

AN ORDINANCE 2017-09-21-0709

AUTHORIZING A SIX-YEAR CONTRACT AND TWO, OPTIONAL ONE-YEAR EXTENSIONS WITH ALANIS WRECKER SERVICE TO PROVIDE AND MANAGE STORAGE SERVICES FOR THE IMPOUNDING, RELEASING AND AUCTIONING OF VEHICLES, FOR THE SAN ANTONIO POLICE DEPARTMENT, WITH AN ANNUAL REVENUE OF APPROXIMATELY \$3.0 MILLION, BASED ON THE GRADUATED SCALE OF THE TOTAL ADJUSTED GROSS INCOME, OR 85% OF AUCTION SALES AND 2% OF IMPOUND FEES, WHICHEVER IS GREATER.

* * * * *

WHEREAS, on May 10, 2017, the City of San Antonio issued a Request for Proposals for the total management of the Growdon vehicle storage facility (VSF), including impounding, releasing and auctioning vehicles, for the San Antonio Police Department (SAPD); and

WHEREAS, four responsive proposals were received and evaluated, and the top three respondents were short-listed and interviewed; and

WHEREAS, the evaluation committee is recommending the highest ranked and most responsive firm, Alanis Wrecker Service, for this contract based on its proposed business model and the administrative and software support provided by its subcontractor, TEGSCO, LLC (AutoReturn); and

WHEREAS, this contract with Alanis Wrecker Service will provide the City with up to \$3 million in revenue annually and an estimated \$500,000.00 per year in capital improvements to the VSF for at least the first two years of the contract; and

WHEREAS, Alanis Wrecker Service will begin providing services on October 1, 2017 for an initial six year term with an option for the City to renew for two additional, one year periods;
NOW THEREFORE:

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

SECTION 1. The City Manager or her designee are hereby authorized to execute a contract with Alanis Wrecker Service for total management of the Growdon vehicle storage facility for an initial term of six years, with the option for the City to renew for two additional, one year periods, subject to and contingent upon the deposit of all required bonds, performance deposits, insurance certificates and endorsements. Attached hereto and incorporated herein for all purposes as **Exhibit I** is the contract in substantially final form.

SECTION 2. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 217000000045 and General Ledger 4404237.

SECTION 3. The financial allocations in this ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the

City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this ordinance.

SECTION 4. This ordinance is effective immediately upon passage by eight affirmative votes; otherwise it is effective on the tenth day after passage.

PASSED and APPROVED this 21st day of September, 2017.



M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Agenda Item:	46						
Date:	09/21/2017						
Time:	12:17:48 PM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a six-year contract and two optional one-year extensions with Alanis Wrecker Service to provide and manage storage services for the impounding, releasing and auctioning of vehicles for the San Antonio Police Department with revenue of approximately \$3.0 million, based on the graduated scale of the Total Adjusted Gross Income, or 85% of Auction Sales and 2% of Impound Fees in revenue, whichever is greater of the two. [Erik Walsh, Deputy City Manager; William McManus, Chief of Police]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				x
William Cruz Shaw	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x			x	

LC
09/21/17
Item No. 46

Exhibit I

**PROFESSIONAL SERVICES AGREEMENT
FOR
TOTAL MANAGEMENT OF GROWDON VEHICLE STORAGE FACILITY**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement 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 Alanis Wrecker Service by and through its owner, Alejandro Alanis (“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 Agreement, the following terms shall have meanings as set out below:

- 1.1 “Capital Improvement” is defined as improvements to the Vehicle Storage Facility, including items listed in Exhibit A, which includes public works projects. (See attached hereto Exhibit A, Contractor’s Capital Improvement Plan.)
- 1.2 “Chief” shall mean the Chief of Police of the San Antonio Police Department.
- 1.3 “City” is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.4 “Contractor” is defined in the preamble of this Agreement and includes its successors.
- 1.5 “Customer” shall mean a person or entity, seeking to claim a vehicle from the Vehicle Storage Facility, which may include owners, lienholders and/or person/entities demonstrating owners’ authority to claim a vehicle.
- 1.6 “Department” is defined as the San Antonio Police Department (hereinafter “SAPD”).
- 1.7 “Hazardous Substances” shall mean any and all hazardous and toxic substances, wastes or materials, any pollutants, contaminants, or dangerous materials (including polychlorinated biphenyls, friable asbestos, volatile and semi-volatile organic

compounds, oil, petroleum products and fractions and radioactive materials), or any other similar substances regulated under Environmental Laws.

- 1.8 “Local Government Records” 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 the public has access to it or 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. Notwithstanding anything herein to the contrary, the definition of “Local Government Records” does not include or refer to any software owned or utilized by Contractor, nor any intellectual property rights that Contractor has or may have in and to the software or other property.
- 1.9 “Other Collection Activities” is defined as activities which may include but are not limited to collecting for Parking Citations due on vehicles to be released from the Vehicle Storage Facility. The terms and scope of “Other Collection Activities” that may be included in the performance of this Agreement shall be mutually agreed upon by Contractor and City.
- 1.10 “Other Services” shall mean services such as photocopying, vending (except the vending of drinks and snacks), notary and other revenue generating services which may be provided at the Vehicle Storage Facility by the Contractor mutually agreed upon by Contractor and City and payment of the Percent Payment due to City on such revenue associated with other services.
- 1.11 “Owner” is defined as the owner, operator, lessee, or person with legal right to possession.
- 1.12 “Public Works” shall mean the construction, alteration or repair of a public building or carrying out or completing any public work, including remodeling, extending, repairing, or demolishing a structure or otherwise improving realty or an appurtenance thereto through similar activities. For purposes of this Agreement, a “public works project” includes demolition, paving, and erecting fencing.
- 1.13 “Towing Service Record” is defined as the record of towing services (hereinafter “TSR”).
- 1.14 “Vehicle Storage Facility” is defined as the City-owned facility located at 3625 Growdon Road in the southwest quadrant of San Antonio – 21.855 acres of City-owned property in Lot 1, Block 1 of New City Block 13964 (hereinafter “VSF”). The VSF will continue to be owned by the City and operated under the City’s direction. (See attached hereto Exhibit B, Map of VSF.)

II. TERM

- 2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on October 1, 2017 and terminate on September 30, 2023.
- 2.2 City shall have the option to renew this Agreement on the same terms and conditions for up to two additional, one-year periods. Renewals shall be in writing and signed by the Chief of Police, or designee, without further action by the San Antonio City Council.
- 2.3 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any additional contract period beyond the initial term set forth in 2.2 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 to Contractor, Payment to City.
- 3.2 Transition Period. Contractor shall use all commercially reasonable efforts to provide an efficient and effective transition of VSF operations by October 1, 2017. Contractor and the City shall create a mutually agreed upon transition plan to support the transition of the VSF operations by October 1, 2017. (See attached hereto Exhibit C, Contractor's Transition Period Plan.)
- 3.3 Management Processes. Contractor shall have in place and make available to SAPD the following documented policies and procedures to manage and/or administer this Agreement. The policies and procedures shall be in accordance with all local, state, and federal laws and City policies. The policies shall be approved by SAPD and include, but are not limited to the descriptions below.
- 3.3.1 Impound Services – Contractor shall:
- a) Provide sufficient staffing, equipment and materials necessary to provide efficient and timely services 24 hours a day, seven days a week, 365 days a year;
 - b) Accept vehicles and miscellaneous property (e.g., stolen/found property, parts, etc.) from SAPD 24 hours a day, seven days a week;
 - c) Inspect, document and list each vehicle's condition and any items that are visible and in plain sight inside of a vehicle;

- d) Take no less than four (4) photos of the entire vehicle at the time of impound;
- e) Maintain knowledge of current City tow fees;
- f) Ensure City tow fees are listed properly on the tow invoicing receipts; and
- g) Use a formalized process to send notifications to vehicle and property owners, and legal lien holders, as required by law to owners and/or lienholders as required.

3.3.2 Storage Services – Contractor shall:

- a) Organize and maintain all vehicles in orderly rows to allow the safe movement of traffic and the safe delivery and removal of vehicles.
- b) Perform a physical inventory of the vehicles stored at the VSF, quarterly on a calendar-year basis.
- c) Cooperate with any investigation of citizen or Customer complaints and work with SAPD in good faith to resolve the complaints.
- d) Provide individuals who are attempting to claim vehicles with an escort to the vehicle, when needed, for the purposes of obtaining ownership documentation located inside the vehicle.
- e) Formalize and document a proper “Report of Damage or Loss” process.
- f) Provide and maintain a process which defines how “SAPD Hold” vehicles and/or property from crime scenes or pending investigation shall be processed to protect the integrity of the vehicle and its contents until the investigation is completed.
- g) Maintain the ability to process and secure a separate area within the VSF to properly store all vehicles and/or property that have had an "SAPD Hold" placed on them (i.e. to include but not limited to evidence from a crime scene, seized vehicles or one waiting for a search warrant).
- h) Ensure vehicles and property are preserved in a manner that prevents damage.

3.3.3 Release of Vehicles and Property – Contractor shall:

- a) Properly release vehicles to owners or legal lien holders twenty-four hours a day, seven days a week;

- b) Obtain proper documentation from owners and legal lien holders (i.e. to include a valid government photo identification card/driver's license, proof of ownership or authorization from the registered owner to claim, and proof of insurance) in order to release vehicle;
- c) Ensure all owners and/or lien holders pay all applicable fees (i.e. to include but not limited to towing, notification, impound and storage fees) except when SAPD provides a waiver of such fees;
- d) Prior to the release of a vehicle, ensure that all SAPD approved fee adjustments have been applied to the vehicle's record;
- e) Ensure signs inside and outside of the customer service areas of the VSF are in compliance with any State of Texas regulations pertaining to such placements.

3.3.4 Auction Services for Abandoned Vehicles – Contractor shall provide auction services and maintain processes which:

- a) Provide to SAPD a weekly motor vehicle auction listing for abandoned vehicles which have been impounded and have been deemed abandoned and eligible for public auction per Texas Transportation Code 683;
- b) Ensure public auctions are held at a frequency approved by the City;
- c) Allow the authorized SAPD designee, any time prior and up to the start of bidding, to withdraw any vehicle without accruing fees or expense charges for the purposes of utilizing the vehicle for law enforcement purposes. City ensures the vehicles will be returned to the Contractor for public auction once the City has deemed the vehicles no longer eligible for City use. ;
- d) Maintain a process, in accordance with City policy, to review certain criteria of all auction participants (e.g., age requirements, family, etc.) which prohibit participants from bidding and/or purchasing auctioned vehicles in accordance with 17.1;
- e) Ensure that the auctioneer is licensed by the State of Texas as required by the Texas Department of Licensing and Regulation;
- f) Provide and maintain a timely notification process to send notifications of vehicles prior to auction.
- g) Seek out, develop, evaluate, and implement strategies to maximize the return on the sale of auctioned vehicles. Contractor shall advise SAPD of any new strategies that it intends to implement, prior to implementation. SAPD shall have the right to disapprove the use of said strategies;

- h) Contractor shall not knowingly permit the following persons to participate in bidding for a vehicle being auctioned or to purchase a vehicle that has been auctioned in connection with this contract: (1) any person under the age of eighteen years; (2) Contractor; (3) Contractor's employees; (4) spouses and family members to the third degree of consanguinity of Contractor's employees; (5) the vehicle storage facility subcontractors; (6) the vehicle storage facility subcontractor's employees; (7) spouses and family members to the third degree of consanguinity of the vehicle storage facility subcontractor's employees; (8) City's employees; and (9) immediate family members of City's employees.
- i) Contractor shall maintain, with input and direction from City, as needed, a list of prohibited buyers. Contractor shall not knowingly permit persons whose names appear on said list or their representatives to participate in bidding for a vehicle being auctioned or to purchase a vehicle that has been auctioned in connection with this contract.

3.4 Fee Collection – Contractor shall:

- 3.4.1 Provide a number of alternative means for Customers to pay fees, including cash, credit cards, Debit/ATM card with a valid ID card as proof of identity, and personal checks with valid ID card as proof of identity if verified through a check verification service provided by Contractor.
- 3.4.2 Provide a number of alternative electronic means, including but not limited to, Payment Card Industry (PCI) compliance Europay, Mastercard and Visa (EMV) capable credit card reader, check verification system, etc. for the payment of fees and services.
- 3.4.3 Provide all staffing, equipment and materials necessary to collect all revenue, perform a daily reconciliation, cash over/short report and prepare deposits for armored transport following proper reconciliation, internal controls and cash handling procedures.
- 3.4.4 Collect Impound Fees, Notification Fees, and Storage Fees as set by the San Antonio City Council, and not to exceed a maximum amount defined by State law, plus taxes in appropriate amounts. City reserves the right to make changes to these fees pursuant to future City Council ordinances which may be approved pursuant to changes in State law governing such fees.
- 3.4.5 Collect Towing Fee (including but not limited to, hook-up, mileage, dollies and/or special equipment) to be remitted to the City as identified on the TSR or by SAPD Designee.

- 3.4.6 For each vehicle sold at auction, collect the Auction Processing Fee and the Auction Proceeds (the bid amount).
 - 3.4.7 City reserves the right to reduce all fees by 100% for up to 200 impounded vehicles, annually at no cost to City and/or vehicle owners/lien holders. These reductions do not include vehicles released from the hold lot or the asset seizure lot. Contractor may not collect fees and the City is not responsible to pay Contractor fees for vehicles released from the hold lot or the asset seizure lot, or for vehicles where City or Contractor is prohibited by a court order, or state or federal law from collecting fees.
 - 3.4.8 Conduct Other Collection Activities, if requested to do so by City at any point during the term of this Agreement, subject to mutual agreement between City and Contractor as to the terms and scope of performance and based on data to be provided by City, if any.
 - 3.4.9 Charge no fees to SAPD for City vehicles that may be placed in the VSF impound lot.
 - 3.4.10 SAPD found property shall be processed with no charges to the SAPD.
 - 3.4.11 Charge no storage fees while on hold for vehicles and property placed in the asset seizure lot, evidence/hold lot, and auction lot, including vehicles and property SAPD may direct to be relocated from the impound lot.
 - 3.4.12 Remit all taxes collected in a timely manner to the State (i.e. impound, auction and any other services where taxes are applicable).
 - 3.4.13 Submit written requests for fee changes, identifying current and proposed fees and a justification for the request, to the City through SAPD Chief of Police. Requests to revise fees shall be subject to City Council approval.
- 3.5 VSF and Operations –Contractor shall:
- 3.5.1 Manage the day-to-day operations of the VSF, beginning at the Growdon Road entrance and maintain and repair all structures on the property including, driveways, fences, lighting and paved/unpaved lots, as required or as directed by the SAPD designee;
 - 3.5.2 Be knowledgeable of any new laws or directives that pertain to the storage, release and sale of stored vehicles.
 - 3.5.3 Operate “Other Services” at the VSF in a manner which is efficient and business like as approved by SAPD.

3.5.4 Store only impounded vehicles, and other items, as authorized by the SAPD. The SAPD authorizes Contractor to store its equipment and other items utilized by Contractor to operate the VSF, at the VSF. Furthermore, SAPD authorizes the employees of Contractor to park their vehicles at VSF during business hours.

3.5.5 Provide all staffing, equipment and materials necessary to perform all work related to the receipt, impoundment and release of vehicles at the VSF. At a minimum, on-site equipment shall include:

a) Two (2) Forklifts equipped with wheel-lift / under-lift attachments designed for moving vehicles throughout the lot while lifting either the front or rear tires from the ground; and

b) Twenty-five four nine-gallon industry approved propane cylinders.

Such resources shall be provided in sufficient number to assure efficient and effective operations which result in:

a) For no less than 90% of vehicles in any given calendar month, a maximum vehicle intake time of not more than 15 minutes until the vehicle is ready to be stored in a space.

b) Contractor will use commercially reasonable efforts, as agreed to by SAPD, to reduce waiting time for customers. Specifically, if a sudden influx of customers arrive at VSF and the release staff on hand are not able to make direct individual verbal contact with Customers within 15 minutes of arrival, Contractor's employees from other departments, including the supervisor on duty will assist with releases.

c) For no less than 90% of vehicles in any given calendar month, a maximum vehicle release time of not more than 45 minutes the first year and 30 minutes after the second year from the time the Customer appears at the counter until the vehicle is released to the customer subject to Customer cooperation and timely presentation of documentation necessary to identify Customer has right to possession of vehicle.

d) For no less than 90% of vehicles in any given calendar month, provide individuals who are attempting to claim vehicles with an escort to the vehicle, when needed, for the purposes of obtaining ownership documentation located inside the vehicle within 30 minutes.

The provisions above may be reviewed by SAPD and Contractor.

3.5.6 Impound and release vehicles twenty-four (24) hours a day every day.

3.5.7 Provide the SAPD access to the VSF at all times.

- 3.5.8 Create, process and retain, as directed by SAPD, all administrative records, related to the receipt, impoundment, and release of vehicles to include the creation, processing and retention of records related to Towing Fees, as reflected on the TSR, to be collected by the Contractor on behalf of the City per Section VI., Records Retention & Audit.
- 3.5.9 Send proper notices to owners and/or lien holders, as required, of said vehicles within 5 days of receiving the vehicle at the VSF. On the 10th day after first notification is sent, a notification of abandonment must be sent to owner and/or lien holders in the same manner per Transportation Code 683.
- 3.5.10 In processing releases, require documentation pursuant to City Code, Chapter 19, Section 19-54.
- 3.5.11 Coordinate with the SAPD and with the City's wrecker services provider(s) when necessary in order to maximize customer service, safety and proficient services under this Agreement.
- 3.5.12 Coordinate with the SAPD on any and all requests received from other law enforcement agencies related to operations at the VSF and/or received/impounded vehicles.
- 3.5.13 Coordinate with SAPD any investigation of citizen or Customer complaints and work with City in good faith to resolve the complaints.
- 3.5.14 Provide an indoor, well- lit, climate controlled customer service area at the VSF in compliance with the Americans with Disabilities Act (ADA) requirements.
- 3.5.15 Provide a SAPD approved emergency and weather contingency plan.

3.6 VSF Personnel. Contractor shall:

- 3.6.1 Maintain a process that supports fair hiring practices and screening of employment applicants.
- 3.6.2 Conduct complete criminal background checks to include fingerprinting and obtaining criminal background verifications from federal, state and local law enforcement agencies for all personnel.
- 3.6.3 SAPD must approve Contractor's documented process on Contractor's criminal background check process.
- 3.6.4 For any of the offenses listed below, Contractor's employees cannot provide services pursuant to this contract if the Contractor's employee:

- a) Has been convicted of a felony or misdemeanor crime involving dishonest conduct or possession of illegal drugs;
- b) Is under indictment or has been convicted or granted deferred adjudication that has not resulted in a dismissal for the offense of criminal homicide, including murder, capital murder, and manslaughter, but excluding criminally negligent homicide;
- c) During the seven (7) years immediately preceding the criminal history check, was convicted or granted deferred adjudication for the offense of criminal homicide, including murder, involuntary manslaughter, criminally negligent homicide, rape, sexual abuse, sexual assault, sale or possession of illegal drugs, robbery, or felony theft;
- d) Is under indictment or charged by information or complaint or convicted or granted deferred adjudication that did not result in dismissal for any offense involving fraud or theft, the unauthorized use of a vehicle, violation of any state or federal laws regulating firearms, violence to any person, except conduct classified as no greater than a Class C misdemeanor offense under state law, prostitution or the promotion of prostitution, sexual assault, sexual abuse, lewdness or indecency, the use, sale or possession of drugs, driving while intoxicated, or any job-related offense;
- e) Is on probation, parole, or mandatory supervision for an offense noted herein; or
- f) Has falsified or materially altered or omitted pertinent information in any government record.

3.6.5 Provide and maintain, at Contractor's own expense, all licenses, registrations, permits and authorization necessary for operating the VSF and public auction for all employees.

3.6.6 Ensure all personnel wear professional uniforms (i.e., company uniforms) and be well groomed and clean.

3.7 Property Management – Contractor shall:

3.7.1 Dedicate office space, for sole use of SAPD.

3.7.2 Be responsible for all maintenance of the VSF and repairs as required or as directed by the Chief or his/her designee except that any maintenance to the on-site water well will be conducted by the San Antonio Water System.

3.7.3 Ensure all parking areas remain clean, all parking spaces are clearly marked, all wheel stops are properly aligned and unbroken, and all handicapped and reserved

parking spaces are used only by appropriate persons, by contacting the appropriate authorities.

- 3.7.4 Provide all janitorial services, including trash removal and disposal, at all buildings at the VSF.
- 3.7.5 Provide for the collection and disposal of all trash and debris on the VSF grounds and keep the grounds free of unsightly vegetation.
- 3.7.6 Provide extermination services to the interior and exterior of all buildings on site on at a minimum, a quarterly basis.
- 3.7.7 Keep the area in and around the water building free of debris and vegetation.
- 3.7.8 Provide public access to not less than two (2) Americans with Disabilities Act compliant portable restrooms, in the unsecured parking lot area of the VSF. Maintain and service the portable restrooms on a regular basis, as approved by the SAPD.
- 3.7.9 Contractor is responsible for the electricity and water expenses of the facility. The SAPD will invoice Contractor for payment to the SAPD. The water expenses include the operation and maintenance fees and expenses as assessed by San Antonio Water System.
- 3.7.10 Provide and maintain the Water Tank/Building at the City's VSF to include but not limited to providing potable water for personnel.
- 3.7.11 Restrict personnel from utilizing unpotable water for consumption or sanitization.
- 3.7.12 Replace the water filter (to include testing of the water) annually.
- 3.7.13 Maintain the water hydraulics and pump by a certified technician.
- 3.7.14 Refill the water tank when it has reached 500 gallons.
- 3.7.15 Power wash the inside of the water shed at a minimum of once a year.

3.8 Environmental Protection – Contractor shall:

- 3.8.1 Ensure a process to meet all of the requirements specified under Texas Pollutant Discharge Elimination System (TPDES) permit TXR05000 effective August 13, 2016 and as so outlined in City Code Chapter 34.

- 3.8.2 Maintain and address the replacement of the sand in the leaker row, at a minimum, quarterly.
- 3.8.3 Ensure access to the San Antonio Water System (SAWS) to the VSF to conduct sampling and analysis of well water.
- 3.8.4 Provide a documented process for the removal of all hazmat material.
- 3.8.5 Contractor shall indemnify the City, defend, and hold it harmless from and against 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 reasonable attorney's fees) arising out of, resulting from, or relating to, directly or indirectly, the presence of Hazardous Substances in or about the VSF introduced by Contractor or its agents, employees, or invitees, and that violate Environmental Laws, specifically including toxic torts. However, Contractor is not obligated to remedy or indemnify, defend and hold the City harmless from and against any costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, (including reasonable attorney's fees and toxic torts) arising out of, resulting from, or relating to, directly or indirectly, the presence of Hazardous Substances in or about the VSF that existed at the VSF prior to Contractor's possession of the VSF. Attached hereto as Exhibit D are copies of a Phase I Environmental Site Assessment and Phase II Environmental Site Assessment, dated March 1, 2017, and performed by Raba Kistner Environmental, Inc. of San Antonio, Texas, evidencing the environmental condition of the VSF prior to Contractor's possession of the VSF. (See attached hereto Exhibit D, Phase I and Phase II Assessments.)
- 3.8.6 "Environmental Laws" shall mean one or more of the following (i) The Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq. ("CERCLA"), (ii) the Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq. ("SWDA"), (iii) the Federal Resource Conservation and Recovery Act of 1986 42 U.S.C § 6921 et seq., (iv) the Clean Water Act, 33 U.S.C. § 1321 et seq., (v) the Clean Air Act, 42 U.S.C. § 7401 et seq., (v) any other federal or state law, ordinance, regulation, order or decree that relates to Hazardous Substances or regulated wastes, and (vi) any present federal or state regulation, ordinance, code, license, approval, order, decree, permit, authorization, Environmental Protection Agency requirement, or any state equivalent agency requirement, in each case concerning or relating to the handling, use, presence, production, operation, transportation, treatment, storage, labeling, testing, processing, discharge, disposal, release, control or clean-up of any Hazardous Substances or regulated wastes.
- 3.8.7 The Contractor shall make any regulatory claim, demand, notice of violation, or any letter or expression of environmental concern from an agency, immediately

known to the City without delay. Contractor shall share with the City and provide written copies of any and all correspondence, studies, assessments, and expressions of professional opinion, written and unwritten, formal and informal that may be generated by an environmental agency as a result of any environmental agency inquiry, claim, enforcement action, or letter of concern. Contractor shall have no privilege to withhold any information from the City in this regard.

3.8.8 The Contractor shall particularly address storm water compliance requirements of both state and federal agencies, i.e., the Texas Commission on Environmental Quality (TCEQ) and USEPA (United States Environmental Protection Agency). Storm water management plans for the site shall be the Contractor's responsibility, using BMP (best management practices) or other methods deemed necessary or suggested by regulatory guidance or as determined by the City's Environmental Services Manager in collaboration with the Drainage Utility Manager, to ensure compliance with the City's NPDES/TPEDS permit (National/Texas Pollution Discharge Elimination Systems permit). Specifically, Contractor agrees to employ at least the following BMP measures: (a) to segregate vehicles that are visibly leaking fluids, from other vehicles, by confining leaking vehicles to an area approximately 50' by 300', the run-off from which area may be addressed with either a berm or drainage containment, or both, at Contractor's discretion as may best inhibit run-off from the leaking vehicles; (b) no fewer than one time per month, sweep the entire premises to capture and legally dispose of sand, absorbent media, if any, and other debris; and (c) Test storm water discharge quarterly.

3.8.9 Contractor shall be responsible, at its sole expense for responding, answering, and remediating any and all conditions so directed or demanded by a State or Federal regulatory agency arising from or related to the presence of Hazardous Substances in or about the VSF introduced by Contractor or its agents, employees, or invitees and that violate Environmental Laws. This remediation obligation shall survive until the expiration of the applicable statute of limitations.

3.9 Capital Improvement – Vehicle Processing Facility for Evidence

3.9.1 Contingent on funds provided pursuant to section 4.6 and Exhibit A-2, Contractor shall provide a Vehicle Processing Facility for Evidence at the VSF which shall be a fully enclosed workspace of sufficient size to store and process up to three (3) standard size automobiles at the same time.

3.9.2 The specific design options and features of the Vehicle Processing Facility, Contractor's acquisition process and cost impact to the City and the Contractor shall be determined and reviewed for acceptance by City and Contractor and in consultation with the SAPD.

3.9.3 The enclosed area should be approximately 75' by 30' and the Contractor shall include the following features:

- a) Secured and controlled access to the building by SAPD only;
- b) Three (3) large bay doors with automatic garage door opener for each;
- c) Garage openers must be installed in each bay;
- d) Concrete floor;
- e) One standard entryway door for foot traffic;
- f) Garage openers must be installed in each bay;
- g) Tool and bench storage to include electrical attached in each bay;
- h) 11' to 15' insulated ceiling;
- i) A built-in work station in each of the four (4) bay areas along the 75-foot wall, to include storage above and below the counter;
- j) Adequate overhead and side fluorescent lighting, which will provide an even distribution of light throughout the entire interior of the facility;
- k) Electrical outlets: Four (4) dedicated circuits, 30 amps each; Five (5) 4-plug electrical receptacles evenly spaced along back wall; and three (3) 2-plug electrical outlets evenly spaced between counter and cabinets;
- l) Adequate climate control (heating and cooling) to maintain a comfortable indoor working environment;
- m) Built-in air exchange system, built to code requirements, to include explosion-proof exhaust fans for venting exhaust and chemical fumes;
- n) Sink area;
- o) Safety eyewash station meeting ANSI standard Z358.1-19-90;
- p) Pit in last bay area or an automatic vehicle lift for undercarriage inspections with safety railing separating pit area from other bays and foot-traffic areas. Tire guides, six (6) inches in height, shall be installed on the sides of the pit to safely guide vehicles being moved over the pit;
- q) Air compressor with one quick disconnect per bay;
- r) Air compressor must support the bays and the vehicle lifts; and
- s) Retractable fluorescent droplights from the ceiling above each bay area (four (4) total), and two (2) retractable lights in the pit area with safety cover.

3.9.4 All Capital Improvements to the VSF by Contractor (to the exclusion of computer software of Contractor that is proprietary) shall become the property of City.

3.10 Vehicle Storage Area for the SAPD Vehicle Processing

3.10.1 The vehicle storage area shall be adjacent to or in close proximity to the SAPD Vehicle Processing Facility and shall include:

- a) An area that shall accommodate 10-20 vehicles;
- b) An area that is covered and paved with asphalt or concrete;
- c) A fenced and secured area: The fence shall be eight feet in height, chain link, with locking gate(s), and with razor wire affixed to the top of the

fence around the circumference of the storage area. Any proposed alternatives to chain link fencing will be considered and are subject to the approval of the City; and

- d) Secured and controlled access to the storage area by authorized SAPD Forensic personnel only.

3.10.2 Contractor shall maintain all records and documentation related to operations improvements of the City's VSF.

3.11 Information and Communications Technology – Contractor shall implement in accordance with Exhibit E, and maintain an information management system that provides an effective and efficient process to intake, inventory and release impounded vehicles and can function and interface with SAPD's current Vehicle Inventory Management System (VIMS), and any future replacement system which may be used by SAPD. SAPD will use its best efforts to assure that the future replacement software of SAPD is developed in "SQL" language. (See attached hereto Exhibit E, Contractor's IT Transition Period Plan.) Contractor shall:

3.11.1 Ensure all computers utilized at the City's VSF have internet access;

3.11.2 Provide and maintain all electronic data/information related to vehicle auctioned at the City's VSF;

3.11.3 Provide and maintain recorded images from the surveillance system daily for retention;

3.11.4 Provide and maintain a website which displays digital photos of high-value vehicles impounded/scheduled for auction. Display photos of vehicles on the website. Contractor and SAPD may modify requirements to increase auction sales when needed.

3.11.5 Provide a means for the City to access the information management system for the City's VSF to run administrative reports such as but not limited to inquiry on impounded vehicles, fees collected, date of notifications, lien holder, owner, date of auction, and inventory; and

3.11.6 Provide a telephone system for the VSF and a separate SAPD phone line.

3.11.7 Any software required to use or integrate with the Contractor's system will be provided by Contractor.

3.12 Security. Contractor shall implement and maintain an agreed upon security plan that is based on an SAPD approved plan submitted by Contractor to City prior to December 1, 2017.

3.13 **Performance Standards**

3.13.1 Contractor shall provide and meet administrative and operational performance standards. The performance standards have been set to achieve a degree of accuracy and timeliness agreed upon by the City and Contractor. The parties agree that Contractor's failure to perform certain obligations under this Agreement during the respective time limits imposed will cause the City to incur cost and inconvenience not contemplated under this Agreement, which cost and inconvenience will constitute damage to the City and the public, that the exact amount of such damage will be extremely difficult or impractical to fix, and that actual damages that might be sustained by the City is uncertain and would be difficult of ascertainment. The City and Contractor agree that the amounts described as liquidated damages in this section of the Agreement are not penalties, but represent a fair and reasonable estimate of the damages that the City will incur by reason of Contractor's failure to perform, and are fair compensation to City for its losses. The City and Contractor have agreed upon performance standards as defined below to measure certain aspects of the Contractor's responsibilities.

3.13.2 The SAPD performance review format will be established within the first three months of the contract and will not change throughout the contract term. The Contractor and SAPD may agree to any and all future modifications. Each performance standard may be reviewed based on the frequency established below and no fines will be assessed in the same calendar month.

3.13.3 The total amount of liquidated damages that SAPD may collect under this Section 3.13 shall be no more than \$6,500.00 per review. Upon written notices from the SAPD of said violations, any assessed amounts shall be accumulated into the applicable compliance review. All fees may be collected as follows:

A) Environmental – Contractor shall meet the standards of the BMP with a score of 90% or above based on semi-annual performance reviews as described within section 3.11.8 of this Agreement. Should the performance review drop below 90%, the following liquidated damages will apply:

Environmental Review Rating	Liquidated Damages
89% -80%	\$3,000.00
79% -70%	\$4,500.00
69 % - 60%	\$5,500.00
50% and below	\$6,500.00

B) Texas Department of Licensing and Regulation (TDLR) – For no less than 98% of vehicles in any given calendar month, notification requirements to vehicle owners and/or lien holders shall comply with all applicable laws and with section 3.3.4 (f) of this agreement. The City may review compliance on a quarterly basis;

should the performance drop below 98%, the Contractor will be assessed an amount of \$50 per occurrence.

C) Agreement – Contractor shall meet all the standards of this Agreement. Contractor shall achieve 90% or above on based on a score during an annual performance review. Should the performance review drop below 90%, the following liquidated damages will apply:

Performance Review Rating	Liquidated Damages
89% -80%	\$3,000.00
79% -70%	\$4,500.00
69 % - 60%	\$5,500.00
50% and below	\$6,500.00

3.14 SAPD Private Property Solution

3.14.1 Contractor shall provide and maintain a private property impound electronic web-based solution with public and City access.

3.14.2 Contractor's website shall be compatible with and accessible through a link from SAPD website.

3.14.3 The web-based solution shall be at no cost to the City, the public and to private non-consent tow companies reporting to SAPD.

3.14.4 Contractor shall ensure by October 1, 2019, the SAPD private property solution is available to private non-consent towers for reporting tows in compliance with law enforcement reporting requirements.

3.15 Financial Management, Records, and Audit – Contractor shall:

3.15.1 Reconcile daily monies collected to daily vehicle release activities;

3.15.2 Reconcile monies collected on each auction sales activities;

3.15.3 Deposit all revenue collected on a daily basis using an armored transport service;

3.15.4 Maintain a separate bank account for all revenue and expenses related to the performance of the scope of services;

3.15.5 Not commingle funds from any other activity of Contractor;

3.15.6 Establish and maintain adequate records to accurately and easily reflect chain of custody of all received vehicles and property and all information pertinent to the

receipt, impoundment, release, and auction of vehicles and/or property delivered to the City's VSF; and

- 3.15.7 At the end of each contract year during the term of this contract and upon termination of this contract, Contractor shall engage an independent certified public accountant, agreed to by City, to audit the accuracy of reported VSF fees and sales for the preceding contract year, during the term of the contract, and the current year, at the termination of this contract, in accordance with the Statement on Standards for Attestation Engagements, as well as any other standards that may apply.
- 3.15.8 Said CPA shall furnish, within ninety calendar days of the end of the contract year, a written report on agreed-upon procedures to City. The CPA must state in his report an opinion whether the VSF fees and sales collected, as defined in the contract, and the amounts paid to City during the preceding year of the agreement are accurately stated.
- 3.15.9 Financial Audit Report. As a service provider of City, Contractor's and Subcontractor's financial condition is pertinent to City's ability to serve the public at large. Within twenty (20) days of City's request, Contractor shall submit the financial statement audited by an independent certified public accountant in accordance with generally accepted auditing standards for the most recently completed fiscal year-end of its subcontractor, TEGSCO, LLC. Contractor shall submit the audited financial statements and any management letter prepared by the independent Certified Public Accountant to both the City's Finance Department at P.O. Box 839966, San Antonio, Texas 78238-3966, and to the San Antonio Police Department at 315 S. Santa Rosa, San Antonio, Texas 78207. The City acknowledges Contractor deems Contractor's and Subcontractor's financial statements and other financial information submitted by Contractor pursuant to this section (the "Confidential Information") as confidential, private and that disclosure of the Confidential Information to the public would cause substantial competitive harm to Contractor. To the extent permitted by law, City agrees not to release or otherwise disclose the Confidential Information. In the event the City receives a request to release information that may include release of the Confidential Information pursuant to the Texas Public Information Act or other State, municipal or federal freedom of information act or law, City agrees to decline to release the Confidential Information for the purpose of requesting an attorney general decision in accordance with Government Code Section 552.305 of the Texas Public Information Act or similar provision in any other applicable ordinance or law. The City shall notify Contractor of the request for the attorney general decision within ten (10) business days after the City received the request for information and provide Contractor a copy of the applicable written request for information.

3.16 Provide and Maintain a Database for VSF Operations

- 3.16.1 Impound Contractor shall provide and maintain a secure database for comprehensive weekly and monthly reporting to the City, which includes reports on numbers of tows by type (impound, abandoned, junked and no-charge) that can be downloaded for user-selected time periods, and shall track total storage times per vehicle.
- 3.16.2 The database shall be configured to allow sorting on variables including, at a minimum, the impounded or abandoned/ junked status of vehicles, dates of arrival, release, auction, and identifying information on vehicles.
- 3.16.3 The database shall include but is not limited to the following information for each vehicle processed:
- a) Make, model (including year, color, body style);
 - b) Vehicle Identification Number (VIN);
 - c) License Plate Number (LPN);
 - d) When available, Owner's name, driver's license number, date of birth, address, and phone number;
 - e) Reference to videotape index and footage, as appropriate to document any damage to and condition of the vehicle;
 - f) Location where the vehicle was picked up, date (year, month, and day) and time of impoundment;
 - g) Employee number of clerks performing impounds and release functions, date (year, month, and day) and time of release;
 - h) Employee number of impounding tow truck operator;
 - i) Employee number of officer requesting the impound, or employee number of abandoned vehicle unit employee requesting impoundment of Abandoned/Junked vehicle;
 - j) Complete description of all unsecured property in the vehicle (to include passenger and cargo spaces);
 - k) Vehicles sold at auction, including auction date, buyer's name, and sale price;
 - l) Vehicles scheduled for sale at next auction, and auction date; and
 - m) Offense report or incident number.
- 3.16.4 Database of information on towed vehicle data shall enable real-time remote access.
- 3.16.5 Database information must be protected and in compliance with the Texas Business and Commerce Act, Section 521 in accordance with Sec. 521.052 of the Act.

3.16.6 All data and information collected or generated by Contractor in connection with this Agreement, stored in whatever fashion, shall be the property of City and may not be sold or distributed without City's prior written approval.

3.17 Auction

3.17.1. Contractor shall provide and maintain a reconciliation report the day after each public auction to include, at a minimum, the following information for each item sold:

- a) Vehicle description and vehicle identification number;
- b) The corresponding sales price;
- c) State tax owed and paid; and
- d) Buyer's information, including, name, address, and phone number.

IV. COMPENSATION TO CONTRACTOR, PAYMENT TO CITY

4.1 Pursuant to San Antonio Municipal Code, Chapter 19, Impounding, Article II, Sections 19-51.1, 19-53 and 19-53.1, Customers/Lien-holders are required to pay an Impound Fee, a Notification Fee and a Storage Fee (per day held in impound) (collectively "Released Vehicle Fees") and applicable sales tax. Contractor shall receive these fees, amounts collected from the sale of unclaimed vehicles ("Auction Sales Price"), amounts collected as service fees related to the Auction Sales Price and Other Services Fees (as defined herein), excluding tax amounts (collectively defined as "Total Adjusted Gross Sales").

4.2 Amounts received from Customers/Lien-holders for Towing Fees for redeemed vehicles (including but not limited to, hook-up, mileage, dollies and/or special equipment) are to be remitted to the City and are not included in Total Adjusted Gross Sales.

4.3 **Minimum Annual Guarantee.** Contractor shall pay to City each year of the Agreement term, the applicable Minimum Annual Guarantee listed below:

Total Adjusted Gross Sales (equal to storage fees, impound fees, notification fees, auction sales price and auction service fees)	Minimum Annual Guarantee
\$ 8,875,000 or above	\$ 4,000,000
\$ 8,675,000 or above	\$ 3,900,000
\$ 8,475,000 or above	\$ 3,800,000
\$ 8,275,000 or above	\$ 3,700,000
\$ 8,075,000 or above	\$ 3,600,000
\$ 7,875,000 or above	\$ 3,500,000

\$	7,675,000 or above	\$	3,400,000
\$	7,475,000 or above	\$	3,300,000
\$	7,275,000 or above	\$	3,200,000
\$	7,075,000 or above	\$	3,100,000
\$	6,875,000 or above	\$	3,000,000
\$	6,675,000 or above	\$	2,900,000
\$	6,475,000 or above	\$	2,800,000
\$	6,275,000 or above	\$	2,700,000
\$	6,075,000 or above	\$	2,600,000
\$	5,875,000 or above	\$	2,500,000
\$	5,675,000 or above	\$	2,400,000
\$	5,475,000 or above	\$	2,300,000
\$	5,275,000 or above	\$	2,200,000
\$	5,075,000 or above	\$	2,100,000
\$	4,875,000 or above	\$	2,000,000

4.4 Percentage for Percent Payment on Total Adjusted Gross Sales. Contractor shall pay the City the Minimum Annual Guarantee or the Percentage for Percent Payment of the Total Adjusted Gross Sales, whichever is greater.

4.4.1 On the tenth day of each month, during the term of this contract, beginning November 2017, Contractor shall pay to City:

- a) Two percent (2%) of Released Vehicle Fees or 1/12 of \$175,000.00, whichever is greater; and
- b) Eighty-five percent (85%) of the Auction Sales Price.

4.5 On the twentieth day following the end of each contract year, Contractor shall pay to City an amount equal to the difference between the amounts paid to the City for the prior contract year less the applicable minimum annual guarantee from the chart above, if the minimum annual guarantee is greater.

4.6 During Contract years one and two only, if total payments made under this section to the City are greater than \$3 million, then the Contractor and City may agree to utilize further payments pursuant to this section to fund other projects based on criteria set by the City to implement the capital expenditures listed in Exhibit A-2. If amounts are paid to support capital expenditures listed on Exhibit A-2, those payments shall reduce the amounts owed to the City as described above.

4.7 City shall not be obligated or liable under this contract to any party other than Contractor for payment of any monies or provision of any goods or services.

4.8 Contractor shall be responsible for all expenses incurred by Contractor in completing the

work required by this contract, except as otherwise expressly provided. City shall not be obligated or liable to any third party under this contract for any fees or costs associated with the provision of any goods or services provided pursuant to this contract.

V. OWNERSHIP OF DOCUMENTS

- 5.1 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 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 Agreement 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 Agreement, shall belong to and be the property of City. Contractor shall be required to turn over to City, all such records. Contractor may retain a copy of such records with City's consent; however, all such records shall remain confidential and may not be released without City's prior written consent. 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 said documents to City prior to or at the conclusion of said retention. This provision shall survive termination of this Agreement.
- 5.3 Contractor understands and acknowledges that as the exclusive owner of any and all such Local Government Records, City has the right to use all such writings, documents and information as City desires, without restriction.
- 5.4 Notwithstanding anything herein to the contrary, if Contractor is presented with a request for documents by an administrative agency or with a subpoena duces tecum regarding any Local Government Records, Contractor must immediately give notice to the City with the understanding that the City will have the opportunity to contest such process by any means available to it before the Local Government Records are submitted to a court or third party. Contractor, however, is not obligated to withhold the delivery beyond the time ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

VI. RECORDS RETENTION & AUDIT

- 6.1 The City reserves the right to audit Contractor's and subcontractor's books and records

which the City determines relevant to this agreement for the purpose of determining the accuracy of reported adjusted gross sales and Contractor's and subcontractor's compliance with the Agreement. Contractor and his subcontractors shall maintain their books and records in sufficient detail to allow determination of sales revenue, taxes, and refunds related to each fee category. City reserves the right to require that any and all such books and records be submitted for audit to the City or to a CPA selected by the City, or any other City designee. If it shall be determined, as a result of such audit, that there has been a deficiency in the adjusted gross sales reported to the City or the payments due to the City, then such deficiency shall become immediately due and payable with interest at the maximum legal rate under applicable law from the date when said payments should have been made.

- 6.2 Retention Period. Contractor shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years from the date this Agreement expires or is otherwise earlier terminated or a longer period if required by state or federal law ("retention period"). If, at the end of the retention period, there is pending litigation or other official inquiries arising from, involving or concerning this documentation or the services provided hereunder, Contractor shall retain the records until the resolution of such litigation or official inquiry. City may, at its election, require Contractor to return said documents to City prior to or at the conclusion of said retention period. Video images shall be retained for a period of ninety (90) days, or longer for specific footage upon request by SAPD, or if required by state or federal law.
- 6.3 Contractor further agrees to include in its subcontractor agreements hereunder a provision to the effect that subcontractor agrees that the City shall, until the expiration of four (4) years from the date the subcontract expires or is otherwise earlier terminated or a longer period if required by state or federal law ("subcontractor retention period"), have access to and right to examine any books, documents, papers and records of such subcontractor, involving transactions to the subcontract, and further that the City shall have access during normal working hours to all subcontractor facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this article.
- 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 Any audits conducted hereunder may be made by the City Auditor or her designated staff, or by a third party auditor of City's choice. Any funds discovered pursuant to an audit hereunder as due to City by Contractor must be paid with interest by Contractor to City within 30 days notice thereof. Interest shall accrue on said funds from the date such funds should have initially been paid to City at the rate of 12% annually, or the maximum rate allowed by law, whichever is less, until paid. If the auditor's report demonstrates that a refund is due to Contractor, City shall pay Contractor the amount due within 30 days

receipt of such report.

- 6.6 Contractor shall take all necessary precautions to ensure that all cash income received from any source and non-cash income, (i.e. credit cards), are immediately recorded.

VII. TERMINATION

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

- 7.2 Termination Without Cause. After the expiration of three hundred sixty-five (365) calendar days after this Agreement is fully executed, this Agreement may be terminated by City without cause upon 30 calendar days written notice, which notice shall be provided in accordance with Article VIII. Notice.

- 7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement:

7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XIII. Assignment and Subcontracting;

7.3.2 Contractor is adjudicated a voluntary or involuntary bankrupt;

7.3.3 Contractor institutes or suffers to be instituted any proceeding for a reorganization or rearrangement of Contractor's affairs;

7.3.4 Contractor makes an assignment for the benefit of creditors;

7.3.5 Contractor becomes insolvent or has a receiver of Contractor's assets or property appointed; or

7.3.6 Any material breach of the terms of this Agreement, as determined solely by City, or any series of breaches, which while not material in and of themselves, constitute a material breach taken as a whole.

- 7.4 Defaults With Opportunity for Cure. Should Contractor default in the performance of this Agreement in a manner stated in this section 7.4 below (see sections 7.4.1 through 7.4.3), same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Contractor shall have 15 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Contractor fails to cure the default within such 15 day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another contractor to complete the work required in this Agreement. City shall also have the right to offset the cost of said new

Agreement with a new contractor against Contractor's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

7.4.1 Failure to comply with the terms and conditions stated in Article XVI. SBEDA;

7.4.2 Failing to perform or failing to comply with any covenant herein required, other than a material breach as provided in 7.3.6 above; or

7.4.3 Performing unsatisfactorily, as determined solely by Chief.

7.5 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 Agreement shall automatically terminate as of the effective date of such prohibition.

7.6 Regardless of how this Agreement 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 & Audit. 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.

7.7 Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Agreement, Contractor shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement 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 Agreement.

7.8 Upon the effective date of expiration or termination of this Agreement, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Agreement.

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

7.10 Transition Period. Regardless of the method by which this Agreement is terminated, Contractor agrees to continue to provide services as provided for under this Agreement for a period not to exceed two (2) months, upon City's request.

- 7.11 At the termination of any agreement to operate and maintain the VSF, Contractor shall return the property in substantially the same condition received by Contractor, wear and tear excepted, and as otherwise modified and improved through the performance of this Agreement.
- 7.12 All work performed by Contractor hereunder shall be performed to the satisfaction of Chief of Police. The determination made by Chief of Police shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Contractor, which is not satisfactory to Chief of Police. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Contractor's work not be satisfactory to Chief of Police; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate. City shall notify Contractor in writing of any decision to withhold payment. Should City elect to terminate, it will do so in accordance with the provisions for Defaults with Opportunity for Cure contained in this Agreement.

VIII. NOTICE

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

If intended for City, to:

City of San Antonio
San Antonio Police Department
Attn: Contract Administration
315 S. Santa Rosa
San Antonio, Texas 78207

If intended for Contractor, to:

Alanis Wrecker Service
Alejandro Alanis
1035 Culebra Rd.
San Antonio, Texas 78201

TEGSCO, LLC
Attn: Ron Perry
450 7th Street
San Francisco, CA 94103

IX. PERFORMANCE BOND

- 9.1 Performance Bond. Contractor shall furnish City a performance bond in the amount of ONE MILLION, ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,100,000), within ten (10) days from final award of this Agreement, which award is subject to City Council approval as evidence by passage of an ordinance. The parties acknowledge and agree that it is a condition precedent to this Agreement to comply with this Section.
- 9.1.1 Contractor shall provide a performance bond made payable to the City of San Antonio and executed by a corporate surety acceptable to City who is licensed pursuant to the Texas Insurance Code in the amount of \$1,100,000. Said bond must be in a form acceptable to City. Said bond shall further provide that the surety shall indemnify the obligee (City) for all damages or losses resulting from the principal's (Contractor or Subcontractor) default. Said bond shall further guarantee the principal's performance of all terms and obligations under this Agreement, including, but not limited to, the public works projects. Said bond must have attached thereto a Power of Attorney as evidence of the authority of the person executing the bond to bind the surety. This bond must be furnished in compliance with the statutory requirements of the Texas Government Code, chapter 2253. This bond must be executed and delivered to City prior to commencement of work under this Agreement, or under a contract between Contractor and any subcontractor for work performed under this Agreement. The bond must clearly and prominently display on the bond or on an attachment to the bond: (1) the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or (2) the toll-free telephone number maintained by the Texas Department of Insurance pursuant to the Texas Insurance Code, Section 521.051, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number. The bond must be executed and delivered to City prior to commencement of work under this Agreement.
- 9.1.2 Should Contractor fail to produce said performance bond as required herein, Contractor shall be in default of this Agreement. In the event of said default, City may, at its option, terminate this Agreement in whole or in part.
- 9.1.3 Contractor shall be obligated to maintain said Performance Bond described in this Section 9.1 until three months following expiration of this Agreement, including any renewal terms, if exercised.

X. PUBLIC WORKS PROJECTS

10.1 Payment Bond for "Public Works" Projects.

10.1.1 Contractor shall provide a payment bond as security for all persons supplying labor and material in the performance of the public works projects in this Agreement. Said bond shall be executed by a corporate surety acceptable to City, licensed pursuant to the Texas Insurance Code in the amount of the project. Said bond must be in a form acceptable to City. Said bond must have attached thereto a Power of Attorney as evidence of the authority of the person executing the bond to bind the surety. This bond must be furnished in compliance with the statutory requirements of the Texas Government Code, chapter 2253 and the Texas Property Code, chapter 53. This bond must be executed and delivered to City prior to commencement of work under this Agreement or under a contract between Contractor and any subcontractor for work performed under this Agreement. As the public works projects are completed and approved by City, said payment bond amount may be reduced to an amount equivalent to the value of the remaining public work projects to be completed under this Agreement. These reductions shall be reflected by a written amendment to this Agreement, executed by the Chief of Police, without further action by the San Antonio City Council.,

10.2 Prevailing Wage Rate Definitions

10.2.1 "Prevailing Wage Rate" – that rate which has been determined by City to be the applicable prevailing wage rate, including the per diem rate and the rate for legal holiday and overtime pay, as set forth in Exhibit F attached hereto and fully incorporated herein, for each category of worker. (See attached hereto Exhibit F, Prevailing Wage Rates.)

10.2.2 "Worker" - person employed by Contractor or a Subcontractor in the execution of this Agreement. A worker includes, but is not limited to, laborers and mechanics.

10.3 Payment of Prevailing Wage Rate

10.3.1 Contractor, or subcontractor if any, shall pay to its workers not less than the prevailing wage rate for that class of worker as described in said Exhibit F. Further, Contractor shall stipulate in all call for bids and contracts with subcontractors engaged by Contractor in furtherance of the execution of this agreement that said subcontractors pay not less than the prevailing wage rate for its workers, and shall attach as an exhibit to said contracts a copy of Exhibit F.

10.4 Penalty for Non-payment of Prevailing Wage Rates

10.4.1 A Contractor or Subcontractor who pays less than the prevailing wage rate to its workers, shall pay to City Sixty Dollars (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in this Agreement. Contractor shall stipulate in all contracts with subcontractors engaged by Contractor in furtherance of the execution of this agreement that Subcontractor is subject to this \$60.00 penalty if Subcontractor fails to pay said prevailing wage rates to its workers.

10.4.2 In accordance with Texas Government Code, Chapter 2258, City shall be entitled to withhold payment from Contractor under this Agreement to satisfy this penalty, even if the party incurring the penalty is a Subcontractor of Contractor. If City withholds payment from Contractor as a result of a Subcontractor's violation, Contractor may withhold payment from said Subcontractor in accordance with said Chapter 2258. Further, release or disbursement of funds withheld as a penalty hereunder shall be governed by said Chapter 2258.

10.5 Prevailing Wage Records

10.5.1 Contractor and Subcontractor shall keep a record showing: (1) the name and occupation of each worker employed by the Contractor or Subcontractor; and (2) the actual per diem wages, including legal holiday and overtime wages, paid to each worker. These records shall be open at all reasonable hours to inspection by the officers and agents of City. Contractor shall stipulate in all contracts with subcontractors engaged by Contractor in furtherance of the execution of this agreement that Subcontractors must maintain and make available for inspection the records as described in this article.

10.6 Workers' Compensation Insurance Coverage Definitions

10.6.1 "Certificate of coverage" ("certificate") – A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

10.6.2 "Duration of the project" – includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

10.6.3 "Persons providing services on the project" ("subcontractor") – includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted

directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity who furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- 10.7 Contractor shall provide workers' compensation coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.
- 10.8 Contractor must provide a certificate of coverage to City prior to being awarded the contract.
- 10.9 If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with City showing that coverage has been extended.
- 10.10 Contractor shall obtain from each person providing services on a project, and provide to City:
 - 10.10.1 A certificate of coverage, prior to that person beginning work on the project, so City will have on file certificates of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
 - 10.10.2 No later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- 10.11 Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- 10.12 Contractor shall notify City in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- 10.13 Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Department of Insurance, Division of Workers' Compensation,

informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

10.14 Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

10.14.1 Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

10.14.2 Provide Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

10.14.3 Provide Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

10.14.4 Obtain from each other person with whom it contracts, and provide to Contractor:

a) a certificate of coverage, prior to the other person beginning work on the project; and

b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

10.14.5 Retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

10.14.6 Notify City in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

10.14.7 Contractually require each person with whom it contracts, to perform as required by paragraph 10.14.1 through 10.14.7, with the certificates of coverage to be provided to the person for whom they are providing services.

10.14.8 By signing this Agreement or providing or causing to be provided a certificate of coverage, the Contractor is representing to City that all employees and employees of subcontractors who will provide services on the project will be

covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject Contractor to administrative penalties, civil penalties, or other civil actions.

10.14.9 Contractor shall include the requirements in Section 10.2 through 10.14 in any call for bids as well as any contracts for public works projects provided hereunder.

10.14.10 Contractor's failure to comply with any of these provisions is a breach of contract by Contractor which entitles City to declare the Agreement void if Contractor does not remedy the breach within 10 days after receipt of notice of breach from City.

10.15 Competitive Bidding of "Public Works" Projects

10.15.1 In completing the "public work" obligations hereunder, Contractor shall comply with all bidding requirements contained in the Texas Local Government Code, Chapters 252 and 271.

10.15.2 Contractor shall contractually require each person with whom it contracts to complete its "public work" obligations to comply with all bidding requirements contained in the Texas Local Government Code, Chapters 252 and 271.

XI. INSURANCE

11.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the San Antonio Police Department, which shall be clearly labeled "Total Management of Growdon Vehicle Storage Facilities" 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 Agreement until such certificate and endorsements have been received and approved by the San Antonio Police Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

- 11.3 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 Agreement, 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:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory, \$1,000,000
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Broad form property damage, to include fire legal liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Environmental Impairment Liability / Pollution Legal Liability Insurance	\$10,000,000 per occurrence to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission.
6. Builder's Risk	In the event Contractor undertakes construction of or a major renovation of an improvement to the VSF, Builder's Risk will be required in the amount of the value

	of the construction/renovation.
7. Crime/Employee Dishonesty (including monies and securities)	\$500,000

- 11.4 Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain relevant insurance coverages required of Contractor herein (e.g., Commercial General Liability), and provide a certificate of insurance and endorsement that names the Contractor and the City as additional insureds. Insurance coverages for irrelevant insurance coverages for a subcontractor providing goods or services hereunder (e.g., Environmental Impairment Liability / Pollution Legal Liability Insurance) is not required for the subcontractor to obtain. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Contractor. 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.
- 11.5 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. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
San Antonio Police Department
Attn: Contract Administration
315 S. Santa Rosa
San Antonio, Texas 78207

- 11.6 Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- a) 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;
 - b) 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;

- c) Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
 - d) Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 11.7 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 Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.
- 11.8 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.
- 11.9 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 Agreement.
- 11.10 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 Agreement.
- 11.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- 11.12 Contractor and any subcontractors are responsible for all damage to their own equipment and/or property.

XII. INDEMNIFICATION

- 12.1 **CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death**

and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this Agreement, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- 12.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.
- 12.3 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 Agreement. If CONTRACTOR fails to retain Counsel and file an appearance on behalf of the City within such time period required by the court in which jurisdiction the complaint is pending for filing an appearance on behalf of the City, City shall have the right to retain defense counsel on its own behalf, and CONTRACTOR shall be liable for all costs incurred by City related to securing the defense counsel and to file an appearance or take any other action to protect its interests in court in the matter at issue. 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.
- 12.4 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.

- 12.5 Environmental Laws – The terms of this Section 12 shall not apply to any costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, arising out of, resulting from, or relating to, directly or indirectly, Environmental Issues, Environmental Laws, Hazardous Substances (“Environmental “Claims”). Environmental Claims shall be governed solely by the terms of Section 3.8.

XIII. ASSIGNMENT AND SUBCONTRACTING

- 13.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Contractor. Contractor, its employees or its subcontractors shall perform all necessary work.
- 13.2 It is City's understanding and this Agreement is made in reliance thereon, that Contractor intends to use the following subcontractor in the performance of this Agreement: TEGSCO, LLC (“Auto Return”) pursuant to the Services Agreement attached as Exhibit G (“Services Agreement”). Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by the Managing Department Director and the Economic Development Director or designee, as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.
- 13.3 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 Agreement. Compliance by subcontractors with this Agreement 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 Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.
- 13.4 Except as otherwise stated herein, Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Contractor, assignee, transferee or subcontractor unless the terms of the City's consent provide otherwise.
- 13.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should

Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Contractor shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

XIV. INDEPENDENT CONTRACTOR

- 15.1 Contractor covenants and agrees that he or she is an independent contractor and not an officer 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 Agreement and that the Contractor has no authority to bind the City.
- 15.2 Regardless of where the work shall be performed, what supplies or resources are provided by City, what instruction or direction is provided by City, Contractor and those persons designated by it to provide services shall not be deemed employees of City and shall not be entitled to wages or benefits from City, other than the compensation provided herein.

XVI. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

- 16.1 SBEDA Program. The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 and as amended, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on the City’s Economic Development Department (EDD) website page and is also available in hard copy format upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of the SBEDA Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded

definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

16.2 Definitions.

- 16.2.1 **Affirmative Procurement Initiatives (API)** – Refers to various S/M/WBE Program tools and Solicitation Incentives that are used to encourage greater prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE Program tools, see Section III.D of Attachment A to the SBEDA Ordinance). To be eligible for the benefits of race- and gender-conscious APIs as provided in the SBEDA Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.
- 16.2.2 **Annual Aspirational Goal** – a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City of San Antonio contracts is established each year for Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contract Industry Categories. This Annual Aspirational Goal is to be set (and thereafter adjusted) by the Goal Setting Committee (GSC) based upon the M/WBE availability by industry in accordance with the City’s 2015 Disparity Study findings, along with relative M/WBE availability data to be collected by the City through its CVR system, and the utilization of M/WBEs. Any adjusted Annual Aspirational Goals for a given industry should not exceed the Expected Availability for award dollar weights as found in the 2015 Disparity Study. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and to the aggressiveness of remedies being applied under the Program. Percentage Goals for S/M/WBE participation may be established by the GSC on a contract-by-contract basis based upon similar data and analysis for the particular goods and services being purchased in a given contract.
- 16.2.3 **Award** – the final selection of a Respondent for a specified Prime Contract or subcontract dollar amount. Contract awards are made by the City to Prime Contractors or vendors and by Prime Contractors or vendors to Subcontractor or sub-vendors, usually pursuant to a solicitation process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a contractor under an awarded contract).
- 16.2.4 **Best Value Contracting** – a purchasing solicitation process through which the Originating Department may evaluate factors other than price. Evaluation

criteria for selection may include a Respondent's previous experience and quality of product or services procured, and other factors identified in the applicable statute.

- 16.2.5 **Centralized Vendor Registration System (CVR)** – a mandatory electronic system of hardware and software programs by which the City recommends all prospective respondents and subcontractors that are ready, willing and able to sell goods or services to the City to register. All businesses awarded a City contract shall be required to register in the CVR. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.
- 16.2.6 **Certification** – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City may accept any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6.
- 16.2.7 **City** – refers to the City of San Antonio, TX.
- 16.2.8 **Commercially Useful Function** – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which

funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed.

- 16.2.9 **Control** – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.
- 16.2.10 **Economic Inclusion** – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.
- 16.2.11 **Emerging SBE (ESBE)** – a certified SBE corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is independently owned and operated by Individuals legally residing in, or that are citizens of, the United States or its territories whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.
- 16.2.12 **Emerging M/WBE** – a certified M/WBE firm whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.
- 16.2.13 **Evaluation Preference** – an API that may be applied by the Goal Setting Committee to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime Respondents.
- 16.2.14 **Formal Solicitation** – an invitation for bids, request for proposals, request for qualifications or other solicitation document issued by a City department for a contract that requires City Council approval, in accordance with the procurement rules adopted by the City Manager or designee through a memorandum issued by the City Manager or designee, an Administrative Directive or a procurement manual issued under the authority of the City Manager or designee, and/or pursuant to statutory requirements.
- 16.2.15 **Goal Setting Committee (GSC)** – a committee, or series of committees, appointed and chaired by the City Manager or designee from the Executive

Team that includes, at a minimum, the EDD Director or designee, and the Director of Finance or Director of Transportation and Capital Improvements (TCI) or their designees, the Director or designee of the Originating Department (if the Originating Department is neither Finance nor TCI,) all without duplication of designees and two citizens appointed by City Council who are eligible to vote during the goal setting committee on contracts valued at \$3,000,000 and above. The City Manager or designee may also appoint two ex-officio members of the Small Business Advocacy Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes S/M/WBE Program Goals for the City of San Antonio (e.g., Annual Aspirational Goals, Contract-by-Contract Subcontracting Goals, and determining which M/WBE segments are eligible for Segmented Subcontracting Goals annually) based upon Industry Categories, vendor availability, project-specific characteristics, and M/WBE utilization. The GSC also makes determinations about which Affirmative Procurement Initiatives (APIs) are to be applied to specific contracts based upon various criteria.

- 16.2.16 **Good Faith Efforts** – documentation of the Respondent’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation as stated in the solicitation reflecting the Respondent’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor’s posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and contractors that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.)
- 16.2.17 **HUBZone Firm** – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

- 16.2.18 **Independently Owned and Operated** – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.
- 16.2.19 **Individual** – an adult person that is of legal majority age.
- 16.2.20 **Industry Categories** – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”
- 16.2.21 **Joint Venture Incentives** – an API that provides inducements for non-SBE and non-M/WBE firms to collaborate with SBE or M/WBE partners in responses to solicitations and performing a Prime Contract to supply goods to, or to perform non-Construction services on behalf of, the City. Joint ventures are manifested by written agreements between two or more Independently Owned and Controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture. Incentives under this API may include Evaluation Preferences that are tied to the percentage of SBE or M/WBE participation in the joint venture, expedited issuance of building permits and extra contract option years in certain Other Services and Goods & Supplies contracts.
- 16.2.22 **Minority/Women Business Enterprise (M/WBE)** – firm that is certified as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.
- 16.2.23 **M/WBE Directory** – a listing of M/WBEs that have been certified for participation in the City’s M/WBE Program APIs.
- 16.2.24 **M/WBE Subcontracting Program** – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified M/WBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-

contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein:

- (1) There have been ongoing disparities in the utilization of available M/WBE Subcontractors; or
- (2) Race-Neutral efforts have failed to eliminate persistent and significant disparities in the award of prime contracts to M/WBEs in a particular Industry Category or industry segment (e.g., Construction contracts, Professional Services contracts, and Architectural and Engineering contracts), and subcontract opportunities are limited outside of City contracts.

When specified by the GSC, the M/WBE Subcontracting Program may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for M/WBE firms.

- 16.2.25 **M/WBE Evaluation Preference** – an API that the City may apply to requests for proposals or qualifications (RFPs or RFQs) on City Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts that are issued pursuant to a Best Value Contracting method or other methods of procurement wherein criteria other than lowest price are factored into the selection process. M/WBEs that submit responses for these kinds of solicitations are awarded additional Points in the scoring of their responses when evaluating and ranking their responses against those submitted by non-minority firms. Where specified in contract specifications as approved by the Goal Setting Committee, the M/WBE Evaluation Preference may be limited to Emerging M/WBE firms.
- 16.2.26 **Minority Business Enterprise (MBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the City. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in the SBEDA Ordinance is not inclusive of women-owned business enterprises (WBEs).
- 16.2.27 **Minority Group Members** – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons with origins in any of the black racial groups of Africa.

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

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

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

- 16.2.28 **Originating Department** – the City department or authorized representative of the City which issues solicitations or for which a solicitation is issued.
- 16.2.29 **Payment** – dollars actually paid to Prime Contractors and/or Subcontractors and vendors for City contracted goods and/or services.
- 16.2.30 **Points** – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts (e.g., up to 20 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).
- 16.2.31 **Prime Contractor** – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City.
- 16.2.32 **Race-Conscious** – any business classification or API wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and APIs that are listed herein under the heading of “Race-Conscious”). To be eligible for the benefits of race- and gender-conscious APIs as provided in this Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.
- 16.2.33 **Race-Neutral** – any business classification or API wherein the race or gender of business owners is not taken into consideration (e.g., references to SBE programs and APIs that are listed herein under the heading of “Race-Neutral”).
- 16.2.34 **Relevant Marketplace** – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the 2015 Disparity Study, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

- 16.2.35 **Respondent** – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City.
- 16.2.36 **Responsible** – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.
- 16.2.37 **Responsive** – a firm’s submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.
- 16.2.38 **San Antonio Metropolitan Statistical Area (SAMSA)** – also known as the Relevant Marketplace, the geographic market area from which the City’s 2015 Disparity Study analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).
- 16.2.39 **Segmented M/WBE Goals** – the application of multiple goals for M/WBE participation within Annual Aspirational Goals or for M/WBE Subcontracting Goals on an individual City contract wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals. Such segmented goals specifically target the participation of a particular segment of business enterprises owned and Controlled by WBEs or certain Minority Group Members (e.g., African-Americans or Hispanic-Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and Minority Group Member categories of M/WBEs. The application of Segmented M/WBE Goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.
- 16.2.40 **SBE Directory** – a listing of small businesses that have been certified for participation in the City’s SBE Program APIs.
- 16.2.41 **Significant Business Presence** – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE’s performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

- 16.2.42 **Small Business Enterprise (SBE)** – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.
- 16.2.43 **Small Business Office (SBO)** – the office within the Economic Development Department (EDD) of the City that is primarily responsible for general oversight and administration of the S/M/WBE Program.
- 16.2.44 **Small Minority Women Business Enterprise Program (S/M/WBE Program)** – the combination of SBE Program and M/WBE Program features contained in this Ordinance.
- 16.2.45 **Solicitation Incentives** – additional inducements or enhancements in the solicitation process that are designed to increase the chances for the selection of S/M/WBE firms in competition with other firms. Such inducements and enhancements may include such terms as additional contract option years, increased quantities in supply contracts, and evaluation preferences, where not prohibited by law. These solicitation incentives may be applied as appropriate to solicitations, contracts, and letter agreements for Construction, Architecture and Engineering services, Professional Services, Other Services, and Goods & Supplies contracts, including change orders and amendments.
- 16.2.46 **Subcontractor** – any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor’s performance under a contract or purchase order with the City. A copy of the binding agreement between the Prime Contractor and the Subcontractor shall be submitted prior to the City’s issuance of a notice to proceed.
- 16.2.47 **Suspension** – the temporary stoppage of an SBE or M/WBE firm’s beneficial participation in the City’s S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7, or pursuant to the Penalties and Sanctions set forth in Section III.E.13.
- 16.2.48 **Subcontractor/Supplier Utilization Plan** – a binding part of this contract agreement which states the Contractor’s commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of Contractor’s Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner

and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.

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

16.3 SBEDA Program Compliance – General Provisions

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

- 16.3.1 Contractor shall cooperate fully with the Small Business Office and other City departments in their data collection and monitoring efforts regarding Contractor’s utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its subcontractors with this term;
- 16.3.2 Contractor shall cooperate fully with any City or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Contractor or its Subcontractors or suppliers;

- 16.3.3 Contractor shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
- 16.3.4 Contractor shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Contractor's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Contractor to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Contractor of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
- 16.3.5 Contractor shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the City, as well as any transfer or change in its ownership or business structure.
- 16.3.6 Contractor shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.
- 16.3.7 In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a Contractor's Subcontractor / Supplier Utilization Plan, the Contractor shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the Contractor and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.
- 16.3.8 Contractor acknowledges that the City will not execute a contract or issue a Notice to Proceed for this project until the Contractor for this project has registered and/or maintained active status in the City's Centralized Vendor Registration System (CVR), and Contractor has represented to City which primary commodity codes each Subcontractor will be performing under for this contract. City recommends all Subcontractors to be registered in the CVR.

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

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

16.4.2 M/WBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 8. (b), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, CONTRACTOR affirms that if it is presently certified as an M/WBE (see *Minority/Women Business Enterprise* definition), CONTRACTOR agrees not to subcontract more than 49% of the contract value to a non-M/WBE firm.

16.5 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, the Contractor represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Contractor shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Contractor's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Contractor shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

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

16.7 Violations, Sanctions and Penalties. In addition to the above terms, Contractor acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

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

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

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

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

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

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

1. Suspension of contract;
2. Withholding of funds;

3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and
5. Disqualification of Contractor or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

XVII. CONFLICT OF INTEREST

- 17.1 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) a City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;
 - b) 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
 - c) 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.
- 17.2 Pursuant to the subsection above, Contractor warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Contractor further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.
- 17.3 Contractor shall not knowingly engage in financial transactions using nonpublic City information to unfairly advance private interests. For purposes of this section, nonpublic City information does not include the following: (1) information which is generally available to the public, or thereafter, without any fault of Contractor, becomes generally available to the public, or which is general knowledge; or (2) information which was already in the possession of Contractor prior to the date of this contract.
- 17.4 Contractor shall not solicit or accept any gift or other item of monetary value from any person or entity that Contractor knows is being offered with the intent to improperly influence conduct of the Contractor.

- 17.5 Contractor shall not knowingly give improper preferential treatment to any private organization or individual in connection with the provision of services pursuant to the provisions of this contract unless otherwise permitted elsewhere in this contract.
- 17.6 Contractor shall endeavor to avoid any actions creating the appearance that it is violating the law or the ethical standards set out in this article.
- 17.7 Contractor shall cause each employee of Contractor working at the VSF, to the exclusion of SAPD off-duty police officers employed by Contractor or otherwise working at the auction lot at the VSF, to sign a document including the covenants set forth in this article and that the employee will comply with the same.

XVIII. 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, and subject to approval by the City Council, as evidenced by passage of an ordinance.

XIX. SEVERABILITY

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 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 Agreement 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 Agreement that is 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.

XX. 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. All licenses, legal certifications, or inspections required for the facilities, equipment, or materials and all applicable state and federal laws and local ordinances must be complied with by Contractor. Failure to comply with this requirement shall be treated as a default and will result in termination of this contract.

XXI. COMPLIANCE

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

XXII. NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVIII. 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.

XXIII. LAW APPLICABLE & LEGAL FEES

- 23.1 **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.**
- 23.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.
- 23.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

XXIV. LEGAL AUTHORITY

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

XXV. 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, and successors and assigns, except as otherwise expressly provided for herein.

XXVI. 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.

XXVII. INCORPORATION OF EXHIBITS

Each of the Exhibits listed below is an essential part of the Agreement, 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 – Contractor’s Capital Improvement Plan
- Exhibit B – Map of VSF
- Exhibit C – Contractor’s Transition Period Plan
- Exhibit D – Phase I and Phase II Assessments
- Exhibit E – Contractor’s IT Transition Period Plan
- Exhibit F – Prevailing Wage Rates
- Exhibit G – Subcontractor Services Agreement
- Exhibit H – Contractor’s Policies and Procedures
- Exhibit I – Contractor’s RFP Response
- Exhibit J – SBEDA Subcontractor/Supplier Utilization Plan

XXVIII. NON-DISCRIMINATION

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.

XXIX. ENTIRE AGREEMENT

This Agreement, 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

Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVIII. Amendments.

XXX. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

- 30.1 Texas Government Code Section 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.
- 30.2 "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.
- 30.3 "Company" means a for-profit sole proprietorship, 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.
- 30.4 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's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

XXXI. PROHIBITED CONTRIBUTIONS

- 31.1 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.

31.2 Contractor acknowledges that the City has identified this Agreement as high profile.

31.3 Contractor warrants and certifies, and this Agreement is made in reliance thereon, that the individual signing this Agreement 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 Agreement. Should the signor of this Agreement violate this provision, the City Council may, in its discretion, declare this Agreement void.

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

CITY OF SAN ANTONIO

ALANIS WRECKER SERVICE

(Signature)

(Signature)

Printed Name: _____
Title: _____
Date: _____

Printed Name: **Alejandro Alanis**
Title: **Owner**
Date: _____

Approved as to Form:

Assistant City Attorney