

ORDINANCE 2019-02-14-0126

SELECTING GONZALEZ, KYPUROS AND WHITE, INC., DBA GKW, INC., AND AWARDING A CONTRACT FOR AN ELECTRIC VEHICLE FLEET CONVERSION AND CITY-WIDE ELECTRIC VEHICLE INFRASTRUCTURE STUDY, FOR A TERM OF ONE YEAR, IN AN AMOUNT NOT TO EXCEED \$125,000.00, FUNDED BY THE BUILDING AND EQUIPMENT SERVICES DEPARTMENT FY 2019 GENERAL FUND BUDGET

* * * * *

WHEREAS, the City of San Antonio has committed to addressing the effects of global warming by signing the Paris Climate Accord; the City's draft Climate Action & Adaption Plan (CAAP) mitigation strategies include reducing transportation energy consumption through the transition to carbon-free vehicles; on January 11, 2019, the City was chosen to participate in Bloomberg Philanthropies' American Climate Cities Challenge and accelerating vehicle electrification is identified as a priority initiative over the two-year challenge; and

WHEREAS, Bexar County was recently designated in marginal nonattainment of federal ozone standards by the Environmental Protection Agency and tailpipe emissions from combustion-engine vehicles are a precursor to the formation of ground-level ozone; and

WHEREAS, a commitment to electric transportation is therefore not only important for the future growth and prosperity of the community, but will also improve air quality, reduce fuel consumption, and help mitigate greenhouse gas emissions; and

WHEREAS, the Office of Sustainability and Purchasing division of the Finance Department jointly developed a Request for Qualifications ("RFQ") for the Electric Vehicle Conversion and Infrastructure Deployment Study (RFQ 19-003; 6100010931) issued on November 16, 2018; and

WHEREAS, qualifications from four firms were received by the deadline and, based on the evaluation conducted by members of the review panel, Gonzalez, Kypuros and White, Inc., dba GKW, Inc., received the top score as the most qualified respondent; and

WHEREAS, Gonzalez, Kypuros and White, Inc., dba GKW, Inc., will provide technical assistance to the Office of Sustainability to assist in transitioning City fleet vehicles to electric, work with CPS Energy to expand and upgrade electric-vehicle charging infrastructure, and promote electric vehicles as a viable transportation choice for individuals and businesses; and

WHEREAS, this ordinance authorizes the selection of Gonzalez, Kypuros and White, Inc., dba GKW, Inc., and the execution of a contract for the Electric Vehicle Conversion and Infrastructure Deployment Study, in an amount not to exceed \$125,000.00, for a term of one year; **NOW THEREFORE:**

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

SECTION 1. Gonzalez, Kypuros and White, Inc., dba GKW, Inc., is hereby selected to provide services in relation to the "Electric Vehicle Conversion and Infrastructure Deployment Study" (RFQ 19-003; 6100010931) for the City of San Antonio as the most qualified respondent to the Request for Qualifications.

SECTION 2. The City Manager, or designee, or the Director, Office of Sustainability, or designee, is hereby authorized to take all actions necessary to negotiate and execute a contract with Gonzalez, Kypuros and White, Inc., dba GKW, Inc., in an amount up to \$125,000.00, for a term of one year. The term shall start after the City executes the contract and shall terminate on February 14, 2020. A copy of the contract, in substantially final form, is attached and incorporated herein for all purposes as **Attachment I**. The execution authority granted by this ordinance shall expire 60 days from the effective date.

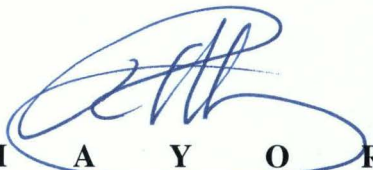
SECTION 3. Funding for this ordinance in the amount up to \$125,000.00 is available in Fund 77001000, Cost Center 3505010011 and General Ledger 5201040 as part of the Fiscal Year 2019 budget approved by City Council.

SECTION 4. Payment not to exceed the budgeted amount is authorized to Gonzalez, Kypuros and White, Inc., dba GKW, Inc., for the Electric Vehicle Conversion & Infrastructure Deployment Study.

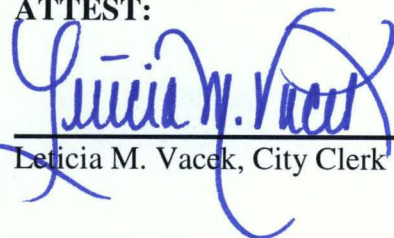
SECTION 5. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 6. This ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise it shall be effective on the tenth day after passage hereof.

PASSED and APPROVED this 14th day of February, 2019.



M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney

Bo

Agenda Item:	21 (in consent vote: 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22)
Date:	02/14/2019
Time:	09:24:36 AM
Vote Type:	Motion to Approve
Description:	Ordinance selecting Gonzalez, Kypuros and White, Inc., dba GKW, Inc., and awarding a contract for an Electric Vehicle Fleet Conversion and City-wide Electric Vehicle Infrastructure Study, for a term of one year, in an amount not to exceed \$125,000.00. Funding is available within the Building & Equipment Services FY 2019 Fleet Operations & Maintenance Fund Adopted Budget. [Roderick Sanchez, Assistant City Manager; Douglas Melnick, Chief Sustainability Officer]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
Art A. Hall	District 2		x				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				

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02/14/2019
Item No. 21

Attachment I

**AGREEMENT BETWEEN
THE CITY OF SAN ANTONIO
AND
GONZALEZ, KYPUROS AND WHITE, INC.
DBA GWK, INC.
FOR
ELECTRIC VEHICLE FLEET CONVERSION AND CITY-WIDE ELECTRIC
VEHICLE INFRASTRUCTURE STUDY (RFQ 19-003)**

**STATE OF TEXAS
COUNTY OF BEXAR**

This agreement (hereinafter referred to as the "Agreement"), made and entered into in San Antonio, Bexar County, Texas, between the City of San Antonio, a Municipal Corporation in the State of Texas acting by and through its City Manager (hereinafter referred to as "City"), and

Gonzalez, Kypuros and White, Inc.
dba GWK, Inc.
3463 Magic Drive, Suite 250
San Antonio, TX 78229

a corporation chartered under the laws of the State of Texas (hereinafter referred to as "GWK" or "Contractor"), said Agreement being executed by Angel Gonzalez, President, and pursuant to Ordinance No. 2019-02-14-_____, passed and approved by the City Council on February 14, 2019.

Terms and conditions for performance and compensation payment for this Agreement are set forth in the following contract documents, true and correct copies of which are attached and fully incorporated herein verbatim for all purposes:

1. Exhibit I, a Request for Qualifications for Electric Vehicle Fleet Conversion and City-wide Electric Vehicle Infrastructure Study. (RFQ 19-003; RFx 6100010931), issued by the City on November 16, 2018;
2. Exhibit II, Addendum I, dated December 5, 2018;
3. Exhibit III, Fee Schedule, submitted by GWK in response to the RFQ;
4. Exhibit IV, Copy of enabling Ordinance No. 2019-02-14-_____

Referenced Documents: Further, GWK's responses to the RFQ and its addendum are also fully incorporated by reference, verbatim, for all purposes. All the documents attached hereto and those incorporated by reference constitute the contract documents for this Agreement.

Conflict: The RFP and its addendum govern GWK's responses; this Integration Agreement governs both the RFP and responses; the Enabling Ordinance governs all in case of conflict.

This agreement supersedes any previous agreement or understanding of the parties, whether written or oral.

Compensation: As authorized by the Ordinance, total budget sums shall not exceed \$125,000.00 unless City Council action is taken to amend the enabling Ordinance.

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 subsequent contract period is subject to and contingent upon such appropriation.

In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by the Director, Office of Sustainability (hereinafter "Director"), of all services and activities set forth in this Agreement, City agrees to pay Contractor an amount not to exceed one hundred twenty-five thousand dollars (\$125,000.00) as total compensation.

It is understood and agreed by the Parties that Contractor will be paid for actual work performed and for allowable expenses, provided that Contractor shall present City with an invoice for all expenses and services monthly within 14 days of the end of the month. Payment shall be made no more than 30 calendar days following receipt and approval of each invoice.

Work Start Date: Work shall start immediately upon instruction to GKW from the Director, Office of Sustainability, or designee, for performance of various City projects described in the RFP's scope of services or the contract documents identified above.

Term of Performance and Termination Date: The term of this agreement is for one year and shall commence, after approval by the City Council as signified by the passage of an Ordinance, on the date recited in the enabling Ordinance, or on the date of the last party to execute this agreement, and terminate on February 14, 2020.

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
Attn: Office of Sustainability
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for Contractor, to:

Gonzalez, Kypuros and White, Inc.
dba GKW, Inc.
Attn: Angel Gonzalez

3463 Magic Drive, Suite 250
San Antonio, TX 78229

Assignment and Subcontracting: 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.

It is City's understanding, and this Agreement is made in reliance thereon, that Contractor intends to use the following subcontractors in the performance of this Agreement: MSE Group, LLC; the Cadmus Group, LLC. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by the Director, prior to the provision of any services by said subcontractor.

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 Director.

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 Director. 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.

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 the termination provisions above, 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.

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 Director. 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.

Independent Contractor: Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under this Agreement and that the Contractor has no authority to bind the City.

Termination: For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated above, or earlier termination pursuant to any of the provisions hereof. This Agreement may be terminated without cause by City upon 30 calendar days written notice. Upon written notice City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of the sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided above in Assignment and Subcontracting, which shall constitute an Event for Cause under this Agreement.

Defaults With Opportunity for Cure. Should Contractor default in the performance of this Agreement in a manner stated in this section below, 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 fifteen (15) calendar days after receipt of the written notice to cure such default. If Contractor fails to cure the default within such fifteen-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.

- Failure to comply with the SBEDA terms and conditions.
- Bankruptcy or selling substantially all of company's assets.
- Failing to perform or failing to comply with any covenant herein required.
- Performing unsatisfactorily.

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.

Regardless of how this Agreement is terminated, Contractor shall affect 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 records retention requirements. 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.

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.

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.

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.

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 signed by the Director. Substantive changes, to include an increase in the amount of compensation, shall require additional City Council approval.

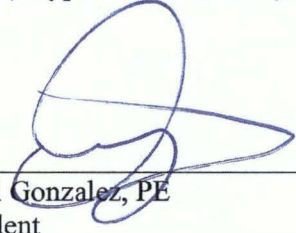
THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

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.

Entire Agreement: This Agreement, together with its authorizing ordinance and its exhibits, as listed above, 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.

Agreed, Consented to, and Executed this _____ day of February, 2019.

Gonzalez, Kypuros and White, Inc. dba GWK, Inc.

BY: 
Angel Gonzalez, PE
President

CITY OF SAN ANTONIO

BY: _____
Printed name: _____
Title: _____
CITY MANAGER, or her designee

APPROVED AS TO FORM:

Office of the City Attorney
Andrew Segovia, City Attorney

By: _____
Assistant City Attorney

EXHIBITS

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