

ORDINANCE 2020-10-29-0749

AWARDING A CONSTRUCTION CONTRACT TO THE LOWEST RESPONSIVE BIDDER, D. WILSON CONSTRUCTION, FOR THE WEST CARGO FACILITY REHABILITATION PROJECT AT THE SAN ANTONIO INTERNATIONAL AIRPORT IN THE AMOUNT OF \$4,661,606.69 AND APPROPRIATING \$1,732,014.42 FROM INTERIM AIRPORT FINANCING AND AMENDING THE FY 2021 - FY 2026 CAPITAL IMPROVEMENT PROGRAM.

* * * * *

WHEREAS, the City released an Invitation for Bids on June 24, 2020 for the West Cargo Facility Rehabilitation project at the San Antonio International Airport and received four bids in response; and

WHEREAS, this Ordinance accepts the lowest responsive bid submitted by D. Wilson Construction in the amount not to exceed \$4,661,606.69 for completion of this project; **NOW THEREFORE**,

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

SECTION 1. The lowest responsive bid by D. Wilson Construction in the amount not to exceed \$4,661,606.69 for the West Cargo Facility Rehabilitation project at the San Antonio International Airport is accepted. All other bids are rejected upon execution of a contract with D. Wilson Construction and the deposit of all required bonds and insurance certificates, or the expiration of 90 days from the effective date of this Ordinance, whichever occurs first. The contract is authorized for execution within 90 days and is attached in substantially final format as **Attachment 1**.

SECTION 2. The amount of \$1,732,014.42 is appropriated in SAP Fund 51099000, Airport Capital Projects, SAP Project Definition 33-00075 Rehabilitate West Cargo Facilities, SAP WBS Element 33-00075-90-XX-XX, 2019 Unissued Interim Airport Financing and SAP General Ledger 610100.

SECTION 3. Payment is authorized to be encumbered and made payable to D. Wilson Construction in an amount not to exceed \$4,661,606.69. Payment is in support of the Rehabilitate West Cargo Facilities Project using Fund 51099000 with the WBS elements and GL accounts in the table below. Funding for this project is provided by Interim Airport Financing and is in the FY2021-FY2026 CIP Budget as amended above.

WBS	GL	AMOUNT
33-00075-01-02	5201170	\$252,696.10
33-00075-04-01	5201180	3,000.00
33-00075-05-01	5201040	296,431.96
33-00075-05-02	5201140	4,616,606.69
33-00075-05-03	5201140	461,060.67

PASSED-PS-01-0808

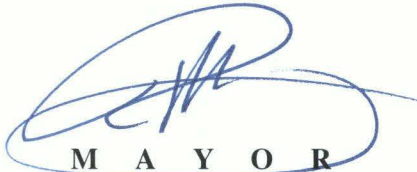
33-00075-05-04	5201040	45,000.00
TOTAL		\$5,674,795.42

Payment is limited to the amounts budgeted in the Operating and/or Capital Budget funding sources identified. All expenditures will comply with approved operating and/or capital budgets for current and future fiscal years.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Fund Numbers, Project Definitions, WBS Elements, Internal Orders, Fund Centers, Cost Centers, Functional Areas, Funds Reservation Document Numbers, and GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.


PASSED and APPROVED this 29th day of October 2020.


M A Y O R
Ron Nirenberg

ATTEST:


Tina J. Flores, City Clerk

APPROVED AS TO FORM:


for Andrew Segovia, City Attorney



City of San Antonio

City Council

October 29, 2020

Item: 11

Enactment Number:

File Number: 20-6003

2020-10-29-0749

Ordinance awarding a construction contract to the lowest responsive bidder to D. Wilson Construction for the West Cargo Facility Rehabilitation project at the San Antonio International Airport in the amount of \$4,661,606.69 and appropriates \$1,732,014.42 from Interim Airport Financing and amends the FY 2021 - FY 2026 Capital Improvement Program. [Carlos Contreras, Assistant City Manager; Jesus Saenz, Director, Aviation]

Councilmember John Courage made a motion to approve. Councilmember Jada Andrews-Sullivan seconded the motion. The motion passed by the following vote:

Aye: 11 Nirenberg, Treviño, Andrews-Sullivan, Viagran, Rocha Garcia,
Gonzales, Cabello Havrda, Sandoval, Pelaez, Courage and Perry

MAT
10/29/2020
Item No. 11

EXHIBIT 1
INTEGRATION AGREEMENT FOR WEST CARGO FACILITY REHABILITATION
PROJECT

**INTEGRATION AGREEMENT BETWEEN
THE CITY OF SAN ANTONIO
AND
D. WILSON CONSTRUCTION
FOR
WEST CARGO FACILITY REHABILITATION
[RFCSP #33-00075]**

**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

D. Wilson Construction
1207 Pecan Blvd.
McAllen, TX 78501

a corporation chartered under the laws of the State of Texas (hereinafter referred to as "D. Wilson" or "Contractor"), said Agreement being executed by Josue Reyes (CEO), and pursuant to Ordinance No. _____, passed and approved by the City Council on _____, 20__.

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 1. REQUEST FOR COMPETITIVE SEALED PROPOSAL FOR WEST CARGO FACILITY REHABILITATION, RFCSP # 33-00075, issued on June 24, 2020;
2. Exhibit 2. D. Wilson Construction Bid Response ;
3. Exhibit 3. Copy of enabling Ordinance No. _____;

Referenced Documents: Further, D. Wilson Construction's responses to the RFCSP 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 RFCSP and its addendum govern D. Wilson Construction's responses; this Integration Agreement governs both the RFCSP 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.

In accordance with Subchapter D. Competitive Sealed Proposal Method Government of Chapter 2269 of the Texas Government Code, City released a Request for Competitive Sealed Proposal (RFCSP) for West Cargo Facility Rehabilitation Project). Based on the published selection criteria, the City has determined that D. Wilson Construction's (Contractor) proposal provides the best value to the City.

Pursuant to Section 2269.155 of the Texas Government Code, the City and Contractor through negotiations have come to agreement on scope and price and hereby agree that the fee schedule attached hereto as Exhibit 4 shall replace any prior cost proposals and/or fee schedules and is hereby incorporated into and made a part of this construction contract.

Compensation:

In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by the Aviation Director (hereinafter "Director"), of all services and activities set forth in this Agreement, City agrees to pay Contractor an amount not to exceed four million, six hundred and sixty-one thousand, six hundred and six and 42/100 dollars (\$4,661,606.69) as total compensation.

Work Start Date: Work shall start immediately upon instruction to D. Wilson Construction from the Director or his designee for performance of the City project described in the RFCSP's scope of services or the contract documents identified above.

Term of Performance and Termination Date: The term of this agreement shall commence upon 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 upon completion of the project.

Insurance:

1 CONTRACTOR'S LIABILITY INSURANCE.

- 1.1** Prior to the commencement of any work under this Contract, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to City's Risk Management Department which shall be clearly labeled "**West Cargo Facility Rehabilitation**" 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. City shall not accept a Memorandum of Insurance or Binder as proof of insurance. The Certificate(s) shall be signed by the Authorized Representative of the insurance carrier and shall include the agent's original signature and

telephone number. The Certificate(s) shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform its obligations under this Contract until such Certificate(s) and endorsements have been received and approved by City's Risk Management Department. No officer or employee of City, other than the City of San Antonio's Risk Manager, shall have authority to waive this requirement.

- 1.2 City reserves the right to review the insurance requirements of this **ARTICLE XI** during the effective period of this Contract and to modify insurance coverages and limits when deemed necessary and prudent by the City of San Antonio's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. In no instance will City allow modification whereby City may incur increased risk.
- 1.3 Contractor's financial integrity is of interest to City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by City, Contractor shall obtain and maintain in full force and effect, for the duration of this Contract and 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:

TABLE ON FOLLOWING PAGE

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	<i>Statutory</i>
2. Employers' Liability	\$1,000,000.00/\$1,000,000.00/ \$1,000,000.00

3. Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. e. Explosion, Collapse, Underground 	For Bodily Injury and Property Damage of: \$5,000,000.00 per occurrence; \$15,000,000.00 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability: <ul style="list-style-type: none"> a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles 	Combined Single Limit for Bodily Injury and Property Damage of: \$5,000,000.00 per occurrence (to include AOA access)
5. *Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.

- 1.4** Contractor agrees to require, by written contract, all Subcontractors providing goods or services pursuant to performance on the Project obtain the same categories of insurance coverage required of Contractor and provide a Certificate of Insurance and endorsement that names Contractor and City as additional insureds. Policy limits of the coverages carried by Subcontractors shall be determined as a business decision of Contractor. Contractor shall provide City with said Certificate and endorsement prior to the commencement of any work by the Subcontractor. This Subcontractor insurance provision may be modified by the City of San Antonio's Risk Manager, without subsequent San Antonio City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. Such insurance coverage modification may be enacted by letter signed by the City of San Antonio's Risk Manager, which shall become a part of this Contract for all purposes.

- 1.5** As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of all insurance policies, declaration pages and all required endorsements associated with this Work. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within ten (10) calendar days. Contractor shall pay any and all costs incurred resulting from provision of said documents to City.

**City of San Antonio
Attn: Risk Management Department**

**Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966**

- 1.6** 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 City, its officers, officials, employees, volunteers, and elected representatives as additional insured(s) by endorsement, with respect to operations and activities of, or on behalf of, the named insured performing under this Contract with City, with the exception of the workers' compensation and professional liability policies;
- b.** Provide for an endorsement reflecting the "other insurance" clause shall not apply to the City of San Antonio where 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 City.
- d.** Provide advance written notice directly to City, at the address cited above, of any suspension or non-renewal in coverage of Contractor's insurance policy/policies associated with this Work and not less than ten (10) calendar days in advance notice for Contractor's nonpayment of premium(s).

- 1.7** Within five (5) calendar days of a suspension, cancellation or non-renewal of insurance coverage associated with this Work, Contractor shall provide a replacement Certificate(s) of Insurance and applicable endorsement(s) to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time

during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Contract.

- 1.8 In addition to any other remedies City may have upon Contractor's failure to provide and maintain any insurance and/or policy endorsements to the extent and within the time required, 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 insurance requirements hereof.
- 1.9 Nothing contained herein shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its Subcontractors' performance of the Work covered under this Contract.
- 1.10 Contractor accepts and agrees Contractor's insurance shall be deemed primary and non-contributory, with respect to any insurance or self-insurance carried by City, for liability arising out of Contractor's operations under this Contract.
- 1.11 Contractor understands, accepts and agrees the insurance required of Contractor by this Contract is in addition to and separate from any other obligation contained in this Contract and no claim or action by or on behalf of City shall be limited to insurance coverage provided.
- 1.12 Contractor and any of Contractor's Subcontractors are responsible for any and all damage to their own equipment and/or property.
- 1.13 Without limiting any of the other obligations or liabilities of Contractor under the Contract Documents, Contractor shall purchase and maintain, during the term of the Contract and at Contractor's own expense, the minimum liability insurance coverage described below with insurance companies duly authorized or approved to do business in the State of Texas and otherwise satisfactory to City. Contractor also shall require each Subcontractor performing work under the Contract, at Subcontractor's own expense, to maintain levels of insurance necessary and appropriate for the Work performed during the term of the Contract, said levels of insurance comply with all applicable laws. Subcontractor's liability insurance shall name Contractor, City and Design Consultant as additional insureds by using endorsement CG 20 26 or broader. Certificates of insurance complying with the requirements prescribed in **ARTICLE XI.1.2** shall show the existence of each policy, together with copies of all policy endorsements showing City and Design Consultant as an additional insured, and shall be delivered to City before any Work is started. Contractor promptly shall furnish, upon the request of and

without expense to City, a copy of each policy required, including all endorsements, which shall indicate:

- a. Workers' Compensation, with statutory limits, with the policy endorsed to provide a waiver of subrogation as to City; Employer's Liability Insurance of not less than \$1,000,000.00 for each accident, \$1,000,000.00 disease for each employee and \$1,000,000.00 disease policy limit;
- b. Commercial General Liability Insurance, Personal Injury Liability, Independent Contractor's Liability and Products and Completed Operations and Contractual Liability covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring Contractor's (and/or Subcontractor's) liability for injury to or death of City's employees and all third parties, and for damage to property of third parties, with a combined bodily injury (including death) and property damage minimum limit of—\$5,000,000.00 per occurrence, \$15,000,000.00 general aggregate, or its equivalent in Umbrella or excess Liability Coverage. If coverage is written on a claims-made basis, coverage shall be continuous (by renewal or extended reporting period) for no less than sixty (60) months following completion of the contract and acceptance of work by City. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. City shall be named as additional insured by using endorsement CG 20 26 or broader. The general liability policy shall include coverage extended to apply to completed operations and XCU hazards. The Completed Operations coverage must be maintained for a minimum of one (1) year after final completion and acceptance of the Work, with evidence of same filed with City. The policy shall include an endorsement CG2503 amendment of limits (designated project or premises) in order to extend the policy's limits specifically to the Project in question.
- c. Business Automobile Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury (including death) and property damage minimum limit of \$5,000,000 per occurrence. Such insurance shall include coverage for loading and unloading hazards.
- d. Five (5) calendar days prior to a suspension, cancellation or non-renewal of any required line of insurance coverage, Contractor shall provide City a replacement certificate of insurance with all applicable endorsements included. City shall have the option to suspend Contractor.

- 1.14 If any insurance company providing insurance coverage(s) required under the Contract Documents for Contractor becomes insolvent or becomes the subject of any rehabilitation, conservatorship, liquidation or similar proceeding, Contractor immediately shall procure, upon first notice to Contractor or City of such occurrence and without cost to City, replacement insurance coverage before continuing the performance of the Work at the Project. Any failure to provide such replacement insurance coverage shall constitute a material breach of the Contract.
- 1.15 **INDEMNIFICATION.** 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' activities under this Agreement, including any acts or omissions of Contractor, any agent, officer, director, representative, employee, contractor 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.

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' 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.

I.2 PROPERTY INSURANCE

I.2.1 As stated in **ARTICLE XI.1** Contractor shall obtain at its expense and maintain throughout the duration of the Project, All-Risk Builder's Risk Insurance, if the Project involves complete construction of a new building, or an All-Risk Installation Floater policy, if the Project involves materials and supplies needed for additions to, renovations or remodeling of an existing building. Coverage on either policy shall be All-Risk, including, but not limited to, Fire, Extended Coverage, Vandalism and Malicious Mischief, Flood (if located in a flood zone) and Theft, in an amount equal to one hundred percent (100%) of the insurable value of the Project for the Installation Floater policy, and one hundred percent (100%) of the replacement cost of the Project for the Builder's Risk policy. If an Installation Floater policy is provided, City shall be shown as a Joint Named Insured with respect to the Project. If a Builder's Risk policy is provided, the policy shall be written on a Completed Value Form, including materials delivered and labor performed for the Project. This policy shall be in the name of Contractor and naming City, Design Consultant and Subcontractors, as well as any Sub-Subcontractors, as additional insureds as their interests may appear. The policy shall have endorsements as follows:

- a.** This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.
- b.** Loss, if any, shall be adjusted with and made payable to Contractor or City and Contractor as trustee for the insureds as their interests may appear.

I.2.2 BOILER AND MACHINERY INSURANCE.

If applicable, City shall purchase and maintain Boiler and Machinery Insurance required by the Contract Documents or by law, which specifically shall cover such insured objects during installation and until final acceptance by City. This insurance shall include the interests of City, Contractor, Subcontractors and Sub-Subcontractors in the Work, and City and Contractor shall be named insureds.

I.2.3 LOSS OF USE INSURANCE.

City, at City's option, may purchase and maintain such insurance as shall insure City against loss of use of City's property due to fire or other hazards, however caused. City waives all rights of action against Contractor that it may now have or have in the future for loss or damage to City's property howsoever arising, including consequential losses due to fire or other hazards however caused.

- I.2.4** Contractor shall provide to City a Certificate of Insurance evidencing all property insurance policies procured under this **ARTICLE XI.2** and all endorsements thereto, before any exposure to loss may occur.
- I.2.5** Partial occupancy or use in accordance with **ARTICLE IX.9** shall not commence until the insurance company/companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. City and Contractor shall take reasonable steps to obtain consent of the insurance company/companies and shall take no action without mutual written consent with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.
- I.2.6** Contractor shall take all necessary precautions to ensure no damage shall result from operations to private or public property. All damages shall be repaired or replaced by Contractor at no additional cost to City.

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: Aviation Department
P.O. Box 839966
San Antonio, Texas 78283-3966

If intended for Contractor, to:

D. Wilson Construction
1207 E. Pecan Blvd.
McAllen, Texas 78501

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. None.

Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by the Director or his designee, 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.

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 or his designee. Substantive changes, to include an increase in the amount of compensation in excess of \$100,000.00, 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 _____, 20__.

D. WILSON CONSTRUCTION

BY: _____

TITLE: _____

CITY OF SAN ANTONIO

BY: _____

Eric J. Walsh

City Manager

APPROVED AS TO FORM:

By: _____

City Attorney

EXHIBIT 1

**REQUEST FOR COMPETATIVE SEALED PROPOSAL FOR WEST CARGO
FACILITY REHABILITATION
[RFCSP #33-00075]**

EXHIBIT 2
D. WILSON CONSTRUCTION BID RESPONSE

EXHIBIT 3
ENABLING ORDINANCE NO. _____