimum of four (4) years from the completion of the Project. Records shall be retained by Grantee in an electronic format and Grantee shall forward the records to City, upon request, upon the termination of this Agreement.

6.03 Grantee shall maintain a numbered interest bearing account in an FDIC insured financial institution for the receipt and disbursement of all funds received pursuant to this Agreement and Grantee further agrees that all checks and withdrawals from such account shall have itemized documentation relating to the "brick and mortar" construction and the use of City funds provided under this Agreement. All interest earned on funds in the account shall be applied to the allowable costs of construction of the Project in accordance with the provisions hereof.

6.04 During construction of the new kennel facility, City shall reimburse Grantee on a monthly basis upon receipt and approval of an invoice submitted through City's electronic Project Reporting Information Management Exchange Link (hereafter referred to as "COSA PRIME*link*")

6.05 All requests for reimbursement shall be submitted through the COSA PRIME*link*. Grantee shall sign a Business Level Agreement and ensure that all of its employees and/or representatives utilizing PRIME*link* sign and comply with an Individual User Agreement. Grantee's requests for reimbursement shall be completed on PRIME*link* or through through the utilization of forms and instructions approved by CIMS. Prior to the initial request for reimbursement, Grantee shall submit a schedule of values for payment to be approved by CIMS, which CIMS' approval shall not be unreasonably withheld, conditioned or delayed. Any changes to the schedule of values once approved shall be processed and approved as task orders through the COSA PRIME*link*.

6.06 Prior to reimbursement, City shall have the right to inspect work completed, to ensure conformance with the approved Plans. Invoices shall include all supporting documentation of costs have been incurred by Grantee, as required by City.

6.07 Following any reimbursement by City to Grantee, City agrees to provide Grantee written notice regarding any expenditure City reasonably determines to be outside the permissible parameters of this Agreement. Said notice shall provide Grantee thirty (30) days from receipt of said notice to cure the deficiency cited by City or refund to City any sum of money paid by City to Grantee determined to:

(A) not having been spent by Grantee strictly in accordance with the terms of this Agreement; or

(B) not being supported by adequate documentation to fully justify the expenditure.

6.08 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in **Section 6** herein as a result of any auditing or monitoring by City, Grantee shall refund such amount to City within thirty (30) working days of City's written request therefore, wherein the amount disallowed or disapproved shall be specified.

## VII. ALLOWABLE EXPENDITURES

7.01 Upon preparation of a design plan, construction plan and budget by Grantee, Grantee shall submit said design plan, construction plan and budget to City for approval of any costs to be paid from funds received hereunder. Costs shall be considered allowable only if so approved in Grantee's construction budget, or otherwise approved in advance by City in writing, and incurred directly and specifically in the performance of and in compliance with this Agreement and with all City, state and federal laws; regulations and ordinances affecting Grantee's operations hereunder. Only the following categories of costs shall be considered allowable:

- Design costs;
- Construction costs, including contingencies; and
- Other allowable brick and mortar construction-related costs

Expenditures of the funds provided under this Agreement only shall be allowed if incurred directly and specifically in the performance of and in compliance with this Agreement and all applicable City, state and federal laws, regulations and/or ordinances.

7.02 The following shall not be considered allowable costs under this Agreement:

- Personnel costs, salaries or wages paid directly by Grantee or other similarly affiliated organization;

- Travel and travel-related expenses;
- Costs or fees for consultant and/or professional services, except for those directly related to the kennel construction Project;
- Costs or fees associated with attendance at meetings, seminars or conferences;
- Costs or fees associated with regular maintenance and operation;
- Fundraising;
- Equipment and Furnishings, except for items of a capital nature, which are being provided by Grantee's General Contractor and shown on the approved Plans and specifically approved by City;
- Advertising; and
- Insurance.

7.03 Written requests for prior approval shall be Grantee's responsibility and shall be made to City thirty (30) days from date necessary to permit a thorough review by City. Procurements and/or purchases which must be approved pursuant to the terms of this Agreement shall be conducted entirely in accordance with all applicable terms, provisions and requirements hereof.

## VIII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

Grantee further represents and warrants that:

(A) All information, data or reports heretofore or hereafter provided to City is, shall be and shall remain complete and accurate, as of the date shown on the information, data or report, and that since said date shown, shall not have undergone any significant change without written notice to City.

(B) It is financially stable and capable of fulfilling its obligations under this Agreement and that it shall provide City immediate written notice of any adverse material change in the financial condition of Grantee that may materially and adversely effect its obligations hereunder.

(C) No litigation or proceedings presently are pending or, to Grantee's knowledge, threatened against Grantee.

(D) None of the provisions contained herein contravene or in any way conflict with the authority under which Grantee is doing business or with the provisions of any existing indenture or agreement of Grantee.

## IX. ACCESSIBILITY OF RECORDS

9.01 At any time and as often as City may deem necessary, upon three (3) days written notice, Grantee shall make all of its records pertaining to this Agreement available to City or any of its authorized representatives and shall permit City or any of its authorized representatives to audit, examine and make excerpts and/or copies of Grantee's records.

9.02 Grantee agrees and represents that it will cooperate with City, at no charge to City, to satisfy, to the extent required by law, any and all requests for information received by City under the Texas Public Information Act or related laws pertaining to this Agreement.

## X. MONITORING AND EVALUATION

Grantee agrees that City may carry out reasonable monitoring and evaluation activities, so as to ensure compliance by Grantee with this Agreement, and Grantee shall provide reasonable access to City related to such activities and with all other laws, regulations and ordinances related to the performance hereof.

## XI. INDEMNITY

11.01 Grantee covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS City and its elected officials, employees, officers, directors, volunteers and representatives of 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 City, directly or indirectly arising out of, resulting from or related to Grantee's activities under this Agreement, including any acts or omissions of Grantee, any agent, officer, director, representative, employee, Consultant, Sub-Consultant, Contractor or Subcontractor of Grantee, and their respective officers, agents, employees, directors and representatives, while in the exercise of performance of the rights or duties under this Agreement. The indemnity provided for in this **Article XI** 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 GRANTEE 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 GOVRNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

11.02 The provisions of this INDEMNITY solely are for the benefit of the parties hereto and not indented to create or grant any rights, contractual or otherwise, to any other person or

entity. Grantee shall advise City in writing within twenty four (24) hours of any claim or demand against either City or Grantee known to Grantee that is related to or arising out of Grantee's activities under this Agreement and Grantee shall see to the investigation and defense of such claim or demand at Grantee's sole cost. City shall have the right, at its option and at its own expense, to participate in such defense without relieving Grantee of any of its obligations under this **Article XI**.

## XII. INSURANCE & BONDS

12.01 Prior to the commencement of any work under this Agreement, Grantee shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to CIMS, which clearly shall be labeled, "Construction and Operation of Kennel Facility" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept Memorandum of Insurance or Binders as proof(s) of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number and be mailed, along with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's CIMS Contract Services Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

12.02 City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement 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 this Agreement. In no instance will City allow any modification to insurance requirements whereupon City may incur increased risk.

12.03 Grantee's financial integrity is of interest to City; therefore, subject to Grantee's right to maintain reasonable deductibles in such amounts as are approved by City, Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, at Grantee's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted 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:

| TYPE | AMOUNTS |
|---|---|
| | |
| 1. Workers' Compensation | Statutory |

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

12.04 Grantee agrees to obtain all insurance coverages with minimum limits of not less than those limits delineated in **Section 12.03 (Insurance table)** from each vendor subcontracted by Grantee and provide a Certificate of Insurance and Endorsement that names Grantee and City as additional insureds.

12.05 City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto, as they apply to the limits required by City, 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). Grantee shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within ten (10) days of the requested change. Grantee shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: CIMS Department
Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966

12.06 Grantee agrees that, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

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

- Provide for an endorsement that the "other insurance" clause shall not apply to City where City is an additional insured shown on the policy;

- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of City.

- Provide thirty (30) calendar days 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.

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

12.08 Nothing herein contained shall be construed as limiting in any way the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's or its Sub-Consultants', Contractor(s)' or Subcontractors' performance of the work covered under this Agreement.

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

12.10 It is understood and agreed that the insurance required under this Agreement is in addition to, separate and apart from any other obligation contained in this Agreement.

12.11 Grantee shall comply with Texas Government Code Chapter 2253 provisions, regarding performance and payment bonds on certain Public Works contracts (copies of required bonds must be provided to City prior to the start of construction).

## XIII. NONDISCRIMINATION

Grantee covenants that it, its agents, employees and/or anyone under its control, shall not discriminate against any individual or group on account of race, color, sex, age, religion, national origin, handicap or familial status in employment practices or in the use of or admission to the premises, which said discrimination Grantee acknowledges is prohibited.

## XIV. CONFLICT OF INTEREST

14.01 Grantee covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Grantee

further covenants that, in the performance of this Agreement, no persons having such interest shall be employed or appointed as a member of Grantee's governing body or of its staff.

14.02 Grantee further covenants that no member of its governing body or of its staff shall possess any interest in or use their position for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business or other ties.

14.03 No member of Grantee's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Agreement shall:

(A) Participate in any decision relating to this Agreement which may affect his or her personal interest or the interest of any corporation, partnership or association in which he or she has a direct or indirect interest;

(B) Have any direct or indirect interest in this Agreement or the proceeds thereof.

## XV. POLITICAL ACTIVITY

None of the activities performed hereunder shall involve and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation.

## XVI. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

All finished or unfinished reports, documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules or other appended documentation to any proposal or contract, along with any responses, inquiries, correspondence and related material submitted by Grantee, shall, upon receipt, become the property of City.

## XVII. CONTRACTING

17.01 Any work or services contracted hereunder shall be contracted only by written contract or agreement and, unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Agreement. Compliance by Consultants, Sub-

Consultants, Contractors and/or Subcontractors with the terms and conditions of this Agreement shall be the responsibility of Grantee. Grantee is responsible to ensure that all local, state and federal permits and approvals required for the activities under this Agreement are obtained.

17.02 City shall, in no event, be obligated to any third party, including any Consultant, Sub-consultant, Contractor and/or Subcontractor of Grantee, for performance of or payment for work or services.

## XVIII. CHANGES AND AMENDMENTS

18.01 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof only shall be by amendment in writing executed by both City and Grantee under authority granted by formal action of the Parties' respective governing bodies.

18.02 It is understood and agreed by City and Grantee that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall automatically be incorporated into this Agreement without written amendment hereto and shall become a part hereof, as of the effective date of the changed rule, regulation or law.

## XIX. ASSIGNMENTS

Grantee shall not transfer, pledge or otherwise assign this Agreement, any interest in and to this Agreement or any claim arising pursuant to this Agreement without first procuring the written approval of City. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

## XX. SEVERABILITY OF PROVISIONS

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws including, but not limited to, City's Charter, City's Code or a City ordinance, then and in that event it is the intention of both City and Grantee that such invalidity, illegality or unenforceability shall not affect any other clause or provision of this Agreement and the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision never was contained herein; it also is the intention of City and Grantee that, in lieu of each clause or provision of this Agreement that is deemed or rendered invalid, illegal or unenforceable, there be added as a part of the Agreement 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.

## XXI. NON-WAIVER OF PERFORMANCE

21.01 No waiver by either City or Grantee of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or of any other term, condition, covenant or

guarantee herein contained. Further, any failure by either City or Grantee to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either City or Grantee of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

21.02 No act or omission by either City or Grantee shall, in any manner, impair or prejudice any right, power, privilege or remedy available to either City or Grantee by law or in equity and such rights, powers, privileges, or remedies shall be specifically preserved hereby.

21.03 No representative or agent of City may waive the effect of the provisions of this **Article XXI** without formal action from the San Antonio City Council.

## XXII. ENTIRE AGREEMENT

This Agreement constitutes the final and entire agreement between the Parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto unless same be in writing, dated subsequent to the date hereof and duly executed by the Parties.

## XXIII. NOTICES

23.01 For purposes of this Agreement, all official communications and notices between City and Grantee shall be deemed sufficient if in writing and mailed via the USPS, registered or certified mail, postage prepaid, to the addresses set forth below:

City: Director Capital Improvements Management
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
San Antonio, Texas 78283-3966

Grantee: *(add address here)*
_____
_____
_____

23.02 Notice of change of address by either Party to this Agreement shall be made in writing and mailed to the other Party's last known address within five (5) business days of such change.

## XXIV. PARTIES BOUND

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

## XXV. RELATIONSHIP OF PARTIES

Nothing contained herein shall be deemed or construed by either City, Grantee or by any third party as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the Parties.

## XXVI. TEXAS LAW TO APPLY

This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the Parties created hereunder are performable in Bexar County, Texas.

## XXVII. GENDER

Words of any gender used in this Agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, unless the context otherwise requires.

## XVIII. CAPTIONS

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

## XXIX. LEGAL AUTHORITY

29.01 Grantee represents, warrants, assures, and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required.

29.02 The signer of this Agreement for Grantee represents, warrants, assures and guarantees that he/she has full legal authority to execute this Agreement on behalf of Grantee and to bind Grantee to all terms, performances and provisions herein contained.

**EXECUTED IN DUPLICATE ORIGINALS,** each of which shall have the full force and effect of an original this _____ day of _____, 20_____.

**CITY OF SAN ANTONIO**

By: _____
Sheryl Sculley
San Antonio City Manager

**GRANTEE:** _____

By: _____
(Name and Title)

**APPROVED AS TO FORM:**

_____
CITY ATTORNEY