

**SERVICES AND REVENUE CONTRACT  
FOR  
REMOVAL AND DISPOSITION OF JUNKED VEHICLES**

STATE OF TEXAS                   §  
  §  
COUNTY OF BEXAR               §

This Contract is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City”) acting by and through its City Manager, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ and **Pick-N-Pull, Inc.** by and through its General Manager (“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 City’s Development Services Department.
- 1.4 “DSD” or “Department” shall mean the City’s Development Services Department.
- 1.5 “Heavy Vehicle” is defined as any vehicle or combination vehicle (tractor-trailer, semi-trailer, full trailer and etc.) longer than forty (40) feet long, regardless of width.
- 1.6 “Inoperable” shall mean a vehicle that is in such condition at the time of inspection, that it is no longer usable for the purpose for which it was manufactured, regardless of the potential for repair or restoration. If the vehicle is wrecked, dismantled or partially dismantled it is presumed to be inoperable.
- 1.7 “Junked Vehicle” shall mean a vehicle that is self-propelled or was manufactured to be self-propelled, or any part thereof, in ordinary public view, which remains inoperable for a continuous period of (10) ten days, and for the purpose of this Contract is so designated as a Junked Vehicle by the Development Services Director. The term shall also include disassembled parts.
- 1.8 “Light Vehicle” is defined as a vehicle that is not longer than twenty (20) feet or wider than seven (7) feet.
- 1.9 “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.
- 1.10 “Moderate/Medium Vehicle” is defined as a vehicle that is longer than twenty (20) feet, but does not exceed forty (40) feet; or, a vehicle that is not longer than twenty (20) feet, but is wider than seven (7) feet.

## II. TERM

- 2.1 Original Contract Term. Unless sooner terminated in accordance with the provisions of this Contract, the term of this Contract is for a two (2) year period commencing upon approval of the San Antonio City Council, or FEBRUARY 1, 2020, whichever is later.
- 2.2 Renewals. At City's option, this Contract may be renewed under the same terms and conditions for up to (3), additional one (1) year periods. Renewals shall be in writing and signed by Director, without further action by the San Antonio City Council, subject to and contingent upon appropriation of funding therefor.
- 2.3 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 additional contract period beyond the initial term set forth in 2.1 is subject to and contingent upon subsequent appropriation.

## III. SCOPE OF SERVICES

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

### 3.2 DELIVERY OF SERVICES

- 3.2.1 Contractor shall have and maintain a valid salvage dealer's license per the Texas Administrative Code, title 43, Part 10, Chapter 221.
- 3.2.2 Contractor shall provide removal and disposition of junked vehicles Monday – Friday (7:45 a.m. – 4:30 p.m.), excluding official City holidays, and Saturdays (10:00 a.m. – 7:00 p.m.). Services shall be scheduled on an as-needed basis by the Development Services Department throughout the duration of the contract. Contractor shall complete work during normal work hours, unless the Code Compliance Officer or designee, request alternate times beyond normal work hours.
- 3.2.3 Contractor shall give "priority" service to the City of San Antonio for any call for services in the City. Response times for removal and disposition of junked vehicles services not considered by the City as an "emergency" will be answered within **24 hours** of receiving the call. Junked vehicles which are considered a matter of public or personal safety by the City will be considered an "emergency" and Contractor shall answer within **four (4) hours** of receiving the call; therefore, reliable emergency response capabilities are critical. The City reserves the sole and exclusive right to determine when a call is considered an "emergency". Due to the number of locations to be serviced, Contractor must have qualified local service personnel employed throughout the duration of the contract.
- 3.2.4 All unique requirements and or regulations for each location shall be strictly followed by Contractor and Contractor's employees. PRIOR to performing any work, Contractor's personnel shall make contact with the Code Compliance Supervisor or his duly authorized representative to inform them of their presence, and the purpose of their visit.
- 3.2.5 Work that cannot be completed within the required time frame must be approved in writing in advance by the Code Compliance Supervisor or designee. The Code Compliance Supervisor or designee reserves the right to terminate the job with Contractor and solicit outside quotes if the required time frame cannot be met.
- 3.2.6 If Contractor cannot remove a vehicle that has a work order for tow without moving another, Contractor shall move the vehicle in question so that services can be rendered as requested.
- 3.2.7 If Contractor cannot perform services because the vehicle in question exceeds its capabilities, Contractor shall solicit quotes to remove the vehicle in question and submit the lowest bid quote to the Director or

designee, for approval and signature. Contractor shall submit City-approved quotes for reimbursement after the services are completed.

- 3.3 **SCHEDULE.** The City shall notify Contractor throughout the course of the contract term as services are required. Contractor shall complete requested services upon notification. Failure to complete services within required schedule may result in termination of the contract.
- 3.4 **REMOVAL SITE.** Contractor shall assume full responsibility and liability for and act prudently in all aspects of handling, transport and disposal of any vehicle, and secure any licenses and permits required by law. 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 Contractor.
- 3.5 **DISPOSITION OF VEHICLES.** Contractor shall ensure that any disposal vehicle including any scrap, waste or hazardous materials are removed in compliance with Federal, State, and local laws and regulations. Contractor may salvage and/or recycle any material from vehicles, but vehicles may not be reconstructed or made operable. Vehicles must be taken directly to a licensed salvaged or scrap yard, or a licensed motor vehicle demolisher. Junked vehicles shall not be taken to, nor stored, even temporarily, at any location other than a licensed salvage or scrap yard, or a licensed motor vehicle demolisher's yard.
- 3.6 **UNIFORM AND ID BADGES.** Contractor shall ensure that all personnel, to include any subcontractors, wear uniforms and an ID badge at all times.
- 3.7 **TRAINING.** Contractor shall ensure its employees and any subcontractors are properly trained in accordance with Contractor's best practices, safety and procedures including properly transporting and disposing of junked vehicles and any related debris.
- 3.8 **PERSONNEL/EQUIPMENT/SUPPLIES:** Contractor shall supply all necessary personnel, equipment and supplies needed for the performance of the work of this contract. Such equipment shall be of the size and type customarily used in work of this kind and no equipment shall be used which is harmful to the surrounding area. All equipment must be in good working condition at all times. Should a junked vehicle or vehicles be inaccessible through the use of standard equipment and towing vehicles in Contractor's inventory, the City and Contractor shall determine the best means for the removal of said vehicle(s), and the vehicle shall be removed only with advance written approval by the City.
- 3.9 **SAFETY EQUIPMENT.** Contractor shall control site safety and security at all times, observe 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. 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.
- 3.10 City shall issue notice to the Texas Department of Transportation of the abatement of each Junked Vehicle removed pursuant to this contract.

#### **IV. COMPENSATION**

- 4.1 Contractor shall remit to the City the amounts set out below for each vehicle removed by Contractor. All fees shall be remitted to the City of San Antonio at the beginning of each month but no later than the 15<sup>th</sup> of each month.
  - 4.1.1 **\$41.00** per junked **Light** vehicle removed
  - 4.1.2 **\$80.00** per junked **Moderate/Medium** vehicle removed
  - 4.1.3 **\$162.00** per junked **Heavy** vehicle removed

- 4.2 Contractor's payment shall be accompanied by a statement showing the following information for each Junked Vehicle for which payment is being made.
- (a) Vehicle Identification Number, if available;
  - (b) State and License Plate Number, if available;
  - (c) Date of Removal;
  - (d) Location from which the vehicle was removed; and
  - (e) Description of vehicle, including make, model and color.
- 4.3 Should the removed vehicle be disassembled parts, Contractor's statement should indicate "Parts Only", and include the:
- (a) Date of removal;
  - (b) Location from which the parts were removed; and
  - (c) List of parts.
- 4.4 Contractor shall remit the payment described in Section 4.1 above on the first of each month for the Junked Vehicles removed the previous month.
- 4.5 No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City.
- 4.6 Final acceptance of work products and services require written approval by City. The approving 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. OWNERSHIP OF DOCUMENTS**

- 5.1 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.
- 5.2 Contractor acknowledges and agrees that all Local Government Records, as described herein, produced in the course of the work required by this contract will belong to and be the property of City. Contractor will turn over to City all such records. Contractor shall not, under any circumstances, release any records created during the course of performance of this contract to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.
- 5.3 In accordance herewith, Contractor agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

## **VI. RECORDS RETENTION & RIGHT TO AUDIT**

- 6.1 Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all

reasonable times and as often as City may deem necessary during the Contract period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

- 6.2 Contractor shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as “retention period”) from the date of termination of the Contract. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Contractor to return the documents to City at Contractor’s expense prior to or at the conclusion of the retention period. In such event, Contractor may retain a copy of the documents at its sole cost and expense.
- 6.3 City reserves the right to audit selected Contractor’s books and records with the City determines relevant for the purpose of determining compliance with the Contract. Contractor shall maintain their books and records in sufficient detail to allow determination of compliance with the Contract and to include sales revenue, taxes, and refunds. City reserves the right to require that any and all such books and records be submitted for audit to the City or to CPA selected by the City or any other City designee.
- 6.4 Nothing herein shall be construed as limiting City's rights of access to any examination of books, documents, papers and records, which may exist independently of this contract provision.
- 6.5 Contractor shall notify City, immediately, in the event Contractor receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Contractor understands and agrees that City will process and handle all such requests.

## **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 either party without cause upon ninety (90) calendar days’ written notice, which notice shall be provided in accordance with Article VIII. Notice.
- 7.3 Termination-Breach. Should Contractor fail to fulfill in a timely and proper manner, as determined solely by the Director, its material obligations under this contract, or violate any of the material terms of this contract, City shall have the right to immediately terminate the contract in whole or in part. Notice of termination shall be provided in writing to Contractor, effective upon the date set forth in the notice. City may, in City’s sole discretion, provide an opportunity for Contractor to cure the default. If City elects to offer an opportunity to cure, City shall provide notice, which notice shall be provided in accordance with Article VIII. Notice, to Contractor specifying the matters in default and the cure period. If Contractor fails to cure the default within the cure period, City shall have the right, without further notice, to terminate the contract in whole or in part. Such termination shall not relieve Vendor of any liability to the City for damages sustained by virtue of any breach by Vendor. The occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Contract:

- 7.3.1 The sale, transfer, pledge, conveyance or assignment of this Contract without prior approval, as provided in Article XII. Assignment and Subcontracting; or
- 7.3.2 Any material breach of the terms of this Contract, as determined solely by City.
- 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 Regardless of how this Contract is terminated, Contractor shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Contractor, or provided to Contractor, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Contractor in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such documents, if requested by City.
- 7.6 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Contract, Contractor shall submit to City its claims, in detail, for the monies owed by City for services performed under this Contract through the effective date of termination. Failure by Contractor to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Contractor of any and all right or claims to collect moneys that Contractor may rightfully be otherwise entitled to for services performed pursuant to this Contract.
- 7.7 Upon the effective date of expiration or termination of this Contract, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Contract.
- 7.8 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

Except where the terms of this Contract expressly provide otherwise, any election, notice or communication required or permitted to be given under this Contract 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  
 Development Services Department  
 P.O. Box 839966  
 San Antonio, Texas 78283-3966

If intended for Contractor, to:

Pick-N-Pull, Inc.  
 11795 Applewhite Road  
 San Antonio, Texas 78224

## IX. INTELLECTUAL PROPERTY

9.1 Contractor shall pay all royalties and licensing fees. Contractor shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, trademarks, trade secrets, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if Contractor has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.

9.2 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware or any other intellectual property infringe upon any United States or International patent, copyright or trademark, Contractor will immediately:

Either:

9.2.1 Obtain, at Contractor's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, both the programs and hardware or any other intellectual property as the case may be; or

9.2.2 Alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated; and

9.2.3 Reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

9.3 Contractor further agrees to:

9.3.1 Assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent, copyright, trademark or any other intellectual property rights arising from the use and/or sale of the equipment or software under this Contract;

9.3.2 Assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses; and

9.3.3 Indemnify the City against any monetary damages and/or costs awarded in such suit;

Provided that:

9.3.4 Contractor is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Contractor agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City;

9.3.5 The Software or the equipment is used by the City in the form, state, or condition as delivered by Contractor or as modified without the permission of Contractor, so long as such modification is not the source of the infringement claim;

9.3.6 The liability claimed shall not have arisen out of the City's negligent act or omission; and

9.3.7 The City promptly provide Contractor with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that Contractor assumes responsibility under this section.

**X. INSURANCE**

- 10.1 Prior to the commencement of any work under this Contract, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City’s Development Services Department, which shall be clearly labeled “Removal and Disposition of Junked Vehicles” in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent’s signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Contract until such certificate and endorsements have been received and approved by the City’s Development Services Department. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.
- 10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Contract and any extension or renewal hereof 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 Contract. In no instance will City allow modification whereby City may incur increased risk.
- 10.3 A Contractor’s financial integrity is of interest to the City; 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 this Contract, and any extension hereof, 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:

| <i>INSURANCE TYPE</i>  | <i>LIMITS</i>  |
|--|--|
| 1. Workers' Compensation   | Statutory  |
| 2. Employers' Liability  | \$1,000,000/\$1,000,000/\$1,000,000  |
| 3. Commercial General Liability Insurance to include coverage for the following:<br>a) Premises/Operations<br>b) Products/Completed Operations<br>c) Personal/Advertising Injury<br>d) Contractual Liability<br>e) Independent Contractors | For Bodily Injury and Property Damage<br>\$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.   |
| 5. Professional Liability<br>(Claims-made Coverage)  | \$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.<br><br>Coverage to be maintained and in effect for no less than two years subsequent to the completion of the |



|  |  |
|--|--|
|  | professional service.  |
| 6. Environmental Insurance –(Contractor’s Pollution Liability (Claims-made coverage) | <p>\$1,000,000 per occurrence;<br/>\$2,000,000 general aggregate for claims associated with hazardous materials, to include spills and mitigation.</p> <p>Coverage to be maintained and in effect for no less than five years subsequent to the completion of the project.</p> |
| 7. Garage Keepers Liability  | <p>\$1,000,000 per occurrence;<br/>\$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.</p>  |

10.4 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 additional insureds. 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.

10.5 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, declaration page, 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 the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

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

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

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

- 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;
  - Workers’ compensation, employers’ liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
  - 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.
- 10.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor 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 Contract.
- 10.8 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 hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- 10.9 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 this Contract.
- 10.10 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 Contract.
- 10.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Contract and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- 10.12 Contractor and any subcontractors 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 Contract, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives**

**while in the exercise of the rights or performance of the duties under this Contract. 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 CONTRACT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.
- 11.3 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 in writing.
- 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 the 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 (SBEDA)**

As a condition of entering into this Contract, 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 Contract and may result in termination of this Contract, 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 Contract. Contractor shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

## **XV. CONFLICT OF INTEREST**

15.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. 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 or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
- an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
- an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

15.2 Pursuant to the subsection above, Contractor warrants and certifies, and this Contract is made in reliance thereon, that by contracting with the City, Contractor does not cause a City employee or officer to have a prohibited financial interest in the Contract. Contractor further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City’s Ethics Code.

## **XVI. AMENDMENTS**

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Contractor. Director shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

## **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**

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

- 19.2 Non-Discrimination. As a party to this contract, Contractor understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X. of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

## **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 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 & LEGAL FEES**

- 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.
- 21.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

## **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, and shall be interpreted in the order of priority as appears below, with this document taking priority over all exhibits:

- Exhibit A – City’s Request for Proposal (RFP 19-094) including its addendums, exhibits and attachments
- Exhibit B – Contractor’s Proposal dated October 14, 2019

## **XXVI. ENTIRE AGREEMENT**

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

## **XXVII. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**

- 27.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:
- (1) does not boycott Israel; and
  - (2) will not boycott Israel during the term of the contract.
- 27.2 This section only applies to a contract that:
- (1) is between a governmental entity and a company with 10 or more full-time employees; and
  - (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.
- 27.3 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- 27.4 "Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship.
- 27.5 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City hereby relies on Company’s verification. If found to be false, City may terminate the contract for material breach.

## **XXVIII. PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION**

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Contractor hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Contractor’s certification. If found to be

false, or if Contractor is identified on such list during the course of its contract with City, City may terminate this Contract for material breach.

**XXIX. PROHIBITED CONTRIBUTIONS**

- 29.1 Contractor acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a “high-profile” discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 calendar days following the contract award. Contractor understands that if the legal signatory entering the contract has made such a contribution, the city may not award the contract to that contributor or to that contributor’s business entity. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.
- 29.2 Contractor acknowledges that the City has identified this Contract as high profile.
- 29.3 Contractor warrants and certifies, and this Contract is made in reliance thereon, that the individual signing this Contract has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Contract. Should the signor of this Contract violate this provision, the City Council may, in its discretion, declare this Contract void.

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

**CITY OF SAN ANTONIO**

**PICK-N-PULL, INC.**

\_\_\_\_\_  
(Signature)  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature)  
Printed Name: **Lloyd R. Welty, Jr.**  
Title: **General Manager**  
Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Assistant City Attorney