

AN ORDINANCE **2007-10-04-1056**

**SELECTING CLEAN ENERGY FOR NEGOTIATION AND EXECUTION OF A DESIGN-BUILD/OPERATION AND MAINTENANCE AGREEMENT; THE PRICE OF DESIGN-BUILD PORTION OF THE CONTRACT SHALL NOT EXCEED \$979,944.00 FOR THE DESIGN AND CONSTRUCTION OF A COMPRESSED NATURAL GAS REFUELING FACILITY PROJECT, AND APPROPRIATING FUNDS.**

\* \* \* \* \*

**WHEREAS**, proposals were submitted in connection with the Compressed Natural Gas Refueling Project; and

**WHEREAS**, Ordinance 2007-05-31-0602 authorized the City to purchase 15 garbage trucks fueled by compressed natural gas which will be delivered in March 2008 and will require a refueling facility to be in place upon delivery; and

**WHEREAS**, a provider is needed to perform design-build services for a compressed natural gas refueling facility at the Northeast Service Center located at 10303 Tool Yard to service the incoming garbage trucks; and

**WHEREAS**, the price of the design-build portion of the contract shall not exceed Clean Energy's Cost Proposal (\$979,944.00); and

**WHEREAS**, the contract will include terms for annual maintenance and operation of this facility; and

**WHEREAS**, this Ordinance selects the proposal submitted by **Clean Energy** for negotiation and execution of a design build/operation and maintenance contract; and

**WHEREAS**, approval of this Ordinance is consistent with the City's policy to seek City Council approval to appropriate project funding and award of contracts; **NOW THEREFORE**,

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

**SECTION 1.** **Clean Energy** is hereby selected as the design builder with operations and maintenance responsibility in connection with the Compressed Natural Gas Refueling Project.

**SECTION 2.** City staff is authorized and directed to commence negotiations with said firm to reach an agreement on a contract for such work at a fair and reasonable price for the design-build portion of the contract which shall not to exceed the total of Clean Energy's Costs Proposal (\$979,944.00).

**SECTION 3.** City staff is authorized and directed to commence negotiations with said firm to reach agreement in the contract for the operations and maintenance portion of the contract at a fair and reasonable price that is subject to the appropriation and availability of funds.

**SECTION 4.** If a contract can be negotiated in accordance with the terms of the standard-form contract for design build services, maintenance and operation, and in accordance with the price provisions contained herein, the City Manager or her designee is authorized to execute such an agreement without further City Council action. The Contract must be executed by all parties within 120 days of signing of this Ordinance; otherwise, the contract must be considered through a subsequent ordinance.

**SECTION 5.** The following financial adjustments are hereby approved:

- a) This ordinance is also a declaration of the City's official intent to reimburse itself from the proceeds derived from the sale of the City of San Antonio, Combination Tax and Revenue Certificates of Obligation, Series 2007 for any authorized expenditures from any lawfully available funds of the City.
- b) The following appropriations are contingent upon the sale of the City of San Antonio, Combination Tax and Revenue Certificates of Obligation, Series 2007 for SAP Project Definition 55-00011, CNG Fueling Facility.
- c) The amount of \$1,300,000.00 is appropriated in SAP Fund 11001000, General Fund, Internal Order # 390000000554, GL account 6102100 – Interfund Transfer out entitled Transfer to 55-00011-90-01. The amount of \$1,300,000.00 is authorized to be transferred to SAP Fund 43099000.
- d) The budget in SAP Fund 40099000, SAP Project Definition 55-00011, CNG Fueling Facility, shall be revised by increasing WBS element 38-00011-90-01 entitled Trf Fr I/O# 390000000554, GL account 6101100 – Interfund Transfer In, by the amount \$ 230,000.00.
- e) The amount of \$1,300,000.00 is appropriated in SAP Fund 40099000, Other Capital Projects, SAP Project Definition 55-00011, CNG Fueling Facility, WBS element 55-00011-05-02-01 entitled City Construction, G/L Account 5201140, and \$979,944.00 is authorized to be encumbered and made payable, (for City Construction) to **Clean Energy**.

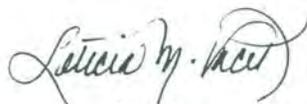
**SECTION 6.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocation to specific SAP Fund Numbers, SAP Project Definitions, 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 7.** This Ordinance shall become effective on October 14, 2007.

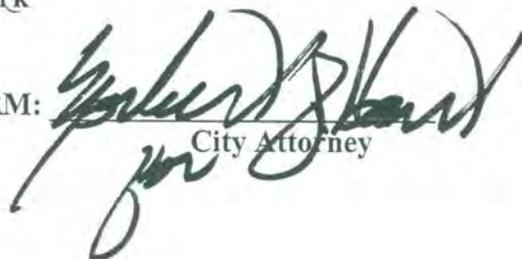
**PASSED AND APPROVED** this 4th day of October, 2007.

  
M A Y O R

ATTEST:

  
City Clerk

APPROVED AS TO FORM:

  
City Attorney

# City Council Meeting

DATE: October 4, 2007

ORDINANCE:

AGENDA ITEM: 23

RESOLUTION:

Consent Agenda

| NAME                              | ROLL CALL | MOTION | SECOND | ABSTAIN | AYE | NAY | ABSENT |
|-----------------------------------|-----------|--------|--------|---------|-----|-----|--------|
| Mary Alice Cisneros<br>DISTRICT 1 |           |        |        |         |     |     |        |
| Sheila McNeil<br>DISTRICT 2       |           |        |        |         |     |     |        |
| Roland Gutierrez<br>DISTRICT 3    |           | ✓      |        |         |     |     |        |
| Philip Cortez<br>DISTRICT 4       |           |        |        |         |     |     |        |
| Lourdes Galvan<br>DISTRICT 5      |           |        |        |         |     |     |        |
| Delicia Herrera<br>DISTRICT 6     |           |        |        |         |     |     |        |
| Justin Rodriguez<br>DISTRICT 7    |           |        | ✓      |         |     |     |        |
| Diane Cibrian<br>DISTRICT 8       |           |        |        |         |     |     |        |
| Kevin Wolff<br>DISTRICT 9         |           |        |        |         |     |     |        |
| John Clamp<br>DISTRICT 10         |           |        |        |         |     |     |        |
| Phil Hardberger<br>MAYOR          |           |        |        |         |     |     |        |

COMMENTS: *Gutierrez moved to accept the bid of Clean Energy in the amount of \$*

*Wolff - Friendly amendment to motion that the amount submitted by Clean Energy will not exceed the bid submitted and announced today. Friendly amendment was accepted by Gutierrez and Rodriguez.*



CMS or Ordinance Number: CN4600007110

TSLGRS File Code:1075-16

Document Title:

CONT - Construction Contract Portion of a Design Build Project for a Compressed natural gas refueling facility.

**Commencement Date:**

**5/7/2008**

**Expiration Date:**

**12/31/2010**

# Design-Build and Operation-Maintenance Agreement

(Clean Energy d/b/a Transtar Energy Company, LP)

This Agreement is undertaken as of the Effective Date between the City of San Antonio (City), and the CONTRACTOR designated below.

**Authorizing Ordinance:** 2007-10-04-1056

**CONTRACTOR:** Clean Energy d/b/a Transtar Energy Company LP  
Clean Energy Facilitators/Subordinates

**CONTRACTOR'S Address:** 3020 Old Ranch Parkway, Suite 200  
Seal Beach California 90740

**Term:** Five years, beginning with the effective date of the  
Authorizing Ordinance

**Renewal:** City can renew this contract for five additional years  
on the same terms and conditions as the original term  
by passage of a Council Ordinance or Resolution.

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## **SECTION 1. GENERAL PROVISIONS**

### **1. Definitions.**

The terms, words and phrases used in the Contract Documents shall have the meanings given in the General Conditions as follows:

1.1.1. “CE” means Clean Energy or its subsidiaries acting by and through its employees, officers and authorized agents.

1.1.2. “CONTRACTOR” means legal entity that execute the Agreement to provide Design, Construction, Operation and Maintenance Services for the CNG Station.

1.1.3. "Direct Salary Expense" or "DSE" means the actual gross salary, expressed on an hourly wage basis, of CONTRACTOR’S employees and consultants directly engaged on the Project. For DSE purposes, CONTRACTOR’S employees include, but are not limited to, architects, officers, principals, engineers, designers, job captains, draftspersons, and specification writers, who are performing consultation, research or design, or who are producing drawings, specifications, plans, or other documents pertaining to the Project, or who are performing services that are directly attributable to

and necessary for the Project. These individuals/positions are identified by the CONTRACTOR in Exhibit "X" to this Agreement.

1.1.6. "Contract General Conditions" means the additional contract provisions described in Exhibit "III", General Conditions.

1.1.7. "CONTRACTOR'S General Conditions" are the allowable costs for managing the construction in the field.

1.1.8. "Guaranteed Maximum Price" (GMP) The guaranteed maximum price of nine-hundred seventy nine thousand nine-hundred and forty four dollars (\$979,944) for the design and construction of the Project, excluding the cost of gas pipeline, telephone and electrical service installation. The GMP is based on the Plans and Specifications outlined in "Exhibit V" and the Schedule of Values outlined in "Exhibit VII."

1.1.9. "Project Architect" means the professional architect or engineer employed by the CONTRACTOR to perform all or part of the Design Services in accordance with the Contract: The Project Architect and its professional consultants must be qualified to perform the Design Services and licensed in the State of Texas in their respective professions and in compliance with all applicable laws.

1.1.11. "SUBCONTRACTOR" means a person or entity that has an agreement with the CONTRACTOR to perform any portion of the Work.

1.1.12. "Work" all services, labor, materials, supplies, workmanship, manufacture and fabrication of components and equipment which are required or reasonably inferable to complete the Project in strict accordance with the requirements of the Contract Documents. Work includes, but is not limited to, the Design Services, the Construction Services, and any additional services and other services required. The term "reasonably inferable" takes into consideration the understanding of the parties hereto that not every detail will be shown on the Drawings and included in the Specifications.

1.1.13. "OWNER/CITY" means the OWNER of the Compressed Natural Gas Refueling Station, Northeast Service Center-10303 Tool Yard, San Antonio, Texas. All references to the term OWNER/City shall mean the City of San Antonio.

1.1.15. "Slow Fill" means to refill the natural gas tank of a garbage truck with compressed natural gas within ten (10) hours or less after the garbage truck connects and starts the refueling process.

1.1.16. "Fast Fill" means to refill at a rate of forty (40) Diesel Gallon Equivalents of compressed natural gas within ten (10) minutes or less after the garbage truck connects and starts the refueling process.

1.1.17. "Station" means the slow fill and fast fill Station for refueling CNG vehicles.

1.1.18. "PSI" means pounds per square inch.

1.1.19. "BTU" means a British Thermal Unit, or the quantity of heat required to raise the temperature of one pound of water by one degree Fahrenheit.

1.1.20. "CF" means One Cubic Foot of gas having an energy content of 1,020 BTUs

1.1.21. "CCF" means 100 CFs of gas having an energy content of 102,000 BTUs

1.1.22. "Standard Cubic Foot" or "SCF" means the quantity of natural gas occupying volume of one cubic foot as standard Texas based conditions (i.e. a temperature of sixty degrees Fahrenheit (60 Degrees F°) and at a pressure of fourteen and seventy-three hundredths pounds per square inch, absolute (14.73 PSI)

1.1.23. "Gasoline Gallon Equivalent" means 125,000 BTU = 123 CF/Gallon or 1.23 CCF/Gallon. Also referred to as a GGE.

1.1.24. "Diesel Gallon Equivalent" means 139,000 BTU = 136 CF/Gallon or 1.36 CCF/Gallon. Also referred to as DGE.

## **2. Scope of Services.**

1.2.1. CONTRACTOR acknowledges it has obligations to the CITY in the performance of the Agreement, and has overall responsibility for, and shall provide, completion of the Design Services and all Construction Services as well as furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the Project, or any phase of the Project, in accordance with the OWNER'S requirements and the terms of this Agreement.

1.2.2. The Project is a station comprised of one (1) 540 standard cubic feet per minute (scfm) electric drive compressor capable of dispensing CNG at a rate of 270 gallons per hour, three (3) ASME high pressure storage cylinders with no less than 30,000 standard cubic feet of storage capacity, sequencing panel, priority panel, fifteen (15) slow fill post with 2 hoses on each and one (1) metered fast fill dispenser capable of fueling two vehicles simultaneously at a minimum rate of 4 diesel equivalent gallons per minute. A list of equipment specifics is outlined in Exhibit I.

1.2.3. CONTRACTOR shall be responsible for the complete operation and maintenance of the CE supplied CNG Refueling Station, including fuel hoses and nozzles, methane-detection and other safety systems, for the duration of the O & M Agreement. CONTRACTOR will also be responsible for the maintenance required by the normal use of the fuel hoses and nozzles. Damage or loss resulting from the misuse or drive-off of the fuel hose will be paid for by the OWNER.

## **3. Contract Documents.**

1.3.1. The Contract Documents consist of:

- This Agreement and all exhibits thereto;
- All Change Orders issued after the Effective Date of this Agreement;
- The Drawings and Specifications developed by CONTRACTOR and accepted by OWNER;
- The Drawings and Specifications developed or prepared by OWNER'S employees and/or independent consultants, if any;
- Project Manuals developed for the design or construction of the Project; and
- Any other documents listed in this Agreement including the Request for Qualifications, Request for Proposal, proposal and contract calculations.

1.3.2. The Contract Documents form the entire and integrated contract ("Contract") between OWNER and CONTRACTOR and supersede all prior negotiations, representations or agreements, written or oral, prior to the Effective Date of this Agreement.

#### **4. Record Retention.**

1.4.1. CONTRACTOR must accurately and completely maintain all documents, papers, and records, whether paper, digital, or otherwise, used or generated in the course of performing this Agreement (Documents). Documents specifically include all survey-related documents. CONTRACTOR must make the Documents available to City at its offices during normal City business hours as often as City may reasonably deem necessary throughout the period of performance and the Retention Period. City may audit, inspect, examine, and make excerpts or copies of the Documents.

1.4.2. CONTRACTOR must retain all Documents for four years after Satisfactory Completion (Retention Period). If, at the end of the Retention Period, there is litigation or other questions arising from, involving, or concerning the Documents or the services provided hereunder, CONTRACTOR must retain the records until resolution of the litigation or other questions. City may require CONTRACTOR to deliver the Documents to City before or at the end of the Retention Period.

1.4.3. CONTRACTOR must notify City immediately if CONTRACTOR receives a request for Documents from a third party. City must be given the opportunity to assert any proprietary interest it may have.

1.4.4. CONTRACTOR must impose on its SUBCONTRACTORS, if any, all Record Retention obligations of this Agreement.

## **SECTION 2. Design Build Service**

### **1. Design Services.**

2.1.1. CONTRACTOR shall designate in writing a representative who is responsible for the day-to-day management of the Design Services. The designated representative shall be the OWNER'S primary contact during the Design Services Phase and shall be available as required for the benefit of the Project and the OWNER. The designated representative shall be authorized to act on behalf of, and to bind, the CONTRACTOR in

all matters including signatory authority for Pay Applications and Change Orders. The designated representative shall not be changed without advance written approval from the OWNER, which approval shall not be unreasonably withheld.

2.1.2. CONTRACTOR may enter into separate agreements with other qualified professionals as required for performance of the Design Services. CONTRACTOR certifies that all professional consultants, contractors, or CE employees have been or will be selected on the basis of competence and qualifications pursuant to Texas Local Government Code Section 272.119 and all other applicable laws. CONTRACTOR shall not perform any architectural or engineering services directly unless CONTRACTOR is licensed in Texas to perform such services. All drawings, specifications, and other design documents shall bear the seal of the licensed professional who prepared them in accordance with the applicable laws and regulations of the State of Texas. CONTRACTOR shall not subcontract any of the design to its construction SUBCONTRACTORS except for shop drawings or technical submittals as required by the specifications.

2.1.3. CONTRACTOR shall be solely responsible for all obligations to the Project Architect and shall pay for the services of the Project Architect and all other professional service providers out of the fees for this Agreement. Nothing in this Agreement shall create any contractual obligation from the OWNER to the Project Architect or other design professionals not hired directly by the OWNER.

2.1.4. The CONTRACTOR shall be responsible for managing the Design Services so as to insure that the Project, as designed, can be constructed for an amount that is within the GMP. The obligation to design the Project so as to achieve the Program objectives of scope and cost shall continue through completion and acceptance of Construction Documents. Any adjustment to the scope or quality considered necessary to comply with the GMP or the Program during the Design Phase shall be mutually agreed upon and shall be considered normal to that process.

2.1.5. The CONTRACTOR shall submit the names of all proposed consultants for Design Services, including the Project Architect and any of its consultants, if any, for approval by the OWNER, which approval shall not be unreasonably withheld.

2.1.6. The Design Services shall incorporate current technology as per Exhibit I.

2.1.8. The CONTRACTOR agrees to meet prevailing standards of care with respect to the sufficiency and completeness of all Design Services performed that are consistent with CNG refueling facility standards. All drawings, specifications, and other information furnished or provided by CONTRACTOR shall be free from material errors and omissions. Approval or acceptance of any Design Services by OWNER shall not in any way release CONTRACTOR from any duty, responsibility or liability for such services, it being understood that OWNER is at all times relying upon CONTRACTOR'S skill and knowledge in performing the Design Phase Services.

2.1.9. OWNER shall have the right to reject any materially defective Design Services or other materially defective Work on the Project of which the OWNER becomes aware. CONTRACTOR shall promptly correct any such defect at CONTRACTOR'S expense. Should any portion of the Project Work be damaged or defective due to material error or omission in the Design Services, including material errors or omissions in any plans, drawings, specifications, and other construction document materials prepared or furnished by CONTRACTOR, shall promptly correct any such damage or defect at no additional cost to the OWNER. Should the CONTRACTOR refuse or neglect to correct any such damage or defect within a reasonable time after notice, OWNER may cause the damage or defect to be corrected and CONTRACTOR shall reimburse OWNER for all expenses incurred to correct the damage or defect on demand.

2.1.11. The CONTRACTOR'S Preconstruction Phase Services are those services described in Sections 4.2 through 4.8, for which compensation is provided as the Preconstruction Phase Fee amount in this Agreement.

2.1.12. The CONTRACTOR shall not proceed to any subsequent stage of Design Services until OWNER has authorized CONTRACTOR to proceed in writing, except at the CONTRACTOR'S sole financial risk.

2.1.13. PRE-DESIGN SERVICES PHASE

- a. The CONTRACTOR shall provide a preliminary evaluation of the OWNER'S Design Criteria (if any).
- b. The CONTRACTOR shall visit the Site to become sufficiently familiar with any existing facilities, systems and conditions to insure that the Project as designed will functionally interface with any existing conditions.

2.1.14. CONSTRUCTION DOCUMENTS PHASE

- a. Based on the approved Design Development Documents, any further adjustments to the Station and the GMP, the CONTRACTOR shall prepare Construction Documents consisting of Drawings and Specifications and submit them to the OWNER for approval. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall provide for the construction of the Project.
- b. The Construction Documents shall be consistent in all material respects with the design presented in the Request for Proposal process and CONTRACTOR'S prior design proposals to OWNER and within the approved GMP.
- c. The CONTRACTOR shall advise the OWNER regarding construction phasing and scheduling, the construction contract time period, and such other construction conditions considered appropriate for the Project.

d. The CONTRACTOR shall assist and advise the OWNER in connection with the OWNER'S responsibility and procedures for obtaining approval of authorities having jurisdiction over the Project.

e. The CONTRACTOR shall furnish and deliver to the OWNER all requested complete printed sets of Construction Documents.

f. Following OWNER'S approval of the Construction Documents, CONTRACTOR shall deliver to the OWNER Computer-aided Design ("CAD") system copies of the Construction Documents plus one (1) set of reproducible and one (1) blue line set, duly sealed.

g. Following OWNER'S approval of the Construction Documents, CONTRACTOR shall not be entitled to any adjustment in the approved GMP except for changes in Project scope or quality which materially increase or decrease the cost to construct the Project or the time required to construct the Project, that are ordered by OWNER in writing in accordance with the General Conditions (Exhibit III).

#### 2.1.16. REVIEW DRAWINGS.

a. The CONTRACTOR, at its sole expense, shall provide OWNER with three (3) design document review sets.

b. The CONTRACTOR shall incorporate into the documents such corrections and amendments as the OWNER requests at each phase review. Any additional cost incurred due to CONTRACTOR'S failure to incorporate OWNER'S requested corrections and amendments shall be born by the CONTRACTOR provided that it does not cause an increase in the GMP.

c. CONTRACTOR shall identify to OWNER in writing anything in CONTRACTOR'S drawings and specifications and any drawings, plans, sketches, instructions, information, requirements, procedures, requests for action, and other data supplied to CONTRACTOR (by OWNER or any other party) that CONTRACTOR regards as unsuitable, improper, or inaccurate in connection with the purposes for which such documents or data are furnished. CONTRACTOR shall be solely responsible for the use of such documents or data unless CONTRACTOR advises OWNER in writing that in its opinion such documents or data are unsuitable, improper, or inaccurate and OWNER instructs the CONTRACTOR in writing to proceed in accordance with the documents or data as originally given.

d. The CONTRACTOR shall pay all costs for plans, specifications and other design and construction documents used by the CONTRACTOR and its

consultants and SUBCONTRACTORS, and all documents produced for review by the OWNER, except for changes generated solely by OWNER.

e. If any of the plans, specifications and other design and construction documents or other Work materials produced or used by CONTRACTOR pursuant to this Agreement are damaged or destroyed by fire or other casualty, CONTRACTOR shall prepare and provide OWNER with new copies of any such documents or materials, at no additional cost to OWNER, unless CONTRACTOR or OWNER has a complete and undamaged set thereof.

#### 2.1.17. CONSTRUCTION ADMINISTRATION SERVICES

a. The CONTRACTOR shall furnish the following Construction Administration Services as part of Construction Services, and without additional cost to OWNER.

b. The CONTRACTOR, and its consultants, shall inspect the Project Site at intervals appropriate to the type and stage of construction progress and as otherwise required by this Agreement to observe the progress and quality of the Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. On the basis of such onsite observations, the CONTRACTOR shall observe the progress and quality of the Work, and shall endeavor to guard the OWNER against defects and deficiencies in the Work.

c. In addition to site visits for general inspection and observation, the CONTRACTOR shall visit the Site for specific purposes related to certification of progress payments, start-up or mock-up reviews for significant work activities and for formal inspections of the work, as necessary

d. The CONTRACTOR shall establish and maintain a numbering and tracking system for all Project records, including changes, requests for information, submittals, and supplementary instructions and shall provide updated records to OWNER.

e. The CONTRACTOR shall administer all regular progress.

f. The CONTRACTOR and with the approval of the OWNER, shall interpret the technical requirements of the Contract Documents. The CONTRACTOR, shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the OWNER or the CONTRACTOR, and shall render written recommendations to the OWNER within a reasonable time on matters relating to the execution or progress of the Work or the interpretation of the Contract Documents.

g. The CONTRACTOR, shall provide consultation for the purpose of clarification and interpretation of the intent and scope of the Construction Documents. Interpretations and recommendations rendered by the Project

Architect or Engineer in accordance with this provision shall be approved, authorized, or concurred with, by the OWNER'S representative prior to being utilized or relied upon in the progress of the work.

h. The CONTRACTOR shall provide to the OWNER an adequate number of copies of each submittal to the OWNER for review and approval.

i. The CONTRACTOR shall, with OWNER'S approval, have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time, which are not inconsistent with the intent of the Contract Documents. The CONTRACTOR shall prepare revised Contract Drawings, where appropriate, to illustrate and document the work required by the Change.

j. All proposed changes to drawings, plans and specifications, regardless of how initiated, shall be fully described in the document depicting them as to scope of work added, removed, or changed. The original copies of the Construction Documents may be revised to show such changes, provided that all such revisions shall be separately recorded on media reasonably acceptable to OWNER, including, without limitation, CAD. Such revisions shall be clearly indicated and a current revision date shall be included on the reproducible copy. Changes to the specifications shall be made by consecutively numbered and dated revision addenda. All changes to design documents or specifications will be identified by date of change, revision number and other customary identification references. Areas changed on drawings will be "clouded" to show each change. Clouds designating previous changes will be removed so that only the most recent changes will be clouded. Areas changed in specifications shall be bolded, and treated in the same manner as changes on drawings.

k. The CONTRACTOR shall participate in concealed space inspections, systems start-up inspections, Substantial Completion and Final Inspections to determine the dates of Substantial Completion and Final Acceptance. The CONTRACTOR shall also participate in the OWNER'S final walk thru after Final Completion.

l. The CONTRACTOR, shall assist the OWNER in checking as built drawings during the course of the Work and shall review final as-built documents for completeness and compliance with Contract requirements. Final as-built drawings shall be approved, authorized, or concurred with, by the OWNER'S representative prior to final payment to the CONTRACTOR.

#### 2.1.18. ADDITIONAL DESIGN SERVICES

a. Additional Services shall be provided by the CONTRACTOR and paid for by the OWNER if authorized in writing by the OWNER. Prior to commencing any Additional Service, CONTRACTOR shall submit to the OWNER an

Additional Services Proposal in a form acceptable to the OWNER. The Additional Services Proposal shall describe in detail the nature or scope of the Additional Services, the basis upon which CONTRACTOR believes that such services are Additional Services, the maximum amount of fees and reimbursable expenses for performance of the Additional Services, and a proposed schedule for the performance of the Additional Service. CONTRACTOR shall proceed with the Additional Service only after written acceptance by OWNER of the Additional Services Proposal.

b. Upon acceptance by OWNER, each Additional Services Proposal and the services performed by CONTRACTOR pursuant to such Additional Services Proposal shall become part of this Agreement and shall be subject to all the terms and conditions of this Agreement, as fully and completely as though the same had been included in this Agreement as a Basic Service at the original execution of this Agreement.

c. The following services are examples of what would normally be considered Additional Services:

- (1) Providing financial feasibility or other special studies other than as they relate to energy conservation and guaranteed savings, and the cost of the Project.
- (2) Providing services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase.
- (3) Providing coordination of Work performed by OWNER'S separate CONTRACTORS or by the OWNER'S own employees, except where such work interfaces with the work of the CONTRACTOR, such as demolition or other CONTRACTORS working at the Site or adjacent sites.
- (4) Providing services in connection with the Work of separate consultants retained by the OWNER.
- (5) Providing services for planning tenant or rental spaces.
- (6) Making revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given by the OWNER or due to Changes approved by the OWNER and not due to errors or omissions by the Project Architect.
- (7) Making revisions in Drawings, Specifications or other documents when such revisions are required by the enactment or revision of

codes, laws of regulations subsequent to the preparation of such documents.

- (8) Providing consultation concerning replacement of any Work damaged by fire or other cause during construction, and furnishing services as may be required in connection with the replacement of such Work provided that the damage was not caused wholly or in part by the CONTRACTOR or a SUBCONTRACTOR.
- (9) Providing services after Final Payment or expiration of the Warranty, whichever is later, except as otherwise required by the Contract.
- (10) Preparing to serve or serving as an expert witness at the request of the OWNER in connection with any public hearing, arbitration proceeding or legal proceeding.
- (11) Providing a Hazardous Material Abatement Consultant.

#### 2.1.19. TECHNOLOGY ACQUISITION

All hardware requirements set out in the RFP, and attachments thereto, are the minimum requirements. The CONTRACTOR'S product shall meet or exceed those requirements. The product selected shall meet the operational, functional, and performance requirements specified in the RFP, and attachments. Additionally, due to the rapid advancement and antiquation of technology related products, the supplied product shall be the "contemporary technical equivalent" of that specified. "Contemporary technical equivalent" shall be based on a comparison of technology at the time of publication of the specifications to the technology at the time of the first product submittal. Final product approval is at the sole discretion of the OWNER.

## **2. Guaranteed Maximum Price.**

2.2.1. Prior to the execution of this Agreement, and incorporated as Exhibit VII to this Agreement is the CONTRACTOR'S GMP. CONTRACTOR certifies the GMP was prepared and includes, without caveats, a breakdown of CONTRACTOR'S estimated costs organized by trade; allowance amounts by item; contingency amounts; the Construction Phase Fee, a Contract Time and date of Substantial Completion, and other items required by the OWNER. The Owner will provide CONTRACTOR evidence that it is exempt from state and local sales and use taxes or it will be responsible for any and all taxes related to the GMP.

2.2.2. The GMP is based on CE's responses to the OWNER'S Request For Design Build Qualifications, describes how it was derived and prepared. The GMP specifically identifies the Drawings, Specifications and other construction documents relied on, the addenda incorporated, the allowances, and all clarifications and assumptions made by the CONTRACTOR.

2.2.3. CONTRACTOR warrants the GMP allows for the continued development and completion of the Drawings and Specifications which are reasonably inferable, except for material changes in scope or quality. The GMP includes "CONTRACTOR Contingency" to allow for additional costs of the Work arising out of such development and completion and price escalations which would not qualify as a formal Change Order. Amounts attributable to clarifications, assumptions, and further development and completion of the Drawings and Specifications shall be specified in an itemized breakdown as part of the GMP.

2.2.4. The GMP and the GMP Contract Documents are intended to address all items, assumptions, costs, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work for the GMP. The CONTRACTOR shall provide a Station as intended in the GMP. The GMP and the GMP Contract Documents are complementary, and what is required by one shall be binding as if required by all. If there is an irreconcilable conflict between or among the various documents that make up the GMP, the interpretation that provides for the higher quality or quantity of materials and/or workmanship shall prevail over all other interpretations.

2.2.5. The GMP shall adopt and incorporate all of the terms and conditions of this Agreement and all other documents that comprise the Contract between the OWNER and the CONTRACTOR. Any exceptions to or modifications of such terms and conditions proposed by the CONTRACTOR in the GMP shall not be effective unless they are expressly stated and conspicuously identified in the GMP and are specifically accepted and approved by the OWNER.

2.2.6 Following execution of this Agreement, CONTRACTOR shall be responsible for developing all Construction Documents that, when complete, the documents incorporate and address all qualifications, assumptions, clarifications, exclusions and value engineering issues contained in the GMP. The CONTRACTOR and the Project Architect shall jointly provide to OWNER monthly status reports on the progress of incorporation of all such qualifications, assumptions, clarifications, exclusions, value engineering issues and all other matters relevant to the GMP.

### **3. Construction Services.**

2.3.1. The Construction Phase shall be deemed to commence upon the earlier of: (i) the date specified in a Notice to Proceed issued by OWNER after approval of this Agreement; (ii) the issuance of a Purchase Order by CONTRACTOR for materials or equipment for the Project after prior written authorization by OWNER; or (iii) award of a subcontract in accordance with the requirements of this Contract after prior written authorization by OWNER. Design Services may overlap the Construction Services phase of the Project.

2.3.2. CONTRACTOR shall prior to installation of the CNG Refueling Station, provide the City with copies of all design documents for the CNG Refueling Station. These documents shall include piping and instrumentation diagrams, site plans, conduit plans, and manufacturer's available catalog cuts and other documentation, as appropriate.

CONTRACTOR shall also provide City with copies of relevant drawings showing interfaces with the CNG Station Site Superstructure and a Fire Department submittal review package, if required by the San Antonio Fire Department. The City and its consultants shall review the CONTRACTOR'S design documents and may provide comments to be included in the final design. The City's and its consultants' review of the CONTRACTOR'S submittals shall not constitute approval of safety precautions or, any construction means, methods, techniques, sequences for procedures. The City's or its consultants' approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.3.3. CONTRACTOR shall designate in writing a representative who is responsible for the day-to-day management of the Construction Services. The designated representative shall be the OWNER'S primary contact during the construction phase and shall be available as required for the benefit of the Project and the OWNER. The designated representative shall be authorized to act on behalf of, and bind, the CONTRACTOR in all matters related to Construction Services including, but not limited to, execution of progress payments, Change Orders, and Additional Service requisitions. The designated representative shall not be changed without advance written approval from the OWNER, which shall not be unreasonably withheld. The position of designated representative is a separate position from that of resident superintendent on-site at the CNG station.

2.3.4. Unless otherwise provided for in the Contract, CONTRACTOR shall provide, or cause to be provided, and shall pay for all Design Services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary or reasonably inferable for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated into the Work.

2.3.5. The CONTRACTOR shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. The CONTRACTOR shall keep the OWNER informed of the progress and quality of the Work.

2.3.6. The CONTRACTOR shall prepare and submit a Schedule of Work for the OWNER'S written approval, which shall be given within ten (10) days after receipt. This Schedule shall indicate the dates for the start and completion of the various phases of construction milestones, including dates when information and approvals are required from the OWNER. The CONTRACTOR shall update this Schedule at regular intervals as required by the conditions of the Work and with the written approval of the OWNER.

2.3.7. The CONTRACTOR warrants to the OWNER that the materials and equipment provided under the Contract will be of good quality and new unless otherwise required or permitted by the Contract; that the construction will be free from material faults and defects; and that the construction will conform to the requirements of the Contract. The CONTRACTOR shall be responsible for timely correction of Work that does not comply with the Contract Documents.

2.3.8. The CONTRACTOR'S responsibilities for all safety precautions and programs, including environmental safety and control, in connection with the Work are set out in the General Conditions, Article 5. CONTRACTOR shall ensure SUBCONTRACTORS' material compliance with the safety precautions and programs.

2.3.9. SAFETY.

a. CONTRACTOR shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the CONTRACTOR shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise commercially reasonable precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. The CONTRACTOR shall be responsible for initiating, maintaining, and supervising all safety precautions in connection with the performance of the Agreement. Safety precautions as applicable shall include, but shall not be limited to: (a) instruction in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (b) adequate facilities for the proper inspection and maintenance of all safety measures.

b. The CONTRACTOR shall take commercially reasonable precautions for safety of, and shall provide commercially reasonable protection to prevent damage, injury, or loss to: CONTRACTOR's employees on the Project and other persons who may be affected thereby; the Project and materials and equipment to be incorporated therein, whether in storage or off the site, under care, custody of control of the CONTRACTOR or the CONTRACTOR's subcontractors; and other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction.

c. To ensure that these precautions are taken, the CONTRACTOR shall prepare and submit to the OWNER's representative a Safety Plan written specifically for the CNG Station. The Safety Plan shall be submitted to the OWNER's Representative prior to any construction activity commencing at the CNG Station.

d. During construction, the CONTRACTOR, subcontractors, and all of its personnel must observe and obey all construction safety rules and regulations prescribed by Texas authorities.

- i. Any crane lifts such as the compressor skids, tanks, storage vessels, and dryer must be approved by OWNER at least 24 hours before the planed lift.
- ii. Provide safety incident reports to OWNER

2.3.10 The CONTRACTOR'S Construction Services and obligations are further described in the General Conditions and other Contract documents.

#### **4. Contractor's Personnel & Subcontractors.**

2.4.1. Before execution of this Agreement and before entering into any subcontract agreements related to the Work on the Project, the CONTRACTOR shall identify in writing to the OWNER its employees, personnel, to be assigned to the Project. Exhibit X, Contractor Personal Titles, Hourly Rates, and DSE Multipliers, indicates the DSE hourly wage for the CONTRACTOR'S employees, personnel, to be assigned to the Project. CONTRACTOR shall not assign to the Project or contract with any person or entity to which OWNER has a reasonable objection. After approval by the OWNER, CONTRACTOR shall not remove or replace the personnel and entities assigned to the Project except with the OWNER'S prior written consent which shall not be unreasonably withheld. CONTRACTOR shall promptly update the personnel list, as required.

2.4.3. CONTRACTOR shall identify every SUBCONTRACTOR it intends to use on the Project to the OWNER.

#### **5. Time**

2.5.1. Unless otherwise approved, the OWNER and the CONTRACTOR shall perform their respective obligations under the Contract as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work.

2.5.2. Times stated in the Contract Documents are of the essence and CONTRACTOR shall complete the construction and installation of the CNG Station within 240 days from the receipt of the Notice to Proceed. The CONTRACTOR shall be responsible for schedule updating and reporting throughout the Project, during both Design Services and Construction Services.

2.5.3. The CONTRACTOR shall submit the Drawings and Specifications to OWNER for review and approval, which approval shall be given twenty (20) days after receipt. The OWNER will assist the CONTRACTOR in submitting the Drawings and Specifications and obtain approval from other necessary authorities, including the City's Historic and Design Review Commission, having jurisdiction over the Project. The OWNER shall make all reasonable efforts to waive fees for all permits and approvals. The Design Services Schedule shall not be mortified except for good cause including but not limited to, delay in OWNER'S approval.

2.5.4. Prior to commencement of Construction Services, the CONTRACTOR shall submit a detailed schedule for the performance of Construction Services. The Construction Phase Schedule shall not be modified except for good cause at the

OWNER'S sole option and discretion. The CONTRACTOR shall provide the OWNER with reports which include the following items:

- a. A copy of the original schedule with marked up changes showing original activities and modified ones (as applicable).
- b. Schedule changes (if any).
- c. Schedule update progress accomplished thus far.
- d. Next month's activities and milestones.
- e. Any time savings or delays experienced thus far and an explanation as to why.
- f. A plan on how the CONTRACTOR would recover from any delays.
- g. Progress photos of construction activities.

## **6. Ownership and Use of Documents.**

2.6.1. The CONTRACTOR shall provide to the OWNER the originals of the following documents: drawings, specifications and other documents or items prepared for the Project, in written reproducible form and electronic form (AutoCAD diskette) of the original design and the "record" drawings, signed and sealed by the CONTRACTOR to be used by the OWNER as the OWNER deems necessary without violating any copyrights of the Architect. The OWNER acknowledges the Architect's construction documents, including electronic files, as instruments of professional service. Nevertheless, The final construction documents prepared under this Agreement shall become the property of the OWNER upon completion of the services and payment of all monies due to the CONTRACTOR. The OWNER shall not reuse or make modifications to the Construction Documents without the prior written authorization of the CONTRACTOR.

2.6.2. The CONTRACTOR shall provide the OWNER with the electronic form of the drawings, specifications and other documents prepared by the CONTRACTOR throughout the course of the Project.

2.6.3. If the Contract is terminated by the OWNER, at any stage of the Agreement, the CONTRACTOR shall grant the OWNER a limited license that allows the OWNER to use the documents to complete the Project.

## **7. Payment.**

2.7.1. Payments shall be made monthly, based on the percentage completion of work performed within each approved phase of the Schedule of Values as demonstrated by work product. All Pay Applications shall be submitted on approved forms. Billings shall accurately and completely detail SUBCONTRACTOR Pay Applications and payments.

2.7.2. Payment for approved Work and Reimbursable Expenses shall be made monthly based upon demonstrated work product, upon presentation of the CONTRACTOR'S statement of services rendered or expenses incurred.

2.7.3. With each Pay Application, CONTRACTOR shall provide copies of bills of lading, invoices, delivery receipts or other evidence of the location and value of such materials.

2.7.4. The CONTRACTOR'S Construction Services Fee shall be shown as a separate line item on the Schedule of Values. The amount requested for such fee shall be in the same proportion to the total fee as the amount requested for the Cost of the Work relative to the total Cost of the Work used in deriving the then current GMP.

2.7.5. 5% retainage will be applied to the entire amount requested, except there shall be no retainage for payments for Station Equipment. Retainage will be released only after the completion of the construction project and accepted by the OWNER. Work is considered complete with OWNER's Acceptance.

2.7.6. Each Schedule of Values submitted shall maintain the originally established value for each work classification line item or SUBCONTRACTOR, and shall contain any revisions to costs or cost estimates for each such classification or SUBCONTRACTOR. The format and tracking method of the original Schedule of Values, and of all updates thereto, shall be subject to the approval of OWNER. The OWNER may require that Payment Applications be submitted electronically. If at any time, the amount shown on the Schedule of Values exceeds the GMP allocable to that classification or SUBCONTRACTOR, then the amount payable to CONTRACTOR by the OWNER shall be reduced by the amount of such excess. At all times, the estimated cost of performing the uncompleted and unpaid portion of the Work (including CONTRACTOR'S fee) shall not exceed the unpaid balance of the GMP (less retainage on Work previously completed).

2.7.7. Payments to SUBCONTRACTORS included in a Payment Application shall not exceed the percentage of Work allocable to that SUBCONTRACTOR for each respective classification which has been actually completed.

2.7.8. CONTRACTOR'S Application for Final Payment shall not be made until CONTRACTOR delivers to OWNER a complete release of all liens arising out of this Agreement and an affidavit that the release includes and covers all materials and services over which CONTRACTOR has control and for which a lien could be filed. Alternatively, CONTRACTOR may furnish a bond satisfactory to OWNER to indemnify OWNER against any lien. If any lien remains unsatisfied after all payments are made, CONTRACTOR shall refund to OWNER all monies OWNER may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees, and OWNER shall have all remedies at law and in equity.

2.7.9. The OWNER will take acceptance of the Station and make the Final Payment on the GMP when Station specifications and requirements have been met and work has been submitted by CONTRACTOR and has been verified by OWNER.

2.7.10 No partial payment made hereunder shall constitute, or be construed to constitute, final acceptance or approval of that part of the services to which such partial payment relates, or a release of CONTRACTOR from any of its obligations hereunder or liabilities

with respect to such services. All proper Pay Applications shall be paid within thirty (30) days of Owner's receipt.

2.7.11 CONTRACTOR shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the services.

2.7.12 OWNER shall have the right to verify and audit the details set forth in CONTRACTOR'S billings, certificates, accountings, cost data, and statements, either before or after payment, by: (1) inspecting the books and records of CONTRACTOR during normal business hours; (2) examining any reports with respect to this Project; (3) visiting the Project Site; and (4) other reasonable action. CONTRACTOR'S records shall be kept on the basis of generally accepted accounting principles, but no less than four (4) years after final completion of the project.

2.7.13 The acceptance by CONTRACTOR of Final Payment under this Agreement shall constitute a full and complete release of OWNER from any and all construction related claims, demands, and causes of action whatsoever which CONTRACTOR or CONTRACTOR'S successors have or may have against OWNER under the provisions of this Agreement except those previously made in writing and identified by CONTRACTOR as unsettled at the time of the final request for payment.

## **8. Reimbursable Expenses.**

2.8.1. Reimbursable Expenses are in addition to Compensation for Basic and Additional Services, and include actual out-of-pocket reasonable expenditures made by CONTRACTOR and its employees and consultants incurred solely and directly in connection with the Work for the following items:

- a. Fees paid for securing approval of authorities having jurisdiction over the Project.
- b. Professional models.

2.8.2. OWNER shall not pay a mark-up on any reimbursable expenses. CONTRACTOR shall submit receipts for all reimbursable expenses along with any reimbursement request.

## **9. Cost of the Work.**

2.9.1. The term "Cost of the Work" means costs which the CONTRACTOR actually and necessarily incurs constructing the Work in strict compliance with the Contract Documents. Cost of the Work includes the cost of CONTRACTOR'S General Conditions for the Work, the cost of the Work itself, and the costs of the CONTRACTOR'S Contingency. The costs associated with Design Services and Construction Administration are not Cost of the Work items within the terms and conditions of this Contract.

2.9.2. References in the General Conditions relating to adjustments in "cost" or "costs" refer to adjustments to the Cost of the Work.

### 2.9.3 COST OF THE WORK INCLUDES:

- a. Labor and Administrative:
  1. Reasonable and customary wages or salaries of CONTRACTOR'S supervisory and administrative personnel who are stationed full-time at the Site with the OWNER'S prior consent. The CONTRACTOR designated representative's salary shall be included in the General Conditions costs. The Superintendent's salary and other full-time personnel stationed at the Site shall be included in the General Conditions costs, with an associated breakdown by personnel category.
  2. Costs paid or incurred by CONTRACTOR for labor costs arising out of taxes, insurance, and benefits which are (i) required by law; (ii) required by collective bargaining agreements; or (iii) otherwise customary, so long as such costs are based on wages and salaries which are properly included in the Cost of the Work as defined herein.
  3. Reasonable and customary travel expenses of CONTRACTOR'S personnel incurred directly and solely in support of the Project.
  4. Costs of long-distance telephone calls, telegrams, postage, package delivery and courier service, telephone service, and reasonable and customary petty cash expenses of CONTRACTOR'S jobsite office, incurred directly and solely in support of the Work.
- b. Materials, Equipment, Tools, Rentals;
  1. Costs of materials and equipment to be incorporated into the Work, including transportation charges, and a reasonable and customary allowance for waste and spoilage. OWNER shall be entitled to take possession of excess materials not incorporated into the Work.
  2. Costs of materials, supplies; temporary facilities, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by CONTRACTOR, if such items are fully consumed in the construction of the Work. Cost for used items shall be based on fair market value and may include costs of transportation, installation, minor maintenance costs, and removal. If the item is not fully consumed, then the cost shall be based on cost of the item minus its fair market salvage value.
  3. Rental charges for temporary facilities, equipment, and hand tools except for those customarily owned by construction workers, all provided at the site by CONTRACTOR, and may include transportation, installation, and minor maintenance costs, and removals. If tools, machinery or construction' equipment are rented from the CONTRACTOR, the amount of such rental, the rate of such rentals, including the freight and delivery cost thereon and all operating expenses except labor, shall be determined by application of "CONTRACTOR'S Equipment Cost Guide," latest edition published by the AGC, but shall in no event be higher than the prevailing competitive rates paid in the locality for similar equipment. In no event shall the aggregate rental cost exceed the purchase price and maintenance cost of the item. In the event

equipment can be purchased for an amount comparable to the aggregate rental cost of said equipment, CONTRACTOR shall purchase such equipment and turn it over to OWNER upon final completion of the Work. Site debris removal and disposal costs in accordance with all applicable laws and regulations.

- c. Subcontracts: Payments made to SUBCONTRACTORS by CONTRACTOR for the construction of the Work in accordance with the Contract Documents and the requirements of the subcontracts with such SUBCONTRACTORS.
- d. Other Costs:
  - 1. OWNER is a governmental entity and CONTRACTOR shall avail itself of all exemptions that may exist for such taxes based on OWNER'S status.
  - 2. Intellectual property royalties and licenses for items specifically required by the Contract
  - 3. Documents which are, or will be, incorporated into the Work
  - 4. Forfeited deposits, but only if such deposit has been forfeited in the absence of any fault or negligence of CONTRACTOR.
  - 5. Other costs approved in advance in writing by OWNER at OWNER'S sole option and discretion.

#### 2.9.4. COSTS TO BE EXCLUDED FROM THE COST OF THE WORK:

- a. Costs including, but not limited to, the failure to perform of any SUBCONTRACTOR or the bankruptcy or insolvency of any SUBCONTRACTOR.
- b. Legal and administrative costs to review and negotiate Contract Documents.
- c. Travel and subsistence expenses of Design-Build CONTRACTOR, its officers or employees incurred while traveling between the Project and CONTRACTOR'S principal or branch offices, and travel in the metropolitan area of the Project.
- d. Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of CONTRACTOR.
- e. Costs incurred by CONTRACTOR resulting from the failure of CONTRACTOR or its SUBCONTRACTORS to coordinate their work with that of OWNER and its consultants, if any, after agreeing to the schedules therefore, or failure of CONTRACTOR to comply with directives of OWNER not in conflict with said schedules.
- f. Cost for obtaining the required insurance coverage, including premiums and deductibles as well as costs for obtaining performance and payment bonds.
- g. Personnel costs, including, without limitation, wages, salaries, and benefits, except for personnel based at the Site office and the designated representative assigned to this Project.
- h. Any and all overhead expenses or office expense at any location, except Site office expense to the extent specifically included herein.

- i. Costs related to CONTRACTOR'S indemnification obligations under the Contract.
- j. The cost of capital, including, without limitation, interest on capital, regardless of whether it is related to the Project.
- k. Any cost arising out of a breach of this Contract or the fault or negligence of CONTRACTOR, its SUBCONTRACTORS, or any person or entity for whom they may be liable, including, without limitation, costs related to defective, rejected or nonconforming' work, materials or equipment, damage to persons or property, errors and omissions with respect to Design Services provided or furnished by CONTRACTOR, and failure to coordinate the Design Services provided or furnished by CONTRACTOR.
- l. Liquidated or actual damages imposed by OWNER for failure of CONTRACTOR to complete the Work within the Contract Time.
- m. Any cost arising' out of the failure of CONTRACTOR to complete the Plans and Specifications in a timely manner.
- n. Costs of CONTRACTOR'S architects, engineers, and other entities and personnel performing Design Services.
- o. Any and all costs not specifically authorized herein, including, without limitation, any cost which would cause the GMP to be exceeded.
- p. Permit and Inspection fees.
- q. Costs of all inspection services, testing of construction materials engineering, verification testing for acceptance of the CNG Station by OWNER.

## **10. Construction Phase Fee.**

2.10.1. The CONTRACTOR'S Construction Phase Fee shall cover the CONTRACTOR'S profit, overhead and expenses in connection with maintaining and operating CONTRACTOR'S main office and any branch or field offices, except the field office for this Project.

2.10.2. References in the General Conditions to CONTRACTOR'S "overhead" and "profit" refer to the CONTRACTOR'S Construction Phase Fee.

2.10.3. The CONTRACTOR'S Construction Phase Fee includes:

- a. Salaries of CONTRACTOR'S designated representative, Site superintendent, estimators and schedulers when not directly assigned to the Project.
- b. Salaries of persons employed in the main or branch offices of the CONTRACTOR whose time is devoted to the general conduct of the CONTRACTOR'S business.
- c. Overhead or general expenses of any kind unless specifically addressed otherwise herein.
- d. Services and expenses of the human resources, accounting, budget control, audit and management information systems (other than preconstruction services) relating to accounting in CONTRACTOR'S office, even if at the CNG Station site.

- e. Interest on the CONTRACTOR'S capital or on money borrowed by the CONTRACTOR, including the capital employed by the CONTRACTOR in the performance of the Work.
- f. Amounts required to be paid by CONTRACTOR for Federal and/or State income and franchise taxes.
- g. Purchase/lease of jobsite vehicles and their maintenance costs.
- h. Purchase/rental of jobsite radios and communications equipment.
- i. Purchase/rental of jobsite computer hardware, software, and other electronic equipment.
- j. Purchase/rental of jobsite phone systems including cellular and digital pagers.

### **11. Contract Savings.**

2.11.1. If the sum of the CONTRACTOR'S actual Cost of the Work including General Conditions, Cost of the Work, Contingencies, Fees, Design Services, and Construction Administration is less than the GMP, then the entire savings shall be returned to the OWNER by a final adjustment being made to the Contract Amount, or applied to another category within the schedule of values.

### **12. Pre-Existing Conditions, Design Errors, and Omissions.**

2.12.1. The CONTRACTOR shall not be liable for existing environmental conditions including but not limited to environmental impact issues not revealed by Geotechnical Investigation. All environmental remediation shall be by the OWNER.

2.12.2. CONTRACTOR is responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished under the Contract. CONTRACTOR shall be responsible for discovering and correcting any material error, omission, conflict, inconsistency or lack of clarity, in the Construction Documents prepared by CONTRACTOR. CONTRACTOR shall be responsible for all costs, including the cost of redoing or remedying the Work and time delays resulting from any material error or omission in the Construction Documents.

### **13. Owner's Responsibilities During Design and Construction.**

2.13.1. The OWNER, in the previously-issued Request for Qualifications and Request for Proposals provided a budget and Schedule for the Project. The budget included the contingencies for changes in the Work during construction, and other costs which are the responsibility of the OWNER. The Schedule set forth the OWNER'S plan for milestone dates and completion of the Project.

2.13.2. The OWNER will designate an OWNER'S representative with authority to act on the OWNER'S behalf with respect to the Project. The OWNER'S representative shall examine the documents submitted by the CONTRACTOR and shall render decisions pertaining thereto. Unless otherwise specifically provided for, the OWNER'S designated representative is the single point of contact between the OWNER and the CONTRACTOR.

2.13.3. The OWNER, at 'OWNER'S cost, will secure the services of special consultants to develop such additional information as may be necessary for the design of the Project. The CONTRACTOR shall provide the OWNER with parameters for inclusion in the OWNER'S instructions to such consultants.

2.13.4. The OWNER shall furnish all legal, accounting, auditing and insurance counseling services for itself as may be necessary for the Project.

2.13.5. The OWNER shall examine the Design Documents submitted by the CONTRACTOR and provide comments concerning corrections or amendments to such documents in writing to the CONTRACTOR. The OWNER may obtain independent review of the Design Documents by its own Design Consultant. The OWNER may require the CONTRACTOR to halt production during design review.

2.13.6. The OWNER shall furnish required information and services and shall render approvals and decisions as expeditiously as is consistent with reasonable skill and care and the orderly progress of the CONTRACTOR'S services.

2.13.7. The OWNER may designate one or more Construction Inspectors who shall be given access to the Work as reasonably requested or needed. The provision of such Inspectors by OWNER shall not reduce or lessen in any respect the CONTRACTOR'S responsibilities for the Work. CONTRACTOR shall remain fully and solely responsible for the drawings, specifications, and other contract documents furnished or provided by CONTRACTOR, and for constructing the Project in strict accordance with the Contract Documents.

#### **14. Special Warranties.**

2.14.1. Notwithstanding anything to the contrary contained in the Contract, OWNER and CONTRACTOR agree and acknowledge that OWNER is entering into the Contract in reliance on CONTRACTOR'S representations regarding its expertise and ability to provide Design-Build services. CONTRACTOR covenants with OWNER to use commercially reasonable efforts, skill, judgment, and abilities to perform the obligations hereunder and to further the interests of OWNER in accordance with OWNER'S requirements and procedures, in accordance with the usual and customary standards of CONTRACTOR'S profession or business and in compliance with all applicable Federal, State, municipal, laws, regulations, codes, ordinances, and orders and with those of any other body having jurisdiction.

2.14.2. Should CONTRACTOR fail to comply with the standard of care required herein, CONTRACTOR'S responsibilities under this Agreement, or the applicable laws, regulations, codes, ordinances, and orders, CONTRACTOR hereby agrees to bear the full cost of correcting CONTRACTOR'S Work and Services, those of its Consultants and SUBCONTRACTORS, and those of any others who have acted in reliance thereon.

2.14.3. The CONTRACTOR warrants, represents, covenants, and agrees that all of the Services to be performed by the CONTRACTOR under or pursuant to the Contract shall

be of the standard and quality which prevail among similar businesses and organizations of comparable experience, size, knowledge and skill engaged in providing similar services in major United States urban areas under the same or similar circumstances and involving a project such as the Project.

2.14.4. The CONTRACTOR'S duties as set forth herein shall at no time be in any way diminished by reason of any approval by the OWNER, nor shall the CONTRACTOR be released from any liability by reason of such approval by the OWNER, it being understood that the OWNER at all times is ultimately relying upon the CONTRACTOR'S skill and knowledge in performing the services required hereunder.

2.14.5. The CONTRACTOR warrants, represents, covenants, and agrees that all persons connected with the CONTRACTOR directly or indirectly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction, if so required by such laws, rules and regulations.

2.14.6. The CONTRACTOR warrants, represents, covenants, and agrees to furnish efficient business administration and superintendence and perform its services hereunder or pursuant to this Agreement in the best way and in the most expeditious and economical manner consistent with the interests of OWNER.

2.14.7. CONTRACTOR warrants, represents, covenants, and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of the obligations required hereunder.

2.14.8. CONTRACTOR warrants, represents, and agrees that the individual executing this Agreement on behalf of the CONTRACTOR has been duly authorized to act for and bind the CONTRACTOR.

2.14.9. Except for the obligation of OWNER to pay the CONTRACTOR certain fees, costs, and expenses pursuant to the terms of the Contract, OWNER shall have no liability to the CONTRACTOR or to anyone claiming through or under CONTRACTOR by reason of the execution or performance of the Contract. Notwithstanding any obligation or liability of OWNER to CONTRACTOR, no present or future partner, affiliate, agent, officer, director, or employee of the OWNER, or of the components comprising or anyone claiming under OWNER has or shall have any personal liability to CONTRACTOR, or to anyone claiming through or under CONTRACTOR by reason of the execution or performance of the Contract.

2.14.10 CONTRACTOR shall identify items not covered under warranty and submit a schedule of labor rates for service.

## **15. Tests and Inspections.**

2.15.1. If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to be inspected, tested or approved, OWNER, or an inspector hired by OWNER at OWNER'S expense, shall perform such

tests. Should the material or Work fail to comply with the requirements of the Contract Documents, the CONTRACTOR shall bear all costs of the retesting by OWNER'S inspector as well as the cost of replacement of unsatisfactory material or Work.

2.15.2. When directed by the OWNER, demonstration of a material's compliance with the Specifications shall be made by one of the following:

- a. Manufacturer's certificate of compliance. 22.2.2 Mill Certificate.
- b. Testing Laboratory certification.
- c. Report of actual laboratory test from the OWNER'S laboratory or from a laboratory satisfactory to the OWNER. Samples tested shall be selected by the OWNER and the method of testing shall comply with professional societies' standard specifications.

2.15.3. Materials incorporated into the Project shall be new, unless otherwise specified, and may be subject to routine tests as specified or as deemed necessary by the OWNER to insure their compliance with the specifications. Materials to be tested by OWNER, or an inspector hired by OWNER at the OWNER'S expense, may include, but are not limited to, the following:

- a. Concrete – Primary mix design, slump tests and cylinder compression tests.
- b. Steel – Tensile tests.
- c. Welds – Field inspection and X-ray equipment
- d. Soils – Subsoil investigation, physical analysis and compaction tests.
- e. Pavements – Physical analysis and compaction tests.
- f. Roofing – Samples cut from in-place roof.
- g. Windows, curtain walls, skylights.

2.15.4. Any other basic materials for which standard laboratory test procedures have been established may also be included if doubt as to their quality should arise. Any testing, as described, will be done at the discretion of the OWNER, who will bear all costs. Although OWNER shall have primary responsibility for testing samples, CONTRACTOR shall cooperate with OWNER in selecting samples of sufficient size for test purposes and assisting OWNER in preparing samples for tests, if requested by OWNER. All tests will be in accordance with standard test procedures and will be performed by a laboratory selected by the OWNER and OWNER shall pay for those tests. Results of all tests will be provided to the OWNER and the CONTRACTOR.

2.15.5. Tests to be provided by the OWNER, at OWNER'S expense, include:

- a. Any test of basic material or fabricated equipment offered as a substitute for a specified item on which a test may be required in order to prove its compliance with the Specifications.
- b. Tests on mechanical systems required to insure their proper installation and operation.

2.15.6. Should any of the routine tests indicate that a material does not comply with the job requirements, the burden of proof of compliance shall be with the CONTRACTOR, subject to the following conditions:

- a. Quality and nature of tests will be determined by the OWNER and all tests will be conducted by an inspector hired by OWNER.
- b. All tests shall be conducted in the presence of the OWNER, or OWNER'S representative.
- c. If material noncompliance is proved, laboratory fees for retesting will be paid by the CONTRACTOR through deduction from the Final Payment.
- d. Proof of material noncompliance will make the CONTRACTOR liable for any corrective action which the OWNER feels is prudent, including complete removal and replacement of defective material.
- e. Subsequent tests on original or replaced materials conducted as a result of prior failure will be paid by the CONTRACTOR through a deduction to the Final Payment.

2.15.7. The OWNER may require and arrange for special inspection, testing or approval of material or Work in addition to that which may be specified for compliance with requirements of the Contract Documents. The costs of special testing shall be at OWNER'S expense and will be performed by an inspector hired by OWNER. However, CONTRACTOR shall pay the entire cost of any retesting inspector that conducted the initial testing, whether routine or special, required because of the failure of a prior test. The costs to be paid by CONTRACTOR for all retesting shall be deducted from the Final Payment.

2.15.8. CONTRACTOR'S Testing. Nothing contained herein is intended to imply that the CONTRACTOR does not have the right to have tests performed on any material at any time for its own information and job control so long as the OWNER is not charged for costs or forced to rely upon such tests when appraising quality of materials. Any modification of, or elaboration on, these test procedures which may be included for specific materials under their respective specification sections shall take precedence over these procedures and all testing required in the technical specification sections shall be the responsibility of the OWNER to coordinate and pay for.

2.15.9. The CONTRACTOR shall maintain an inspection system reasonably acceptable to the OWNER and perform such inspections as will insure that the Work conforms to the Contract Documents. The CONTRACTOR shall maintain complete inspection records and make them available to the OWNER at OWNER'S request. All Work shall be conducted under the general direction of the OWNER and is subject to inspection and testing by the OWNER and/or the OWNER'S consultants at places and at reasonable times before acceptance.

2.15.10. Inspections and tests by the OWNER are for the sole benefit of the OWNER at OWNER'S expense and do not:

- a. relieve the CONTRACTOR of responsibility for providing adequate quality control measures;

- b. relieve the CONTRACTOR of responsibility for damage to or loss of the material before acceptance;
- c. constitute or imply acceptance; or
- d. affect the continuing rights of the OWNER after acceptance of the completed work.

2.15.11. The presence or absence of an inspector from the OWNER does not relieve the CONTRACTOR from any contract requirements, nor is the inspector authorized to change any term or condition or waive any requirement of the Specifications without the OWNER'S written authorization.

2.15.12. For any work to be inspected, the OWNER may deduct from the Final Payment to the CONTRACTOR any additional costs for inspections or tests when Work is not ready at the time specified by the CONTRACTOR for inspection or test, or when prior rejection makes re-inspections or retests necessary. The OWNER shall perform all inspections and tests in a manner that will not unnecessarily delay the Work.

2.15.13. The CONTRACTOR shall, without charge, replace or correct Work found by the OWNER not to materially conform to Contract Documents, whether found before or after Substantial Completion, and whether or not fabricated, installed or completed, unless the OWNER consents to accept the Work with an appropriate reduction in Contract Price. The CONTRACTOR shall promptly segregate and remove, rejected material from the Site.

2.15.14 If the CONTRACTOR does not promptly replace or correct rejected Work, the OWNER may: by contract or otherwise, replace or correct the Work and charge the cost to the CONTRACTOR.

2.15.15. If, before acceptance of the entire Work, the OWNER decides to examine already completed Work by uncovering it, removing it or tearing it out, the CONTRACTOR, on request, shall promptly furnish all necessary facilities, labor, and material. If the Work is found to be defective or nonconforming in any material respect due to the fault of the CONTRACTOR or its SUBCONTRACTORS, the CONTRACTOR shall pay for the examination and for satisfactory reconstruction through a deduction to its Final Payment. However, if the Work is found to meet requirements of the Contract Documents, the OWNER shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of time.

2.15.16. Unless otherwise specified in the Contract, the OWNER shall accept, as promptly as practicable after completion and inspection, all Work required by the Contract or that portion of the Work the OWNER determines can be accepted separately. Subject to the provisions of the Warranty of Construction clause hereof, acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the OWNER'S rights under any warranty or guarantee.

2.15.17. The CONTRACTOR shall not cover up any Work with finishing materials or other building components prior to providing the OWNER an opportunity to perform an inspection of the Work. The inspection of the Work shall be limited to civil, mechanical and electrical components by the appropriate authority.

2.15.18. The CONTRACTOR shall be responsible for providing notification of at least five (5) working days or as mutually agreed, to the OWNER of the anticipated need for a cover up inspection. Should the OWNER fail to respond to the requested inspection within the five (5) working day period, or as mutually agreed, the CONTRACTOR may proceed with the particular cover up Work identified in the notification. The five (5) working day notice requirement may be reduced or waived by the OWNER'S ability to respond in less time.

2.15.19. The OWNER has the authority to reject and condemn Work which does not materially meet the requirements of the Contract Documents, and to order such Work removed and replaced. The OWNER shall interpret the Contract Documents and shall be the final judge of the acceptability of the Work under the Documents. If any materials or Work are condemned or rejected by the OWNER, the CONTRACTOR shall proceed to remove materials, whether worked or un-worked, and to take down all portions of the Work condemned. CONTRACTOR shall make good all Work damaged or destroyed by the removal and replacement process.

2.15.20. The CONTRACTOR shall, without charge or assessment against the CONTRACTOR'S Contingency Fund, replace any material or correct any workmanship found by the OWNER not to conform to the Contract Documents, unless, in the public interest, the OWNER consents in writing to accept such material or workmanship with an appropriate adjustment in the Contract Price. The CONTRACTOR shall promptly correct all Work reasonably rejected by the OWNER as defective or as failing to conform to the Contract Documents whether observed before or after the Date of Substantial Completion or final inspection and acceptance and whether or not fabricated, installed or completed. The CONTRACTOR shall bear all costs of correcting such rejected Work.

## **16. Certification of No Asbestos-Containing Materials.**

2.16.1. CONTRACTOR shall provide a certification statement, included with each materials submittal, stating that no asbestos containing materials or work is included within the scope of the proposed submittal.

2.16.2. The CONTRACTOR shall provide, at Substantial Completion, a notarized certification to the OWNER that no asbestos containing materials or work was provided, installed, furnished or added to the Project.

2.16.3. The CONTRACTOR shall take whatever measures he deems necessary to insure that all employees, suppliers, fabricators, subcontractors, or their assigns, comply with this requirement.

2.16.4. The CONTRACTOR shall insure compliance with the Asbestos Hazard Emergency Response Act (AHERA – 40\* CER 763-99 (7)) from all of its SUBCONTRACTORS and assigns as listed above. All materials used on this project shall be certified as non Asbestos Containing Building Materials (ACBM).

2.16.5. Every SUBCONTRACTOR shall provide a notarized statement that no ACBM has been used, provided, or left on this Project.

2.16.6. The CONTRACTOR shall provide to the extent deemed necessary for compliance by the State; data sheets and/or labels as proof of compliance.

2.16.7. The CONTRACTOR shall provide a notarized certification that no ACBM's were used.

2.16.8 CONTRACTOR shall obtain Material Safety Data Sheet (MSDS) for all products used in the construction of this station and to present those MSDS with the Certification that no asbestos was used in the construction of this station as the submittal to the OWNER for acceptance of completion .

## **17. Liquidated Damages – Project Completion.**

2.17.1. It is mutually understood and agreed by and between OWNER and the CONTRACTOR that time is of the essence with respect to the completion of the construction and installation of the CNG Station and that in case of any failure on the part of the CONTRACTOR to complete the work within the time specified in paragraph 2.5.2. Owner will be damaged thereby. The amount of said damages, being difficult if not impossible of the definite ascertainment and proof, it is hereby agreed that the amount of such damages due OWNER shall be fixed at \$350 per day for each day of the Contractor's failure to complete the Project by the scheduled completion date. CONTRACTOR will not be held responsible for delays caused by OWNER.

2.17.2. The CONTRACTOR hereby agrees to pay the fore stated amounts as fixed, agreed upon and liquidated damages, and not by way of penalty, to OWNER and further authorizes OWNER to deduct the amount of the damages from money due the CONTRACTOR under the AGREEMENT, computed as aforesaid. If the monies due the CONTRACTOR are insufficient or no monies are due the CONTRACTOR, the CONTRACTOR shall pay OWNER the difference or the entire amount, whichever may be the case, within 30 (thirty) calendar days after receipt of a written demand by OWNER.

2.17.3. The payment of aforesaid fixed, agreed upon and liquidated damages shall be in lieu of any damages for the increased in costs, loss of profit, loss of revenue, loss of use, or for any other direct, indirect, special or consequential losses or damages of any kind whatsoever that may be suffered by OWNER arising at any time from the failure of the CONTRACTOR to fulfill the obligations referenced in this clause in a timely manner.

## **18. Completion of the Design Build Construction & Warranty Fulfillment.**

2.18.1 The design build construction shall be considered completed, except as provided in any warranty or maintenance stipulations, bond, or by law, when all of the construction has been finally completed, the final inspection is made, final acceptance, and final payment that releases the 5% retained from prior payments.

2.18.2 The CONTRACTOR shall warranty the construction workmanship for a period of two (2) years after the final acceptance by the OWNER and pass along the equipment warranty information to the OWNER. Prior to the expiration of the specified warranty period, the OWNER shall make a detailed inspection of the CNG station and will advise the CONTRACTOR of the items that need correction. The CONTRACTOR and OWNER will make a subsequent inspection and if the corrections have been properly performed, the OWNER will issue a letter of release on the warranty maintenance obligations to the CONTRACTOR. If for any reason the CONTRACTOR has not made the required corrections before the expiration of the warranty period, the warranty provisions as provided for before the expiration of the warranty period, the warranty provisions as provided for shall remain in effect until the corrections have been properly performed and a letter of release is issued.

## **19. CPS Energy's Assumed Responsibilities During Design and Construction.**

2.19.1 The OWNER and CONTRACTOR mutually understand that CPS Energy will contribute up to the maximum amount of \$130,000.00 to provide natural gas service of 58 psig minimum to the compressor compound area at flow rates of no less than 60,000 SCFH. In the event the cost to provide natural gas service to the chosen compressor compound area exceeds \$130,000.00, CONTRACTOR agrees to pay the additional cost in excess of \$130,000.00 necessary to provide natural gas to the chosen compressor compound area.

2.19.2 The OWNER and CONTRACTOR mutually understand that CPS Energy will be responsible for the installation costs and provision of electrical service of 480V, 800 Amp, 3 phase minimum to the compressor compound.

2.19.3 CONTRACTOR will notify the OWNER of any delays pertaining to CPS Energy's installation of the natural gas pipeline supply, electrical service or any other CPS Energy installation delays. CONTRACTOR will not be held responsible for unexpected delays caused by CPS Energy's natural gas pipeline, electrical transformer or any other installation delays.

## **SECTION 3. OPERATION & MAINTENANCE**

### **1. Station Operation.**

3.1.1. CONTRACTOR agrees to and shall provide the services described below in exchange for the compensation described in Exhibit II, Compensation for Operation and Maintenance of the CNG Station.

3.1.2. CONTRACTOR shall operate and Maintain CNG Station for five (5) years and the OWNER has the right to extend the operation and maintenance contract upon mutual agreement of CONTRACTOR for up to an additional five years.

3.1.3. CONTRACTOR shall be responsible for providing all services necessary to the operation of the CNG Station including but not limited to the services described herein. CONTRACTOR will install, connect, test, and interface a city approved fuel management system, including a card reader system, or other OWNER approved method to record fuel consumption at dispensers.

3.1.4. CONTRACTOR shall be responsible for the operation and maintenance of the entire CNG Refueling Station including but not limited to fuel hoses and nozzles, methane-detection and all other safety systems.

3.1.5. CONTRACTOR shall design, construct, operate, and maintain the station so that all CNG garbage trucks presented for fast-fill shall be refueled with compressed natural gas at a rate of forty (40) DGE within ten (10) minutes after the garbage truck arrives at the CNG Station for fast-fill refueling without interruption.

3.1.6. CONTRACTOR shall design, construct, operate, and maintain the station so that all garbage trucks presented for slow-fill shall be fueled with compressed natural gas within ten (10) hours after the garbage truck arrives, connects and starts the refueling process for slow-fill refueling without interruption.

3.1.7. The OWNER will provide office space within the existing Fleet Maintenance Office during the contract period.

3.1.8. CONTRACTOR shall follow all applicable codes and standards that are applicable to the operation and maintenance of the CNG Station.

3.1.9. CONTRACTOR shall provide real time camera surveillance of the CNG station.

3.1.10. CONTRACTOR shall monitor the CNG Station and all nightly fueling operations as well as general CNG Station activity from its operations center. CONTRACTOR will provide remote monitoring of fuel dispensing operations twenty four (24) hours per day seven (7) days a week to include station alarms for interruptions in fueling.

3.1.11. CONTRACTOR agrees to use commercially reasonable efforts to proactively identify, trouble shoot and immediately correct any and all faults breaks, breakdowns,

errors, and defects at the CNG Station.

3.1.12. Maintenance Team. CONTRACTOR shall hire a minimum one (1) qualified technician to specifically provide all required/necessary maintenance services for the CNG Station. Any and all technicians providing maintenance services for the CNG Station will be trained by CONTRACTOR'S experienced service technicians, attended appropriate equipment training courses and receive appropriate certifications necessary and required for maintenance services at the CNG Station. CONTRACTOR may shift qualified personnel from other areas to meet the initial needs of the CNG Station.

3.1.13. Maintenance Personnel. The CONTRACTOR is responsible for recruiting and maintaining a pool of properly trained maintenance service personnel for performing the on-site work at the CNG Station. Each person shall meet the personal, technical, and experience requirements to perform CNG station maintenance work required by CONTRACTOR. OWNER shall have the right to demand the removal of any of the CONTRACTOR's personnel from the Project/CNG Station for reasonable cause and by written notice. The pool of CONTRACTOR maintenance personnel shall participate in the start-up, commissioning, and performance testing of the new CNG Station.

3.1.14. The CONTRACTOR is responsible for furnishing its personnel with vehicles, safety equipment, computers, hand tools, pagers, cell phones, general test equipment, gas detectors, and other equipment required to service a CNG station, CONTRACTOR personnel shall wear the CE required personal protection equipment while doing maintenance in the CNG Station.

3.1.16. CONTRACTOR will maintain any underground gas piping, electrical, telephone conduit and wiring associated with the CNG Station.

3.1.17. Upon receipt of a written request from the OWNER, the CONTRACTOR will issue fleet cards to the applicable fleet operations staff members within five (5) business days.

## **2. Scheduled Maintenance Plan.**

3.2.1. The CONTRACTOR shall prepare and submit a Preventative Maintenance Plan for City approval not later than sixty (60) days after OWNER acceptance of the CNG Station.

3.2.2. The CONTRACTOR'S Preventive Maintenance Plan will ensure that the OWNER is provided prompt hands-on solutions for the continuous and successful on-site minimum required operation of the CNG Station.

3.2.3. CONTRACTOR shall at a minimum follow all manufacturer recommended maintenance schedules to maintain all CNG Station Equipment for preventive and scheduled maintenance. Preventive maintenance shall at a minimum include pressure and temperature readings, oil level checks, visual inspections of equipment to detect excessive noise or vibration, inspection of nozzles and hoses, and personal observation of fueling to ensure smooth operation and performance of minor repairs.

3.2.4. CONTRACTOR shall provide all scheduled and unscheduled maintenance and repairs to the CNG Refueling Station and equipment, as well as being responsible for securing and providing all consumables, parts, labor, rebuilds, component and systems replacement necessary and required to ensure CNG Station's ability to provide slow-fill and fast-fill compressed natural gas on-demand and without interruption. CONTRACTOR shall be responsible for the required maintenance and replacement of all fuel hoses and nozzles as a result of normal use. In addition, CONTRACTOR shall be responsible for maintaining and maintenance of all permanent and stationary fire suppressions equipment including all re-certifications as required by the San Antonio Fire Department National Fire Protection Association (NFPA) and any other industry standard-setting or governmental bodies. Such maintenance and repair responsibilities of CONTRACTOR shall include the entire CNG Refueling Station, along with all islands and time-fill stations.

3.2.5. All scheduled maintenance must only be done with the prior written approval of the Fleet Maintenance and Operations and Solid Waste Departments (scheduling and approval may be done electronically).

3.2.6. CONTRACTOR shall use commercially reasonable efforts to ensure scheduled maintenance shall not negatively impact the fueling requirements of the OWNER'S vehicles.

### **3. Emergency Maintenance.**

3.3.1. CONTRACTOR shall use commercially reasonable efforts to respond to an emergency situation via remote monitoring within one (1) hour.

3.3.2. In the event of a system failure CONTRACTOR shall within five (5) hours provide back-up components, compressor(s) or alternate CNG fueling source to ensure that the City's natural gas vehicles are fueled for operation without interruption to meet the daily route requirements.

3.3.3. CONTRACTOR shall prepare not later than sixty (60) days after OWNER acceptance of the CNG Station for OWNER approval an Emergency Maintenance/Repair Plan. Such Plan shall at a minimum require CONTRACTOR/Technician to use commercially reasonable efforts to respond and arrive at the CNG Station within two (2) hours whenever CNG Station equipment is down unexpectedly.

3.3.4. CONTRACTOR agrees that CONTRACTOR shall at all times maintain sufficient spare parts for most repairs needed on-site or available within a one (1) hour period for repair of CNG Station equipment. CONTRACTOR shall submit for approval by OWNER, not later than sixty (60) days after OWNER acceptance of the CNG Station, a list of spare parts that are on-site or are available within a one (1) hour period. If spare parts are not listed on the approved inventory list, CONTRACTOR agrees to immediately order such spare parts for delivery.

3.3.5. CONTRACTOR shall provide OWNER with both CONTRACTOR'S 24-hour toll free emergency call center telephone number and emergency contact telephone numbers for:

- a. 24/7 Emergency Call number
- b. CE Operations Manager (TX)

#### **4. Service Calls.**

3.4.1. CONTRACTOR agrees that its CNG Technicians shall be available to provide emergency repair service on a 24-hour, 7-day per week, 365 days per year basis for the duration of the five (5) year operations and maintenance service period. CONTRACTOR will provide an emergency contact telephone number to OWNER.

3.4.2. CONTRACTOR agrees that in the event of other non-emergency operational difficulties that could impair the CNG Station's ability to fuel and operate its vehicles, CONTRACTOR shall respond as soon as commercially reasonable following receipt of notification from OWNER. Contractor further agrees that repairs shall be undertaken and completed as soon as is commercially reasonable, considering the nature of the repairs.

3.4.3. CONTRACTOR shall ensure that a fueling source is available for the City's natural gas vehicles to be fueled for operation without interruption to meet the daily routine requirements per Section 3.3.2.

#### **5. Extended System Down-Time.**

3.5.1 CONTRACTOR must notify the OWNER in writing within 12 hours of system failure and provide a thorough explanation of why the CNG Station is not operational. This notification shall contain an estimate of when the CNG Station will be completely operational without the aid of an alternate CNG fueling source and when the failed component will be replaced or made whole.

#### **6. Reporting & Database Records.**

3.6.1. CONTRACTOR must provide monthly fleet data reports to OWNER within thirty (30) days of the end of each month

3.6.2. The OWNER must provide the CONTRACTOR monthly natural gas meter readings upon receipt.

3.6.3. CONTRACTOR shall at all times maintain an accurate and up-to-date data base of maintenance records on all CNG Station equipment. Such data base shall be standardized to build in work assignments and maintenance records for all CNG Station equipment.

3.6.4. Upon the OWNER'S request, OWNER shall be notified of the time and place of each CONTRACTOR weekly maintenance meeting to allow technicians to collaborate and discuss solutions to CNG Station maintenance and operational issues with the OWNER.

#### **7. Inventory.**

3.7.1 CONTRACTOR shall maintain an on-site inventory of materials necessary for

replacement, such as gaskets, hoses, and belts for above ground CNG equipment that may be damaged or worn with repetitive use.

3.7.2. CONTRACTOR shall add to its on-site inventory of replacement materials any other items that require replacement three times within a twelve (12) month period for the duration of the contract.

3.7.3. OWNER shall provide adequate space for a CONTRACTOR inventory job box. The responsibility of the inventory job box and cost of the on-site inventory shall be borne by CONTRACTOR.

3.7.4. CONTRACTOR'S full-time Warehouse Supervisor will be actively involved in the maintenance and service of the CNG Station and will immediately provide all support necessary for continuous and successful on-site minimum or within its regional inventory warehouse required for the operation of the CNG Station.

3.7.5. At the end of the term on this agreement the spare parts inventory is the property for CONTRACTOR.

## **8. Owner's Responsibilities During Operation.**

3.8.1. The OWNER shall establish an account with CPS Energy to supply the CNG Refueling Station with natural gas and shall be responsible for the cost of the monthly natural gas commodity and transportation to the meter set assembly (MSA) at the Station; the cost of monthly electrical service and electricity used for the operation of the Station and related components; the phone service necessary to maintain the Station; any other applicable utility fees.

3.8.2. The OWNER shall maintain the area in and around the station in a clean, safe, and commercially reasonable condition suitable for CNG vehicle refueling use, including the ingress to, and egress from, the Station.

3.8.3. The OWNER'S employees shall refuel its CNG Vehicles. The OWNER will provide appropriate supervision for employees, and require employee attendance at all appropriate training sessions provided by the CONTRACTOR.

## **9. Access.**

3.9.1. CONTRACTOR shall have access to the CNG station and designated office space at all times 24 hours per day, 7 days per week, during the Term of this Agreement. The City shall make available to CONTRACTOR at all times the necessary arrangements required to gain access. Additionally, upon authorization by CONTRACTOR, its engineers, employees, contractors, or agents of CONTRACTOR, representatives or person under their supervision shall be permitted to enter on the premises at reasonable times for the purposes of servicing equipment or other business related matters, with signing-in required such parties with OWNER staff at 10303 Tool Yard, and notifying the Fleet Maintenance Service Department in advance with confirmation obtained in advance for non-CONTRACTOR employees being escorted by CONTRACTOR staff.

3.9.2. Except where SUBCONTRACTORS are approved, SUBCONTRACTORS used by CONTRACTOR shall at all times be escorted by CONTRACTOR personnel when in non-public areas.

3.9.3. Keys, lock combinations, magnetic access cards or other access control devices to the site that are issued to CONTRACTOR shall not be loaned to SUBCONTRACTOR personnel.

3.9.4. While on the OWNER premises, CONTRACTOR'S personnel must wear a suitable photo ID badge, to be provided by the OWNER, which includes a nominal 1 ½" square personal photo, unique logo and labeling that identifies the specific individual by name and a telephone number where confirmation of employment may be readily confirmed.

3.9.5. CONTRACTOR shall at all times assure that the OWNER has a current list of all its personnel who are authorized to be on the premises on CONTRACTOR'S behalf. The OWNER shall be notified immediately to remove the name of any employee subject to disciplinary probation or termination, and shall be notified of additional personnel to be added to this list. OWNER shall have the right to exclude any employee, agent, or representative of CONTRACTOR from City property, for reasonable cause, if deemed by the City to be necessary for the proper security of its facilities or the safety of its employees.

3.9.6. The Station shall have adequate space to park the provider's maintenance vehicle(s) provided that the number of vehicles does not hinder the daily operation performed on site.

3.9.7. CONTRACTOR shall have exclusive right to access and control its designated office space for storage and on-site inventory. However, all other areas are under the control of the City. The City shall have the right to enter and inspect the designated office space, upon notifying CONTRACTOR.

3.9.8. CONTRACTOR covenants not to unreasonably interfere with the daily operations at 10303 Tool Yard and any subsequent service Station.

## **10. Payment.**

3.10.1. Payments to the CONTRACTOR shall be made according to the provisions stated in Chapter 2251 of the Local Government Code of the State of Texas, with interest on unpaid amounts and payment disputes provided therein.

## **11. Training for City Personnel.**

3.11.1. CONTRACTOR shall within the first thirty (30) days of OWNER'S acceptance of the CNG Station provide CNG Station personnel training for the basic operation of the

CNG Station. Such required training shall at a minimum include an introduction to natural gas, dispensers with fuel-management systems, manual and automatic operation of pumps electrical switch gear and panel control to include all shutdowns, indicator lights, alarms and resets as needed, de-fueling, and emergency response in case of leak or malfunction:

a. Training. CONTRACTOR shall provide the following training listed in this Section to OWNER's personnel. The training is to include a manual for each of 30 participants. A refresher course on safety and operational related training shall be provided six (6) months after the CNG Station has been accepted by Owner.

b. Operational Training. On two separate dates, CONTRACTOR shall provide training on natural gas safety, fueling procedures, safety shutdowns, ESD system, and the gas detection system.

c. Training Related to the Compressor and Dryer Systems. CONTRACTOR shall provide for OWNER's personnel and Service Contractor personnel a one (1) day training class on basic operations and maintenance of the compressors, dryers, dispensers, and storage vessels, including the monitoring and warning systems.

d. Safety Training. CONTRACTOR shall coordinate with OWNER's Risk Management Department and develop an emergency response plan. Training for the safe use of the system shall also cover the operation/function of the gas monitoring and warning system, procedures on emergency shutdowns, and evacuation procedures. This training shall be conducted in conjunction with the Operational Training component required in this Section.

e. Fire Department Training. CONTRACTOR is required to inform and train all appropriate personnel as requested by the OWNER's Fire Department the complete CNG fueling system and assist the Fire Department, as requested, in the preparation of the emergency response plan. Relevant portions of this plan should be included in the Safety Training component required in this Section. CONTRACTOR, in coordination with the San Antonio Fire Department, shall provide emergency response training for events of high discharge CNG venting of CNG Station equipment, of vehicle venting during fueling or any other emergency situations.

3.11.2. CONTRACTOR shall also provide training to all City refuse truck drivers for vehicles using the fast-fill dispensers, including the fuel management system. Instruction shall include a minimum of four (4), one (1) hour training sessions. Follow up and new hire personnel training for all training requirements shall be provided by CONTRACTOR upon request by City and shall be paid for by CONTRACTOR.

## **12. Other Operational Requirements.**

3.12.1. CONTRACTOR shall be responsible for obtaining and maintaining up to date any and all required permits from any local, state, and/or federal agency along with any required and/or necessary annual fuel quality testing, baseline and annual testing of all major CNG Station equipment and station systems, as well as identifying any CNG Station design deficiencies and purpose modifications.

3.12.2. CONTRACTOR shall be responsible for maintaining the CNG Station's optimal performance and complying with all compliance standards, codes, regulations and laws throughout the Contract term.

## **SECTION 4. OTHER PROVISIONS**

### **1. Bonds and Insurance.**

4.1.1. Prior to City's issuance of a Notice to Proceed with the Construction Services Phase, Contractor shall provide, at its sole expense, performance and payment bonds on the forms in Exhibit "IV". The penal sum of the payment and performance bonds shall be equal to the GMP.

4.1.2. Following final inspection and acceptance by OWNER, CONTRACTOR shall provide OWNER a good and sufficient performance guarantee in the form of a bond or letter of credit, each year in an amount equal to 100% of the Total Annual Compensation for Operations/Maintenance, guaranteeing the full and faithful execution of the Operations and Maintenance portion of this Contract, including any extensions thereof, for the benefit of the OWNER.

4.1.3. Corporate sureties authorized to issue bonds shall be qualified and comply with relevant provisions of the Texas Insurance Code.

4.1.4. Each bond shall be executed by a corporate surety or sureties authorized to do business in the State of Texas and acceptable to the Owner. If any bond is for more than ten percent (10%) of the surety's capital and surplus, the Owner may require certification that the company has reinsured the excess portion with one or more reinsurers authorized, accredited, or trusted to do business in the State. A reinsurer may not reinsure for more than ten percent (10%) of its capital and surplus. In the event a surety upon a bond loses its authority to do business in the State, the CONTRACTOR shall within thirty (30) days after such loss furnish a replacement bond at no added cost to the Owner.

4.1.5. Sureties shall be listed on the Department of the Treasury's Listing of Approved Sureties stating companies holding Certificates of Authority as acceptable sureties on Federal Bonds and acceptable reinsuring companies (Department Circular 570).

4.1.6. Each bond shall be accompanied by a valid power-of-attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney-in-fact signing the bond to commit the company to the

terms of the bond, and stating the limit in the amount for which the attorney can issue a single bond.

4.1.7. The process of requiring and accepting bonds and making claims there under shall be conducted in compliance with Texas Local Government Code, Chapter 271, Subchapter H, Subsection 271.119 (i) and Texas Government Code, Chapter 2253. In the event of a conflict in the provisions of Chapter 271, Texas Local Government Code, and Chapter 2253, Texas Government Code, the terms of Chapter 271 shall govern.

4.1.8. Additional Bond Security. The Contractor shall promptly furnish additional security required to protect the Owner and persons supplying labor or materials under this Contract if any surety on any bond furnished with this Contract becomes reasonably unacceptable to the Owner; or any surety fails to furnish reports on its financial condition as reasonably required by the Owner; or the GMP is increased so that the penal sum of any bond becomes inadequate in the opinion of the Owner.

4.1.9. The insurance coverage and the requirements set out in this Section are intended to compensate the City for any losses incurred as a result of the Contractor's performance under the Contract. All requirements' in this Section pertaining to Certificates of Insurance will name City as an Additional Insured. All documentation and notices required to be sent to Owner will be forwarded to City as provided herein.

4.1.10. Prior to commencement of any Work under the Contract, Contractor shall furnish original completed Certificates of Insurance to the Owner which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the Owner. The Owner shall have no duty to pay or perform under the Contract until such Certificates shall have been delivered to the Owner and no officers or employees, other than the City's Risk Manager, shall have authority to waive this requirement.

4.1.11. The Owner reserves the right to review the insurance requirements of this Section during the effective period of the Contract and any extension or renewal-hereof and to modify insurance coverage and limits when reasonably deemed necessary and prudent by the City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Contract, but in no instance will the Owner allow modification whereupon the Owner may incur increased risk.

4.1.12. The Contractor's financial integrity is of interest to the Owner, therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the Owner. Contractor shall obtain and maintain in full force and effect for the duration of the Contract, and any extension thereof, at Contractor's sole expense, including all costs for premiums and deductibles, insurance coverage written on an

occurrence basis, by companies authorized and admitted to do business in the State of Texas otherwise acceptable to the Owner.

4.1.13. Contractor shall obtain and maintain the following types of coverage at the limits stated during the term of the Agreement:

| TYPE   | MINIMUM AMOUNTS  |
|--|--|
| 1. Workers' Compensation   | Statutory  |
| 2. Employers' Liability  | \$500,000/\$500,000/\$500,000  |
| Commercial General (public) Liability Insurance to include coverage for the following:<br>a. Premises/Operations<br>b. Independent Contractors<br>c. Products/completed operations<br>d. Personal Injury<br>e. Contractual liability | Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per;<br>General Aggregate limit of \$2,000,000 occurrence or its equivalent in umbrella or excess liability coverage                            |
| 4. Business Automobile Liability<br>a. Owned/Leased Vehicles<br>b. Non-Owned Vehicles<br>c. Hired Vehicles   | Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence  |
| 5. Professional Liability (Claims made form)   | \$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any negligent act, malpractice, error or omission in professional services. |

4.1.14. The Contractor shall be liable for the first tier Subcontractor' insurance coverage appropriate to their scope of Work given the above guidelines, and in the event a first tier Subcontractor is unable to furnish insurance in the limits required by the Contractor, the Contractor shall endorse the first tier Subcontractors as Additional Insured on the applicable Contractor policies. Contractor shall be responsible for obtaining Certificates of Insurance from the first tier Subcontractors, and upon request furnish copies to the Owner.

4.1.15. The Owner shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the Owner, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by the Owner, the Contractor shall exercise reasonable efforts to accomplish such changes in policy coverage, and shall pay the cost thereof.

4.1.16. Contractor agrees that with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions;

4.1.17. Name the Owner and its officers, employees, and elected representatives as Additional Insured with respect to operations and activities of, or on behalf of, the named insured's performed under contract with the Owner, with the exception of the worker's compensation and professional liability policies;

4.1.18. The Contractor's insurance shall be deemed primary with respect to any insurance or self insurance carried by the Owner for liability arising out of operations under the Contract with the Owner; and

4.1.19. Worker's compensation and employers' liability policy will provide a waiver of subrogation in favor of the Owner.

4.1.20. Contractor shall notify the Owner in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or thirty (30) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the Owner at the following address:

CITY OF SAN ANTONIO

Director of Solid Waste Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

and

City Clerk's Office  
P.O. Box 839966  
San Antonio, Texas 78283-3966

4.1.21. If Contractor fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the Owner may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; however, procuring of said insurance by the Owner is an alternative to other remedies the Owner may have, and is not the exclusive remedy for failure of Contractor to maintain said insurance or secure such endorsement. In addition to any other remedies the Owner 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 Owner 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.

4.1.22. 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.

4.1.23. All Risk, Builder's Risk Insurance: Contractor shall provide, keep in force, and at its own cost maintain at all times during the conduct and progress of the Work policies of insurance in the Contract Amount in order to amply indemnify itself and the Owner as their interests may appear against all risks or loss or damage to the Owner's property and/or construction materials on the Project Site and all off-site storage of construction materials. Such policy shall be open to the inspection of the Owner. If the Contractor fails to show the policy on request, the Owner may insure its own interest and charge the cost thereof to the Contractor.

4.1.24. The Contractor shall be required to provide worker's compensation coverage through a group plan for each employee of the Contractor employed on the Project.

4.1.25. The Contractor shall provide all required Certificates of Coverage for all persons providing Services on the Project, in accordance with the Texas Worker's Compensation Commission, Rule 110.110 (E) (1), and attachment to this Section. The Contractor will be required to:

- a. Provide coverage and Certificates of Coverage for all its employees.
- b. Obtain and provide the Owner all required Certificates of Coverage for all persons providing Services on the Project.

4.1.26. Notify the Owner in writing, by certified mail or personal delivery, within ten (10) business days after changes that materially affects any provisions of the coverage.

17.2.16.3 Post notices on each Project Site, and contractually require all Subcontractors to do the same.

4.1.27. In the submission of the Certificates of Insurance, the insurance companies must agree to provide notice of cancellation of any insurance to the Owner thirty (30) days prior to such cancellation of policies covered by the Certificates.

4.1.28. Contractor shall include a provision in all contracts with its Subcontractors requiring the Subcontractors to name Owner as Additional Insured on the general liability insurance policies maintained by such Subcontractors. Contractor also shall include a provision in such subcontracts requiring its Subcontractors to maintain statutory worker's compensation insurance for all employees of subcontractors with a waiver of subrogation in - favor of Owner. Contractor shall provide Owner, at Owner's request, with Certificates of Insurance evidencing that the coverages have been obtained by the Subcontractors and that Owner has been named as Additional Insured.

## **2. Disputes.**

4.2.1. It is the OWNER'S policy to try to resolve controversies by mutual agreement. In appropriate circumstances, discussions between parties can aid in the resolution of differences. Such discussions are encouraged. In the event that resolution is not reached, the OWNER and CONTRACTOR agree to mediation to resolve their differences, with each party paying its own attorney's fees and sharing equally the cost of the mediation. The CONTRACTOR agrees to exhaust its administrative remedies prior to seeking judicial relief of any type in connection with any matter related to this Contract.

4.2.2. Pending the final resolution of a dispute hereunder, the CONTRACTOR shall proceed diligently with the performance of the Contract, as the OWNER shall act in good faith in all instances.

4.2.3. If it is determined that the OWNER'S interpretation of the Contract, direction to the CONTRACTOR, or any other action required by the decision was an erroneous determination of the rights and obligations of the parties under the Contract, the CONTRACTOR'S remedy shall be the same as if such action were a Change Order to the Contract.

### **3. Termination of Contract.**

4.3.1 The Contract may be terminated by the OWNER, at OWNER'S discretion, during any phase of the Project upon at least thirty (30) days written notice to the CONTRACTOR with OWNER having no further obligations other than to compensate CONTRACTOR as provided in this Section.

4.3.2. This AGREEMENT may be terminated for default by either Party for substantial failure by the other Party to perform (through no fault of the terminating Party) in accordance with the terms of this AGREEMENT for a failure to cure after notice of breach.

4.3.3. The Party not in breach of this AGREEMENT must issue a written notice of breach (citing this paragraph) to the other Party declaring the other Party to be in breach and stating the reason(s) the party is in breach. Upon receipt of such written notice of breach the Party in receipt of the notice shall have twenty (20) days to cure the breach.

4.3.4. The Party not in default must issue a written notice of termination for default (citing this paragraph) to the other Party declaring the other party to be in default and stating the reason(s) why the other Party is in default. Upon receipt of such written notice of termination for default, the Party in receipt shall have a period of ten (10) days to cure a default for any failure to perform under this AGREEMENT. Upon the completion of such ten (10)-day period commencing upon receipt of notice of termination for default, if such party has not cured any default for failure to perform, such termination shall become effective without further written notice.

4.3.5. In the event of termination by OWNER under Section 4.3, the CONTRACTOR shall be entitled to compensation for all unpaid Services performed up to the date of receipt of the notice of termination ("Notice of Termination") together with Reimbursable Expenses then due, provided those Services were performed in a manner satisfactory to OWNER and CONTRACTOR finishes OWNER with the documentation and materials required in this Section.

4.3.6. The Contract may be terminated by either party for substantial failure by the other party to perform (through no fault of the terminating party) in accordance with the terms of the Contract. The terminating party must issue a signed, written Notice of Termination to the other party describing in detail the matter constituting a default. Upon receipt of such written Notice of Termination, the party in receipt shall have a period of thirty (30) days to cure any failure to perform under the Contract. Upon the completion of such thirty (30) day period commencing upon receipt of the Notice of Termination, if such party has not cured any failure to perform, such termination shall become automatically effective.

4.3.7. If OWNER terminates the Contract due to CONTRACTOR'S breach of a material duty, or obligation under the Contract under the Contract, OWNER shall have the right to refuse to accept and not pay CONTRACTOR for any partially completed Work and to offset any amounts due CONTRACTOR by the amount of any damages for which CONTRACTOR is liable to OWNER under the terms of the Contract.

4.3.8. REQUIREMENTS FOLLOWING TERMINATION AT OWNER'S DISCRETION OR UPON DEFAULT:

a. In the event of termination in accordance with this Article 4, CONTRACTOR shall, upon receipt of Notice of Termination, unless otherwise directed by OWNER, stop work on the date specified in the Notice. In addition, CONTRACTOR shall take all reasonable steps to mitigate and minimize termination costs including the immediate issuance of stop work orders. CONTRACTOR shall: (1) take such action as may be necessary in order to protect and preserve OWNER'S materials and property; (2) cancel all orders; (3) assign to OWNER and deliver, to the location designated by OWNER, all non-cancellable orders that are not capable of use except in the performance of the Contract that have been specifically developed for the sole purpose of this Contract: and (4) deliver to OWNER all Contract materials located at any off-site facilities. CONTRACTOR shall take no action after receipt of the Notice of Termination which would increase any amounts payable by OWNER under the Contract.

b. Termination of the Contract shall not relieve CONTRACTOR or any of its employees, Subcontractors, or consultants of liability for violations of the Contract or for any act or omission or negligence. In the event of a termination for cause, CONTRACTOR hereby consents to employment by OWNER of a substitute CONTRACTOR to complete the Work under the Contract, with the substitute CONTRACTOR having all rights and privileges of the original Design-Build Contractor.

c. Within ten (10) days of the date of the Notice of Termination of the Contract by either party, CONTRACTOR shall furnish to OWNER all statements, accounts, reports, drawings, specifications, and all other material and documentation prepared by CONTRACTOR in connection with CONTRACTOR'S responsibilities hereunder. OWNER shall have the right to use the ideas and designs therein contained for the completion of the Work described in the Contract and for completion of the Project.

d. The parties shall not consider either party's failure to declare immediately an event of default, or any party's failure to take any action with respect to an event of default, as a waiver of default by either party.

e. Upon termination of the Contract, neither party will have any further obligations to the other except for: (1) the payment of compensation earned prior to the effective date of the termination and previously unbilled; (2) any liability for any breach of the Contract occurring prior to termination; and (3) any provisions of the Contract which survive termination of the Contract.

#### **4. Indemnification.**

**4.4.1 CONTRACTOR COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE OWNER AND THEIR ELECTED OFFICIALS, EMPLOYEES, OFFICERS, AGENTS, AND REPRESENTATIVES, INDIVIDUALLY OR COLLECTIVELY, (EACH AND "INDEMNIFIED PERSON") FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, INTEREST, PENALTIES, ATTORNEY'S FEES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO: (1) PERSONAL \* OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE AN INDEMNIFIED PERSON DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO, CONTRACTOR'S ACTIVITIES UNDER THE CONTRACT, INCLUDING ANY ACTS OR OMISSIONS OF CONTRACTOR, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE,, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF CONTRACTOR, AND ITS RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF PERFORMANCE OF ITS RIGHTS, DUTIES, OR OBLIGATIONS UNDER THIS CONTRACT; (2) CLAIMS ARISING FROM VIOLATIONS, OR FAILURE TO COMPLY WITH, ANY FEDERAL, STATE, OR LOCAL LAW, ORDINANCE OR REGULATION, INCLUDING, BUT NOT LIMITED TO, LAWS GOVERNING LABOR, EQUAL EMPLOYMENT OPPORTUNITIES, SAFETY AND ENVIRONMENTAL PROTECTION; (3) CLAIMS ATTRIBUTABLE TO CONTRACTOR'S FAILURE UPON ENCOUNTERING ANY PREVIOUSLY UNKNOWN POTENTIALLY HAZARDOUS MATERIAL OR OTHER MATERIALS POTENTIALLY CONTAMINATED BY HAZARDOUS MATERIAL; (4) CLAIMS OR LOSSES INCURRED IF A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY A SURETY; AND (5) CLAIMS ARISING FROM ANY BREACH OR DEFAULT OF CONTRACTOR IN ITS PERFORMANCE OF ANY TERM OR COVENANT TO BE PERFORMED PURSUANT TO THE CONTRACT, ALL WITHOUT HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE INDEMNIFIED PERSONS UNDER TEXAS LAW. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY WHERE SUCH COSTS, CLAIMS, LIENS,**

DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN PART FROM THE NEGLIGENCE OF, AN INDEMNIFIED PERSON UNDER THE CONTRACT; HOWEVER THE INDEMNITY IS LIMITED TO THE PERCENTAGE OF CONTRIBUTORY NEGLIGENCE FOR WHICH CONTRACTOR IS DETERMINED TO BE RESPONSIBLE. 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, IF SELECTED, SHALL ADVISE THE OWNER IN WRITING WITHIN TWENTY-FOUR (24) HOURS OF ANY CLAIM OR DEMAND AGAINST AN INDEMNIFIED PERSON OR CONTRACTOR, KNOWN TO CONTRACTOR, RELATING TO OR ARISING OUT OF DESIGN-BUILD CONTRACTOR'S ACTIVITIES UNDER THE CONTRACT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT CONTRACTOR'S SOLE EXPENSE. THE INDEMNIFIED PERSON SHALL HAVE THE RIGHT, AT ITS OPTION, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING CONTRACTOR OF ANY OF ITS OBLIGATIONS UNDER THIS PROVISION.

IT IS THE EXPRESS INTENT OF THE PARTIES TO THE CONTRACT, THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION, IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY, PROTECT AND HOLD HARMLESS, THE INDEMNIFIED PERSONS FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, PROVIDED HOWEVER, THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL APPLY ONLY WHEN THE NEGLIGENT ACT OF AN INDEMNIFIED PERSON IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE, AND SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF AN INDEMNIFIED PERSON IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE. CONTRACTOR FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF THE INDEMNIFIED PERSON AND IN THE NAME OF THE INDEMNIFIED PERSON, ANY CLAIM OR SUIT BROUGHT AGAINST AN INDEMNIFIED PERSON. IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH HEREIN.

4.4.2 CONTRACTOR SHALL FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS THE OWNER FROM AND AGAINST ALL CLAIMS, DAMAGES, JUDGMENTS AND LOSS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY UNITED STATES PATENT, COPYRIGHT, OR INTELLECTUAL PROPERTY RIGHT ARISING BY OR OUT OF ANY OF THE WORK PERFORMED HEREUNDER OR THE USE BY CONTRACTOR, OR BY OWNER AT THE DIRECTION OF CONTRACTOR, OF ANY ARTICLE OR MATERIAL UPON BECOMING AWARE OF A SUIT OR THREAT OF SUIT FOR PATENT, COPYRIGHT

INFRINGEMENT OR INTELLECTUAL PROPERTY RIGHT INFRINGEMENT. OWNER SHALL PROMPTLY NOTIFY CONTRACTOR AND CONTRACTOR SHALL BE GIVEN FULL OPPORTUNITY TO NEGOTIATE A SETTLEMENT. CONTRACTOR DOES NOT WARRANT AGAINST INFRINGEMENT BY REASON OF OWNER'S DESIGN OF ARTICLES OR THE USE THEREOF IN COMBINATION WITH OTHER MATERIALS OR IN THE OPERATION OF ANY PROCESS. IN THE EVENT OF LITIGATION, OWNER AGREES TO COOPERATE REASONABLY WITH CONTRACTOR AND OWNER SHALL BE ENTITLED, IN CONNECTION WITH ANY SUCH LITIGATION, TO BE REPRESENTED BY COUNSEL HIRED BY OWNER AT DESIGN-BUILD CONTRACTOR'S SOLE EXPENSE. AT ITS OPTION TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING CONTRACTOR OF ANY OF ITS OBLIGATIONS UNDER THIS PROVISION.

4.4.3. The indemnities contained herein shall survive the termination of this Agreement for any reason whatsoever.

## **5. Miscellaneous Provisions**

4.5.1 Assignment. The Owner and CONTRACTOR respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners; successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. As the Contract is a personal services contract for the services of the Contractor, CONTRACTOR shall not assign its rights, duties or obligations under the Contract Documents or any rights to any amount due or to become due without the written consent of the Owner, which shall not be unreasonably withheld. If the CONTRACTOR attempts to make such an assignment without such consent, the CONTRACTOR shall nevertheless remain legally responsible for all obligations under the Contract. Any entity or person which shall succeed to the rights of Owner shall be entitled to enforce the rights of Owner hereunder. Any assignment by CONTRACTOR without prior written consent from Owner shall be void.

4.5.2. The Owner has the right to assign its rights under the Contract Documents and shall be released from its obligations under the Contract Documents upon written assumption thereof by the assignee and the Contractor's written consent, which shall not be unreasonably withheld, conditioned, or delayed. The Owner may, without consent of the Contractor, assign the Contract to any lender or other third party providing financing for the Project. In such an event, the lender or third party shall have the right to assume the Owner's rights and obligations under the Contract Documents and the CONTRACTOR will remain fully obligated to perform under the Contract Documents. The CONTRACTOR shall execute all consents reasonably required to facilitate such assignment, The Owner may also assign the obligations and duties of the CONTRACTOR to any party that controls, is controlled by, or is under common control with Owner, without obtaining Contractor's consent. In connection with financing of this Project, the CONTRACTOR and all Subcontractors of any tier shall execute and deliver

any and all instruments reasonable required by the Owner or any lender or other third party providing financing for the Project. CONTRACTOR agrees to waive or subordinate its lien rights, if *any*, to the rights of any such lenders or third party providing financing for the Project. CONTRACTOR also agrees to follow any administration or reporting procedures reasonably required by such lenders or third party and cooperate with Owner in satisfying the reasonable requests and requirements of such lenders or third party.

4.5.3. Family Code Child Support Certification. By signing this Agreement, the Undersigned certifies as follows: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate."

4.5.4. Sales Tax Certification. By signing this Agreement, the undersigned certifies as follows: "Under Section 2155.004, *Texas Government Code*, the Contractor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified Contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

4.5.5. This Agreement, and each of its provisions, shall be binding upon the parties and may not be waived, modified, amended or altered except in writing and signed by CONTRACTOR and Owner.

4.5.6. Captions. The captions of paragraphs in this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

4.5.7. Governing Law and Venue. This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas, Bexar County, Texas shall be the sole place of venue for any legal action arising from or related to this Contract or the Project in which the Owner is a party.

4.5.8. Waivers. No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power, or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

4.5.9. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted assigns and successors.

4.5.10. Records. All of Contractor's books, records; documents, and papers pertaining to this Project, including plans and specifications for construction as well as accounting documentation of costs, expenses, and payrolls of employees working on the Project shall be available to Owner or Owner's authorized representative at mutually convenient times for a minimum period of four (4) years after final completion of the project and other pending matters concerning the Contract have been closed. Owner shall have the right to verify the details set forth in Contractor's billings, certificates, and statements either before or after payment therefore, by: (1) inspecting the books and records of Contractor's during normal business hours; (2) examining any reports or documentation with respect to this Project; (3) interviewing Contractor's employees. CONTRACTOR further agrees to make these requirements applied to any all Subcontractor contracts in which CONTRACTOR has a contractual relationship for the services performed under the Contract. Any inspection or review conducted hereunder by Owner shall be at the Owner's sole cost and expense.

4.5.11. Notices. All notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of this Agreement shall be in writing. Written notice shall be deemed to have been given when delivered in person to the designated representative of the CONTRACTOR or Owner for whom it is intended; or sent by registered or certified U. S. mail to the last known business address of the designated representative; or transmitted by fax machine to the last known business fax number of the designated representative. Mail notices are deemed effective three (3) business days after the date of mailing. Fax notices are deemed effective the next business day after faxing.

4.5.12. Severability. In case any provision hereof shall, for any reason, be held invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included herein.

4.5.13. Enforcement. It is acknowledged and agreed that Contractor's services to Owner are unique, which gives CONTRACTOR a peculiar value to Owner and for the loss of which Owner cannot be reasonably or adequately compensated in damages. Accordingly, CONTRACTOR acknowledges and agrees that a breach by CONTRACTOR of the provisions hereof will cause Owner irreparable injury and damage. The Contractor, therefore, expressly agrees that Owner shall be entitled to injunctive and/or other equitable relief in any court of competent jurisdiction to prevent or otherwise restrain a breach of this Agreement, but only if Owner is not in breach of this Agreement.

4.5.14. Attorney's Fees. If any action at law or in equity is brought to enforce or interpret the terms of the Contract Documents, the prevailing party shall be entitled to reasonable attorney's fees, notwithstanding any limitations of liability contained herein, in addition to any relief to which such party maybe entitled.

4.5.15. Accounting Records. CONTRACTOR shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement in

accordance with generally accepted accounting principles. All such records shall be clearly identifiable. The Contractor agrees that OWNER, or any of its duly authorized representatives, shall, for the purpose of audit and examination, be permitted to inspect all work, materials, payrolls, and other data and records, and to audit the books, records, and accounts relating to the performance of the Contract. Further, CONTRACTOR agrees to maintain all required records for at least four (4) years after OWNER has made final payment and all other pending matters are close.

4.5.16. Audit Adjustments. Appropriate financial adjustments may be made OWNER based upon any inconsistency, irregularity, discrepancy or unsubstantiated billing revealed as a result an audit. Financial adjustments reflecting an overcharge to OWNER may be charged against CONTRACTOR's future invoices.

4.5.17. Drug and Alcohol Testing. In the event the terms of this Agreement require the performance of safety-sensitive functions as defined in 49 CFR Part 655, CONTRACTOR agrees to comply with OWNER's Drug and Alcohol Policy and the provisions of 49 CFR Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations and/or OWNER to inspect Station and record associated with the implementation of the drug and alcohol testing progress program as required under 49 CFR Part 655 and review the testing process.

## **6. Incorporation by Reference.**

4.6.1 Each exhibit referred to in this agreement is incorporated by reference for all purposes as if it were fully set forth. The RFQ propounded by the City dated July 2, 2007 leading to the award of this contract is incorporated by reference for all purposes as if fully set forth. CONTRACTOR'S Proposal to the extent it does not conflict with this Agreement.

## **7. Contrary Terms in Exhibits.**

4.7.1. The terms of this document prevail over any contrary terms in letters of intent, proposals, the RFQ, or other materials produced by or for CONTRACTOR, even if incorporated into this agreement.

## **8. Authority to Bind.**

4.8.1. The person who signs on behalf of CONTRACTOR individually represents and warrants that he has full legal authority to execute this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the terms and conditions of this agreement.

In Witness Whereof, the parties have hereunto caused their representatives to set their hands.

**City**

**City of San Antonio,**  
a Texas municipal corporation

By: *Erik J. Walsh*

Printed Name: Erik J. Walsh

Title: Assistant City Manager

Date: Jan. 7, 2008

ATTEST: *J. Frank L. Helton*

Approved as to Form:

*J. Frank L. Helton*  
City Attorney *SCF for NH*  
*12-31-07*



**CONTRACTOR**

**Clean Energy**

By: *James N. Harger*

Printed Name: James N. Harger

Title: Senior Vice President of Marketing and Sales

Date: 12/24/07

## EXHIBITS

The following exhibits are incorporated by reference as part of this Agreement and the Contract:

Exhibit I – Station Equipment

Exhibit II - Compensation for Operation and Maintenance of the CNG Station

Exhibit III - Payment and Performance Bonds

Exhibit IV - General Conditions

Exhibit V - Plans and Specifications

Exhibit VI – Schedule for the Project

Exhibit VII – Schedule of Values

Exhibit VIII - Small Business Economic Development Advocacy (SBEDA) Program

Exhibit IX – Labor Wage Rates for Bexar County

Exhibit X – Contractor Personal Titles, Hourly Rates, and DSE Multipliers

**Exhibit I**  
**Station Equipment**

| <b>Quantity</b> | <b>Make/Model</b>   | <b>Description</b>   |
|-----------------|---|--|
| 1               | GreenField C4T120.2, 4 stage, electric driven compressor                            | GreenField Compressor rated at 540 SCFM. One 250 HP electric drive motors will power the compressor. Total compressor capacity is 540 SCFM.  |
| 1               | Clean Energy Standard priority sequence panel                                       | Allows for direct flow from compressor to either storage or dispensing line  |
| 1               | Motor Control Center for the compressor unit  | Switchgear, starter, disconnect, control transformer, ESD, autodialer and junction box   |
| 1               | GreenField/Gilbarco G2E Encore Two-Hose dispenser c/w remote mounted fueling posts. | Single pressure P-36 1/2" tubing dispenser unit adjacent that includes all standard features, internal electronic sequentials with OPW CT1000 fueling nozzles and in-line breakaways |
| 1               | Portable Generator Hook Ups   | Emergency power provisions   |
| 1               | ASME High pressure storage vessel assembly  | The assembly is made up of three vessels each vessel has a capacity of 10,000 SCF, and is rated for 5500PSI. Total storage capacity of the assembly is approx 30,000SCF              |
| 15              | Time-Fill Fuel Posts  | 2 hose time fill fueling posts, c/w hoses, retractors, nozzles etc.  |
| 1               | Sierra IR Gas Detection System  | Methane detection system   |
| 1               | Clean Energy Dial Out Modem   |  |
| 1               | Control system including GreenField software and modem                              | Controls operation of compression and dispensing systems   |
| 1               | Fuel Guard Card Reader  | For receiving transaction authorizations and transmit data back to the existing Fuel Guard fuel management terminal  |
| 1               | Fueling Canopy  | Protects fast fill dispenser from the elements   |
| 1               | Bosch VDC45SV03-205 security camera   |  |

**Exhibit II**  
 Compensation for Operation and Maintenance of the CNG Station

|                                | Year 1           | Year 2           | Year 3           | Year 4           | Year 5           |
|--------------------------------|------------------|------------------|------------------|------------------|------------------|
| <b>Operation Costs Per DGE</b> | <b>\$0.65</b>    | <b>\$0.55</b>    | <b>\$0.55</b>    | <b>\$0.55</b>    | <b>\$0.55</b>    |
| Minimum Volume Commitment      | 129,600          | 129,600          | 129,600          | 129,600          | 129,600          |
| Additional Volume              | -                | 129,600          | 129,600          | 129,600          | 129,600          |
| Total Volume                   | 129,600          | 259,200          | 259,200          | 259,200          | 259,200          |
| <b>TOTAL O&amp;M COST</b>      | <b>\$84,240</b>  | <b>\$142,560</b> | <b>\$142,560</b> | <b>\$142,560</b> | <b>\$142,560</b> |
|                                |                  |                  |                  |                  |                  |
|                                | Year 6           | Year 7           | Year 8           | Year 9           | Year 10          |
| <b>Operation Costs Per DGE</b> | <b>\$0.55</b>    | <b>\$0.55</b>    | <b>\$0.55</b>    | <b>\$0.55</b>    | <b>\$0.55</b>    |
| Minimum Volume Commitment      | 129,600          | 129,600          | 129,600          | 129,600          | 129,600          |
| Additional Volume              | 129,600          | 129,600          | 129,600          | 129,600          | 129,600          |
| Total Volume                   | 259,200          | 259,200          | 259,200          | 259,200          | 259,200          |
| <b>TOTAL O&amp;M COST</b>      | <b>\$142,560</b> | <b>\$142,560</b> | <b>\$142,560</b> | <b>\$142,560</b> | <b>\$142,560</b> |

CE's all-inclusive O&M rate, including all parts, labor, materials, insurance, etc., is \$0.65 per equivalent diesel gallon (DGE). A DGE is defined to be 1.36 therms, where a CCF is 102,000 BTUs (British Thermal Units) of energy. The O&M rate will be billed monthly based on the volume of natural gas delivered through CPS Energy's meter set assembly and posted in their monthly bill to the OWNER. The posted volume in CFs will be converted to DGEs.

After three months of station operation, there will be a minimum monthly bill based on 10,800 DGEs (i.e. 15 trucks x 40 DGE/truck/day x 18 days/month). If the OWNER'S volume should be less than 10,800 DGE's in a given month, CE will bill the OWNER for the shortfall at the applicable O&M rate. When the OWNER'S monthly volume exceeds 21,600 DGE's month, CE will reduce the O&M rate for the entire monthly volume by \$0.10 per DGE. Beginning July 1, 2008, and each year thereafter, the price per DGE charged by CE shall be as determined from time to time by CE: provided, however, that in no event shall such price during any subsequent year change by more than the increase in the United States Bureau of Labor Statistics Consumer Price Index All Items, for South Urban Area Consumers, (1982-84=100), from the date hereof through the duration of the contract.



**Exhibit III - B**  
**PAYMENT BOND**

STATE OF TEXAS            )  
COUNTY OF BEXAR        )     Know all men by these presents:  
CITY OF SAN ANTONIO    )

**1. THAT WE CLEAN ENERGY , A TEXAS CORPORATION, ACTING BY AND THROUGH JAMES N. HARGER AS PRINCIPAL, AND SENIOR VICE PRESIDENT OF MARKETING AND SALES**

as Sureties, do hereby acknowledge ourselves to be held and firmly bound unto the City of San Antonio, a municipal corporation of the County of Bexar and State of Texas in the sum of **\$979,944** for payment of which sum well and truly to be made in and unto said City of San Antonio, we do hereby bind and obligate ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally:

**2. THE CONDITIONS OF THIS BOND, HOWEVER, ARE SUCH THAT WHEREAS, the said CLEAN ENERGY**

hereinafter called Contractor or Principal, has made and does this day make and enter into a certain contract in writing with said City of San Antonio, for the construction and completion for said City of certain structures, work and improvements generally described as

**Compressed Natural Gas Refueling Station**

and for the performance and observance of diverse other matters and things in connection with said work, and interalia, therein entered into covenants and agreements to promptly pay all persons supplying labor, materials and services in the prosecution of the work provided for in said contract; all as more fully described in said contract and its included instruments which are expressly made a part of this obligation;

3. NOW THEREFORE, if Contractor, the Principal party to this obligation shall promptly make payment to all persons supplying labor and materials in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation shall be and become null and void, but otherwise to remain in full force and effect; and it is hereby further understood and agreed that this bond shall be a continuous obligation against the principal and each member of said principal party hereto, and each and all sureties hereon, and that successive recoveries may be had thereon for each and every breach of this bond until the full amount thereof shall have been exhausted; and the liability of the sureties on this bond shall not be in any manner released or diminished by any changes in the work which may be authorized or directed by the City, nor by the exercise or failure to exercise by or on behalf of the City any right or remedy provided by the contract or specifications or by any law or ordinances.

4. It is further understood that this obligation is incurred pursuant to Chapter 2253 of the Texas Government Code, and that this obligation is for the benefit and protection of the City and all persons supplying labor and materials in the prosecution of said contract.

5. IN TESTIMONY WHEREOF, witness our hands and the seal of any incorporated surety hereon this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 20\_\_

6. The foregoing bond is approved and accepted

this \_\_\_\_\_ day of \_\_\_\_\_  
20 \_\_\_\_\_  
By \_\_\_\_\_  
\_\_\_\_\_  
City Manager

(SEAL)

By

**CLEAN ENERGY**

\_\_\_\_\_  
NAME, TITLE

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Address of Surety for Service Purposes

**Exhibit IV**  
**General Conditions**

**GENERAL CONDITIONS FOR  
CITY OF SAN ANTONIO BUILDING CONSTRUCTION CONTRACTS**

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**GENERAL CONDITIONS FOR  
CITY OF SAN ANTONIO BUILDING CONSTRUCTION CONTRACTS**

**ARTICLE I. GENERAL PROVISIONS**

1.1 **CONTRACT DEFINITIONS.** Wherever used in the Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated, which are applicable to both the singular and plural thereof.

1.1.1 The Contract Documents.

1.1.1.1 The Contract Documents consist of the formal Building Construction Services Agreement between the Owner and the Contractor), these General Conditions and other supplementary conditions included by special provisions or addenda, Drawings, Specifications, addenda issued prior to execution of the Contract, other documents listed in the Contract and Amendments issued after execution of the Contract. An Amendment is a written supplemental agreement to the Contract signed by authorized representatives of both parties; a Change Order, including Change Orders signed only by the Owner as described in Section 7.1; or a written order for a minor change in the Work issued by the Design Consultant as described in Section 7.3.

1.1.1.2 The Contract Documents also include bid documents such as the Owner's Instructions to Bidders, sample forms, the Contractor's Bid Proposal and portions of addenda relating to any of these documents, and any other documents, exhibits or attachments specifically enumerated in the Building Construction Services Agreement, but specifically exclude geotechnical and subsurface reports that the Owner may have provided to the Contractor.

1.1.2 The Contract. The Contract Documents, as defined in Section 1.1, are expressly incorporated into and made a part of the formal Building Construction Services Agreement between the Owner and the Contractor by reference in this Section and Section 1.1 (which documents are sometimes also referred to collectively in these General Conditions as the "Contract"). The Contract Documents represent the entire and integrated agreement between the Owner and the Contractor and supersede all prior negotiations, representations or agreements, either written or oral. The terms and conditions of the Contract Documents may be changed only by an Amendment. The Contract Documents shall not be construed to create a contractual relationship of any kind:

1.1.2.1 between the Design Consultant and Contractor;

1.1.2.2 between the Owner and a Subcontractor or Sub-subcontractor; or

1.1.2.3 between any persons or entities other than the Owner and Contractor.

The Design Consultant shall, however, be entitled to performance and enforcement of obligations under the Contract Documents intended to facilitate performance of the Design Consultant's duties.

1.1.3 The Work. The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment, and services provided or to be provided by the Contractor, or any Subcontractors, Sub-subcontractors, material suppliers, or any other entity for whom the Contractor is responsible, to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.1.4 The Project. The Project is the total construction more particularly described in the Building Construction Services Agreement, of which the Work performed under the Contract Documents may be the whole or a part of the Project and which may include construction by the

Owner or by separate contractors. All references in these General Conditions to or concerning the Work or the site of the Work will use the term "Project," notwithstanding that the Work may only be a part of the Project.

1.1.5 The Drawings. The Drawings (also known as the "Plans") are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

1.1.6 The Specifications. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work, performance of related services, and other technical requirements.

1.1.7 The Project Manual. The Project Manual is the volume or volumes which contain the bidding requirements, sample forms, General Conditions for Building Construction, special provisions, and Specifications. The Project Manual may be modified by written addendums issued by the Owner during bidding, in which case the written addendums become a part of the Project Manual upon their issuance, unless otherwise indicated by the Owner in writing.

1.1.8 Alternate. An Alternate is a variation in the Work on which the Owner requires a price separate from the Base Bid. If an Alternate is accepted by the Owner, the variation will become a part of the Contract through the execution of a Change Order or Amendment to the Contract and the Base Bid will be adjusted to include the amount quoted. If an Alternate is accepted by the Owner, and later deleted, the Owner will be entitled to a credit in the full value of the Alternate as priced in the Contractor's Bid Proposal.

1.1.9 Base Bid. The Base Bid is the price quoted for the Work before Alternates are considered.

1.1.10 Hazardous Substance. The term Hazardous Substance is defined to include the following:

1.1.10.1 any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophyllite or actinolite, whether friable or non-friable;

1.1.10.2 any polychlorinated biphenyls ("PCBs"), or PCB-containing materials, or fluids;

1.1.10.3 radon;

1.1.10.4 any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste;

1.1.10.5 any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the environment, or natural resources;

1.1.10.6 any substance that, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations;

1.1.10.7 any underground storage tanks, as defined in 42 U.S.C. Section 6991(1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste

Amendments to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Texas Water Code Annotated Section 26.344; and Title 30 of the Texas Administrative Code Sections 334.3 and 334.4), whether empty, filled or partially filled with any substance; and

1.1.10.8 any other hazardous material, hazardous waste, hazardous substance, solid waste, and toxic substance as those or similar terms are defined under any federal, state, or local environmental laws, rules, or regulations.

1.1.11 City Council. The duly elected members of the City Council of the City of San Antonio, Texas.

1.1.12 Construction Observer/Inspector. ("COI") The authorized representative of the Director of Public Works, or its designee department, assigned by the Owner to observe and inspect any or all parts of the Project and the materials to be used therein. Sometimes also referred to as the Resident Inspector. Also referred to as Resident Inspector.

1.1.13 Department. The Department of Public Works, City of San Antonio, Texas or other department designee of the Department of Public Works.

1.1.14 Federally Assisted Contract. Any contract financed in whole or in part with federal funds

1.1.15 Field Work Directives. A written order issued by the Design Consultant or the Owner Designated Representative (ODR) which orders minor changes in the Work, but which does not involve a change in the Contract Sum or the Contract Time.

1.1.16 Major Bid Item. Any individual bid item submitted by Contractor that constitutes, at a minimum, five percent (5%) of the total Contract Sum proposed by the Contractor or, the dollar amount defined in the Special Conditions as constituting a "Major Bid Item", whichever is less; or in some instances specific bid Items which are identified and defined in other sections of the Contract Documents as constituting "Major Bid Items"

1.1.17 Notice to Proceed. (also "Work Project Authorization") A written notice given by Owner to Contractor establishing the date on which the Contract Time will commence to run, and on which Contractor may begin performance of its contractual obligations.

1.1.18 Site. Lands or areas (as indicated in the Contract Documents) furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

1.1.19 Other Definitions. As used in the Contract Documents, the following additional terms have the following meanings:

1.1.19.1 "provide" means to furnish, install, fabricate, deliver and erect, including all services, materials, appurtenances and other expenses to complete in place, ready for operation or use;

1.1.19.2 "shall" means the action of the party to which reference is being made is mandatory;

1.1.19.3 "as required" means as prescribed in the Contract Documents; and

1.1.19.4 "as necessary" means all action essential or needed to complete the work in accordance with the Contract Documents and applicable laws, ordinances, construction codes, and regulations.

1.1.19.5 "Design Consultant" means the architect or engineer retained by the City as more specifically defined in Sections 4.1.1 through 4.1.3 hereof.

1.1.19.6 "Program Management Team" is comprised of the Owner, its representatives, the Design Consultant and the Program Manager for this Work.

## 1.2 PRELIMINARY MATTERS.

1.2.1 Delivery of Bonds. When Contractor delivers the executed Contracts to City, Contractor shall also deliver to City such bonds as Contractor may be required to furnish, including but not limited to a payment bond in the form and amount specified in the Contract Documents and a performance bond in the form amount specified in the Contract Documents.

1.2.2 Delivery of Evidence of Insurance. Prior to the commencement of any Work under this Contract, Contractor shall furnish an original completed Certificate of Insurance and a copy of all insurance policies, together with all required endorsements thereto, required by the Contract Documents to the Department, or its delegate department, clearly labeled with the name of the Project, which shall furnish and contain all information required by Contract Documents. The Contractor shall be prohibited from commencing the Work and the City shall have no duty to pay or perform under this Contract until such evidence of insurance shall have been delivered to the City. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

1.2.3 Notice to Proceed and Commencement of Contract Times. Unless otherwise stated in the Notice to Proceed, the Contract Times will commence to run on the earlier of the date work actually commenced, or seven calendar days after issuance of City's Notice to Proceed. No Work shall be done at the Site prior to issuance of the Notice to Proceed.

1.2.4 Submission of Preliminary Schedules. Within ten (10) calendar days after receipt of City's Notice to Proceed (unless otherwise specified elsewhere in the Contract Documents) Contractor shall submit to the Director of Public Works or his designee the following:

1.2.4.1 A Preliminary Work Progress Schedule, which shall show the order in which the Contractor proposes to carry out the Work in accordance with the final approved phasing plan, if any, and the anticipated start and completion dates of each phase of the Work. The schedule shall be in the form of a time scaled work progress chart, to indicate the percentage of Work scheduled for completion at various critical milestones;

1.2.4.2 A Preliminary Schedule of Shop Drawing and Sample Submittals, which shall list each required submittal and the times for submitting, reviewing and processing such submittal; and

1.2.4.3 A Preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

1.2.5 Preconstruction Conference. Within seven (7) days of issuance of the Notice to Proceed, but before any Work at the Site is started, a conference attended by Contractor, Design Consultant and others as appropriate will be held to establish a working understanding among the parties as to the Work and discuss the Preliminary Work Progress Schedule referenced in this Article, procedures for handling Shop Drawings and other submittal, processing Applications for Payment and maintaining required records.

## 1.3 CONTRACT DOCUMENTS.

1.3.1 Execution of Contract Documents. The Contract Documents shall be signed by Owner and Contractor. If either the Owner or Contractor or both do not sign all of the Contract Documents, the Design Consultant shall identify such unsigned documents to both the Owner and the Contractor upon request. Execution of the Contract by the Contractor is a representation that the Contractor has been provided unrestricted access to the existing improvements and conditions on the Project Site, that it has thoroughly investigated the visible conditions at the Site and the general local conditions affecting the Work, and that Contractor's investigation was instrumental in preparing its bid or proposal for the Work. Contractor shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum arising from conditions that Contractor discovered or, in the exercise of reasonable care, should have discovered in Contractor's investigation.

1.3.2 Ownership and Use of Drawings, Specifications and Other Instruments of Service.

1.3.2.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Design Consultant, its consultants, or other consultants retained by the City for the Project that describe the Work to be executed by the Contractor (the "Construction Documents") are Instruments Of Service and shall remain the property of their authors whether the Project(s) for which they are made is executed or not. The Contractor shall be permitted to retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Design Consultant or the Design Consultant's consultants, and unless otherwise indicated the Design Consultant and the Design Consultant's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Construction Documents, except the Contractor's record set, shall be returned or suitably accounted for to the Design Consultant, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Design Consultant and the Design Consultant's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Design Consultant and the Design Consultant's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Design Consultant and the Design Consultant's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Design Consultant and the Design Consultant's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Design Consultant's or Design Consultant's consultants' copyrights or other reserved rights.

1.3.2.2 All of the Contractor's non-proprietary, documentary Work product, including reports and correspondence to City prepared pursuant to this Contract, shall be the property of the City and, upon completion of this Contract, such documentary Work product shall, upon written request by the City, be promptly delivered to City in a reasonably organized form, without restriction on its future use by City on any additional Work associated with the any of the Projects. For the avoidance of doubt, documentary Work product does not include privileged communications, proprietary information and documents used to prepare Contractor's Bid Proposal.

1.3.2.3 The Contractor may retain for its files any copies of documents it chooses to retain and may use its Work product as it deems fit. Any materially significant Work

product lost or destroyed by the Contractor shall be replaced or reproduced at the Contractor's non-reimbursable, sole cost. In addition, City shall have access during normal business hours and following reasonable notice during the time this Contract is in effect, and for four (4) years after the final completion of the Work, to all of Contractor's records and documents covering reimbursable expenses, actual base hourly rates, time cards, annual salary escalation records maintained in connection with this Contract, for purposes of auditing same at the sole cost of the City. The purpose of any such audit shall be for the verification of such costs. The Contractor shall not be required to keep records of, or provide access to the make up of any negotiated and agreed-to lump sums, unit prices or fixed overhead and profit multipliers. At the conclusion of any City audit, Contractor will be afforded an audit exit conference to review the results of City's audit. Nothing herein shall deny the Contractor the right to retain duplicates. Refusal by the Contractor to comply with the provisions hereof shall entitle City to withhold further payments to Contractor until compliance is obtained.

1.3.2.4 All of the Contractor's documentary Work product shall be maintained within the Contractor's San Antonio offices, unless otherwise authorized by the City. After expiration of this Contract, the Contractor's documents may be archived in the Contractor's central record storage facility.

### 1.3.3 Correlation and Intent.

1.3.3.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonable inferable from them as being necessary to produce the indicated results. In cases of discrepancy between any drawing and the dimension figures written thereon, the dimension figures shall govern over scaled dimensions; Detailed Drawings and accompanying notations shall govern over general Drawings; Specifications shall govern over Drawings, subject to Section 1.3.3.6; and Special Conditions shall govern over Specifications, Drawings and these General Conditions. The most recent revision of Plans shall control over older revisions.

1.3.3.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.3.3.3 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Where the phrases "directed by", "ordered by" or "to the satisfaction of" the Design Consultant or the City's Resident Inspector occur, it is to be understood that the directions, orders, or instructions to which they relate are those within the scope of, and authorized by the Contract Documents.

1.3.3.4 Reference to manufacturer's instructions, standard specifications, manuals or codes of any technical society, organization or association, Laws or Regulations of any governmental authority, or to any other documents, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of opening of Contractor's Bid Proposal except as may be otherwise specifically stated or where a particular issue is indicated. Municipal and utility standards shall govern except in case of conflict with the Specifications. In case of a conflict between the Specifications and the referenced standard, the more stringent shall govern.

1.3.3.5 The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows with the highest authority listed as "1".

1. Contract Modifications signed by Contractor and Owner.
2. Addenda, with those of later date having precedence over those of earlier date.
3. Special Conditions
4. Supplementary Conditions.
5. Building Construction Services Agreement.
6. General Conditions
7. Specifications
8. Drawings.

1.3.3.6 Relation of Specifications and Drawings.

1.3.3.6.1 Drawings and Specifications are intended to be equivalent in authority and priority. Should they disagree in themselves, or with each other, prices shall be based on the better quality and greater quantity of work indicated. In the event of the above-mentioned disagreements, the Design Consultant shall determine the resolution.

1.3.3.6.2 Where in the Drawings and Specifications, certain products, manufacturer's trade names, or catalog numbers are given, that is done for the sole and express purpose of establishing a standard of function, dimension, appearance, and quality of design, in harmony with the Work, and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such substitution has been specifically accepted for use on this Project by the Design Consultant.

1.3.3.7 When the work is governed by reference to standards, building codes, manufacturer's instructions, or other documents, unless otherwise specified, the current edition as of the date of the submission of the bid shall apply.

1.3.3.8 Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements.

1.3.4 Interpretation. In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an", but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

## **ARTICLE 2. OWNER**

### **2.1 GENERAL**

2.1.1 Owner Defined. The City of San Antonio, Texas, a home-rule, Texas Municipal Corporation located in Bexar County, and identified as "Owner" or as "the City" in the Contract, is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters concerning this Contract requiring the Owner's approval or authorization. ("Owner's Designated Representative" or "ODR") Whenever the term "City" or "Owner" is found in this Contract, such term shall include the City's agents, elected officials, employees, officers, directors, volunteers, and representatives, successors and assigns.

2.1.2 The Contractor acknowledges that no lien rights exist with respect to public property.

### **2.2 INFORMATION AND SERVICES TO BE PROVIDED BY OWNER.**

2.2.1 The City will provide and maintain the Preliminary Budget developed by the Program Management and general schedule for the Project, if any. The Preliminary Budget will include the anticipated construction cost, contingencies for changes in the Work during construction, and other costs that are the responsibility of the Owner. The general schedule will set forth the Owner's plan for milestone dates and completion of the Project.

2.2.2 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations, and utility locations. The furnishing of these surveys and reports shall not relieve the Contractor of any of its duties under the Contract Documents or these General Conditions. Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness following actual receipt of a written request. It is incumbent upon the Contractor to identify, establish, and maintain a current schedule of latest dates for submittal and approval by the Owner, as required in Section 3.10, including when such information or services must be delivered. If Owner delivers the information or services to the Contractor as scheduled and Contractor is not prepared to accept or act on such information or services, then Contractor shall reimburse Owner for all extra costs incurred of holding, storage, or retention, including redeliveries by the Owner to comply with the current schedule.

2.2.4 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, five (5) complete sets of the Plans and Specifications. Additional complete sets of Plans and Specifications, if requested, will be furnished at reproduction cost to the Contractor requesting such additional sets.

2.2.5 Owner's personnel may, but are not required to be present at the construction site during progress of the Work to assist the Design Consultant in the performance of his duties, and to verify the Contractor's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, and the equipment used in the performance of the Work for purpose of verification of Contractor's Applications for Payment.

2.2.6 **OWNER'S RIGHT TO STOP THE WORK.** If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2, "CORRECTION OF WORK," or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's right under Paragraph 12.2.

2.2.7 **OWNER'S RIGHT TO CARRY OUT THE WORK.** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, after such three-day period, give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor, within such three-day period after receipt of such second notice, fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Design Consultant's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## **ARTICLE 3. CONTRACTOR**

### **3.1 GENERAL.**

3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.1.2 The Contractor shall perform the Work in a good and workmanlike manner except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship.

3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Design Consultant in the Design Consultant's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

### **3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR.**

3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the Site affecting it. Any error, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Design Consultant as a Request for Information in such form as the Design Consultant may require.

3.2.1.1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Design Consultant, or the work installed by other contractors, is not guaranteed by the Design Consultant or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations.

3.2.1.2 In all cases of interconnection of its Work with existing or other work, the Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

3.2.2 As between Owner and Contractor, and subject to the provisions of Section 3.2.4 below, Contractor has no responsibility for the timely delivery, completeness, accuracy and/or sufficiency of the Specifications or Drawings (or any errors, omissions, or ambiguities therein), and is not responsible for any failure of the design of the facilities or structures as reflected thereon to be suitable, sound or safe. The Contractor shall be deemed to have satisfied itself as to the design contained in and reflected by the Specifications and the Drawings. In particular, but without prejudice to the generality of the foregoing, the Contractor will review the Contract Documents to establish that:

3.2.2.1 the information is sufficiently complete to perform the Work; and

3.2.2.2 there are no obvious or patent ambiguities, inaccuracies or inconsistencies within or between the documents forming the Contract; and

3.2.2.3 the Contractor can work with the aforementioned Contract Documents so as to perform the Work and of each and every part thereof such that the Work and each and every part thereof will, jointly and severally, be in accordance with the requirements of the Contract Documents and in particular, but without limiting the generality of the

foregoing, such that the Work as a whole and, as appropriate, each and every part thereof, shall comply with the requirements of any performance specifications.

3.2.3 Any design errors or omissions noted by the Contractor during its review shall be reported promptly to the Design Consultant, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Design Consultant.

3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Design Consultant in response to the Contractor's Notices or Requests for Information the Contractor shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Design Consultant for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or differences and knowing failed to report it to the Design Consultant.

3.2.5 Notwithstanding the delivery of a survey or other documents by the Owner, Contractor shall use reasonable efforts to perform all Work in such a manner so as to avoid damaging any utility lines, cables, pipes, or pipelines on the property. Contractor shall be responsible for, and shall repair at Contractor's own expense, any damage done to lines, cables, pipes, and pipelines identified to Contractor.

### **3.3 SUPERVISION AND CONSTRUCTION PROCEDURES.**

3.3.1 The Contractor shall supervise, inspect and direct the Work competently and efficiently, exercising the skill and attention of a reasonably prudent Contractor, devoting such attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Design Consultant and shall not proceed with that portion of the Work without further written instructions from the Design Consultant. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portion are in proper condition to receive subsequent Work.

3.3.4 Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, Subchapter C, Sections 756.021, et seq.

3.3.5 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

3.3.6 The Contractor shall review subcontractor safety programs, procedures, and precautions in connection with performance of the Work. However, the Contractor's duties shall not relieve any subcontractor(s) or any other person or entity (e.g. a supplier), including any person or entity with whom the Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state and local laws, rules, regulations, and ordinances, which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this paragraph are not intended to impose upon the Contractor any additional obligations that the Contractor would not have under any applicable state or federal laws including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

#### 3.4 LABOR AND MATERIALS.

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**3.4.1.1 PREVAILING WAGE RATE AND GENERAL LABOR CONDITIONS.** The Provisions of Chapter 2258, Texas Government Code, are expressly made a part of this contract. In accordance therewith, the City will provide Contractor with a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform this contract prior to the bidding of the Projects described in Section 2.3.3 of the Agreement and this schedule will become a part hereof. The Contractor shall forfeit as a penalty to the City sixty dollars (\$60.00) for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the contractor or any sub-contractor under him. The establishment of prevailing wage rates pursuant to Chapter 2258, Texas Government Code shall not be construed to relieve the Contractor from his obligation under any Federal or State Law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed hereunder. The Contractor, in the execution of this Project, agrees that he shall not discriminate in his employment practices against any person because of race, color, creed, sex or origin. The Contractor agrees that he/she will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation. In addition, Contractor agrees that he/she will abide by all applicable terms and City "General Conditions" governing wages and labor standards and practices, established by City ordinance 60110, amended by City ordinance 71312, and provisions of the Nondiscrimination Clause and the Small and/or Minority Business Advocacy Clause as

contained in the City of San Antonio's current Affirmative Action Plan on file in the City Clerk's Office.

### 3.4.2 Substitutions.

3.4.2.1 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor (iii) and when in the judgment of the Owner or the Design Consultant, a substitution would be substantially in the Owner's best interests in terms of cost, time, or other considerations.

3.4.2.2 The Contractor must submit to the Design Consultant and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and (v) and in the event of a substitution under clause (ii) of Section 3.4.2.1, an affidavit stating the (a) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Design Consultant. Proposals for substitutions shall be submitted in triplicate to the Design Consultant in sufficient time to allow the Design Consultant no less than twenty-one (21) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

3.4.2.3 In the event of substitution under clause (ii) of Section 3.4.2.1, and whether or not any such proposed substitution is accepted by the Owner or the Design Consultant, the Contractor shall reimburse the Owner for any fees charged by the Design Consultant or other consultants for evaluating each proposed substitute.

3.4.3 Except as otherwise required for safety or protection of persons or the Work or property at the Site or adjacent thereto, no Work will be allowed by Owner between the hours of 10:00 p.m. and 6:00 a.m. of the following day unless directed by the ODR or requested in writing by Contractor and approved by the Director of Public Works or its Designee Department Director.

3.4.4 The Contractor shall at all times enforce strict discipline and good order among persons working on the Project, and shall not employ or continue to employ any unfit person on the project or any person not skilled in the assigned work. The Contractor shall be responsible to the Owner for all acts and omissions of its employees, all tiers of its Subcontractors, material suppliers, anyone whom the Contractor may allow to perform any Work on the Project, and their respective officers, agents, employees, and consultants whom the Contractor may allow to come on the job site with the exception of the Owner, the Design Consultant, and the Program Management Team. In addition, if the Contractor receives written notice from the Owner complaining about any Subcontractors or employees or anyone who is a hindrance to proper or timely execution of the Work, Contractor shall remedy such complaint without delay to the Project and at no additional cost to the Owner. This provision shall be included in all contracts between the Contractor and all Subcontractors of all tiers.

3.4.5 . The Contractor recognizes that the Project Site is a public facility which represents the City of San Antonio, and the Contractor shall prohibit the possession or use of alcohol, controlled substances, tobacco, and any prohibited weapons on the Project Site and shall require adequate dress of the Contractor's forces consistent with the nature of the work being performed, including

wearing shirts at all times. Sexual harassment of employees of the Contractor or employees of the Owner by employees of the Contractor is strictly forbidden. Any employee of the Contractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by the Contractor, including removal from the job Site.

3.4.6 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project.

3.4.7 All materials and equipment shall be as specified in the Contract Documents, and if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by the Design Consultant, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind and quality of materials and equipment. The Contractor may make substitutions only with the consent of the Owner, after Contractor's compliance with Section 3.4.2 hereof.

3.4.8 All materials shall be shipped, stored and handled in a manner that will protect and ensure their condition at the time of incorporation in the Work. After installation, all materials shall be properly protected against damage to ensure their being in the condition required by Section 3.5.1 when the Work is Substantially Completed or Owner takes over use and occupancy, whichever is earlier.

3.4.9 The Contractor shall procure and furnish to the Owner all guarantees, warranties, spares and maintenance manuals that are called for by the Specifications or that are normally provided by a manufacturer. The maintenance manual shall include a catalog and price list for any equipment, materials, supplies, or parts used in the inspection, calibration, maintenance or repair of the equipment. Items in the catalog shall be readily available for purchase.

3.4.10 During construction of the Work and for four years after final completion, the Contractor shall retain and shall require all Subcontractors to retain for inspection and audit by the City all books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all other direct or indirect costs related to the bidding and performance of this Work. Upon request by the Owner, a legible copy or the original of any or all such records shall be produced by the Contractor at the administrative office of the Owner. To the extent that it requests copies of such documents, the City will reimburse the Contractor and its Subcontractors for copying costs. The Contractor shall not be required to keep records of, or provide access to the make up of any negotiated and agreed-to lump sums, unit prices or fixed overhead and profit multipliers.

### 3.5 **WARRANTY.**

3.5.1 The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, normal wear and tear and normal usage, and additional damage or defects caused by Owner's failure to promptly notify Contractor. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5.2 The Contractor agrees to assign to the Owner, at the time of final completion of the Work, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties; provided that such assignment shall contain a reservation of Contractor's right to also enforce the manufacturer's warranties. As a condition precedent to final payment, the Contractor

shall submit to Owner a complete set of warranties from subcontractors, manufacturers, or suppliers as appropriate, and executed by Contractor as required, with, as between Owner and Contractor, a warranty commencement date as required by the Contract Documents.

3.5.3 A right of action by the Owner for any breach of the Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies Owner may have under this Contract, at law, or in equity regarding any defective Work.

3.5.4 The warranty provided in paragraph 3.5.1 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents, and such warranty shall be interpreted to require Contractor, upon written timely demand by Owner, to replace defective materials and equipment and re-execute defective Work which is disclosed to the Contractor by the Owner within a period of one (1) year after (i) Substantial Completion of the applicable Work, (ii) such earlier date contemplated by Section 9.9 or, (iii) in the event of a latent defect, within one (1) year after discovery thereof by Owner.

3.5.5 The Contractor shall issue in writing to the Owner, as a condition precedent to final payment, a "General Warranty" reflecting the terms and conditions of paragraphs 3.5.1 and 3.5.2 for all Work under the Contract Documents. This General Warranty shall be assignable. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.

3.5.6 Except when a longer warranty time is specifically called for in the Specification Sections or is otherwise provided by law, the General Warranty shall be for twelve (12) months and shall be in form and content otherwise reasonably satisfactory to the Owner. Owner and Contractor acknowledge that the Project may involve construction work on more than one (1) building for the Owner. Each building, or approved phase of each building, shall have its own, separate, and independent date of Substantial Completion or final completion. Contractor shall maintain a complete and accurate schedule of the dates of Substantial Completion, dates upon which the one year warranty on each phase or building which is substantially complete will expire, and dates of . Contractor agrees to provide notice of the warranty expiration date to Owner and Design Consultant at least one month prior to the expiration of the one year warranty period on each building or each phase of the building which has been substantially completed. Prior to termination of the one year warranty period, Contractor shall accompany the Owner and Design Consultant on reinspection of the building and be responsible for correcting any reasonable additional deficiencies not caused by the Owner or by the use of the building which are observed or reported during the reinspection. For extended warranties required by the Contract Documents, Owner will notify the Contractor of deficiencies and Contractor shall start remedying these defects within seven (7) days of initial notification from Owner Contractor shall prosecute the work without interruption until accepted by the Owner and the Design Consultant, even though such prosecution should extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one-year warranty period at least one month prior to the expiration date, Contractor's warranty obligations described in this paragraph shall continue until such inspection is conducted and any deficiencies found in the inspection corrected.

3.5.7 Warranties shall become effective on a date established by the Owner and Design Consultant in accordance with the Contract Documents. This date shall be the Date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties, except for work to be completed or corrected after the date of Substantial Completion and prior to final payment. Warranties for Work to be completed or corrected after the date of Substantial Completion and prior to Final Completion shall become effective on the later of the date the Work is completed or corrected and accepted by the Owner and Design Consultant or the date of final completion of the Work.

3.5.8 Neither final payment nor compliance by the Contractor with any provision in the Contract Documents shall constitute an acceptance of Work not done in accordance with the Contract Documents or relieve the Contractor or its sureties of liability with respect to any warranties or

responsibility for faulty materials and workmanship. The Contractor warrants that the Work will conform to the requirements of the Contract Documents.

3.5.9 The building(s) shall be watertight and leak proof at every point and in every area, except where leaks can be attributed to damage to the building(s) by external forces beyond Contractor's control. The Contractor, immediately upon notification by the Owner of water penetration, shall determine the source of water penetration and perform any work necessary to make the building(s) watertight. The Contractor also shall repair or replace any damaged material, finishes, and fixtures, damaged as a result of this water penetration, to return the building(s) to original condition. The costs of such determination and repair shall be borne by the Contractor only to the extent that the leak(s) are attributable to faulty workmanship or unauthorized or defective materials.

3.6 **TAXES.** The Contractor will not include in the Contract Sum or any Modification any amount for sales, use, or similar taxes for which (1) the City is exempt, and (2) the Owner has provided the Contractor with a tax exemption certificate or other documentation necessary to establish the Owner's exemption from such taxes.

3.7 **PERMITS, FEES AND NOTICES.**

3.7.1 **Permits.** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded. Owner and Design Consultant shall assist Contractor, when necessary, in obtaining such permits and licenses.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Design Consultant and Owner in writing, and necessary changes shall be accomplished by appropriate Modification before the Work affected by such modification is performed.

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Design Consultant and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

3.7.5 The Contractor shall also assist Owner in obtaining all permits and approvals, and pay all fees and expenses, if any, associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project. Contractor's obligations under this paragraph do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the Site. However, any drainage alterations made by Contractor during the construction process which require the issuance of a permit shall be at Contractor's sole cost.

3.8 **ALLOWANCES.**

3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

3.8.2.1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

3.8.2.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance shall be included in the Contract Sum but not in the allowances;

3.8.2.3 Whenever actual costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect: (1) the difference between actual costs and the allowances under Section 3.8.2.1, and (2) changes in Contractor's costs under Section 3.8.2.2.

3.8.3 Materials and equipment under an allowance shall be selected by the Owner within such time as is reasonably specified by the Contractor as necessary to avoid delay in the Work.

### 3.9 SUPERINTENDENT.

3.9.1 At all times during the progress of the Work Contractor shall assign a competent resident superintendent, able to communicate fluently in English, and any necessary assistants, all satisfactory to the Director of Public Works or Designee Department Director, as applicable. Any Superintendent designee shall be identified in writing to the ODR promptly after Owner issues written Notice to Proceed. The Superintendent shall represent the Contractor and all directions given to him shall be binding on the Contractor. The designated Superintendent shall not be replaced without written notice to the ODR and approval of the Director, which approval will not be unreasonably withheld, except with good reason (including any termination or disability of the Superintendent) or under extraordinary circumstances. The Superintendent may not be employed on any other project prior to Final Completion of the Work, without the approval of the Director, which approval will not be unreasonably withheld.

3.9.2 The Contractor shall furnish a list to the Design Consultant of all engineers, consultants, job-site superintendents, subcontractors and suppliers involved in construction. The Design Consultant shall provide such information to the Owner.

3.9.2.1 The Owner, upon the showing of good and reasonable cause, may reject or require removal of any engineer, consultant, job superintendent, or employee of the Contractor, Subcontractor or Sub-subcontractor involved in the Project.

3.9.2.2 Contractor shall provide an adequate staff for the proper coordination and expedition of the Work. Owner reserves the right to require Contractor to dismiss from the Work any employee or employees that Owner may deem incompetent, careless, insubordinate, or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, Sub-subcontractors and their employees.

3.9.2.3 The Owner reserves the right to utilize one or more of its employees to function in the capacity of the City's Inspector, whose primary function will be daily inspections, checking pay requests, construction timelines, and storage of supplies and materials.

### 3.10 CONTRACTOR'S WORK PROGRESS SCHEDULES.

3.10.1 Unless indicated otherwise in those documents, Contractor shall submit their initial Work Progress Schedule for the Work in relation to the entire Project to the ODR and the Design Consultant not later than twenty-one (21) days after the effective date of the Notice to Proceed. Unless otherwise indicated in the Contract Documents, the Work Progress Schedule shall be a computerized Critical Path Method (CPM) with full reporting capability. This initial schedule shall indicate the dates for starting and completing the various aspects required to complete the Work,

including mobilization, procurement, installation, testing, inspection, and acceptance of all the Work of the Contract, including any contractually mandated Milestone Dates. The initial schedule shall not exceed the time limits set forth in the Contract Documents. Contractor shall organize the Work Progress Schedule and provide adequate detail so the Schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities. When acceptable to the Owner, this initially accepted schedule shall be the Baseline Schedule for comparison to actual conditions throughout the Contract Duration.

3.10.2 The Work Progress Schedule and successive updates or revisions thereof are for the Contractor's use in managing the Work. The Work Progress Schedule is for the information of the Owner and to demonstrate that the Contractor has complied with requirements for planning the Work. The Owner's acceptance of a schedule and schedule updates or revisions constitutes the Owner's agreement to coordinate its own activities with the Contractor's activities as shown on the schedule.

3.10.2.1 Acceptance of the Work Progress Schedule, or update and/or revision thereto, does not indicate any approval of the Contractor's proposed sequences and duration.

3.10.2.2 Acceptance of a Work Progress Schedule update or revision indicating early or late completion does not constitute the Owner's consent to any changes, alter the terms of the Contract, waive either the Contractor's responsibility for timely completion, or waive the Owner's right to damages for the Contractor's failure to do so.

3.10.2.3 The Contractor's scheduled dates for completion of any activity or of the entire Work do not constitute a change in terms of the Contract. Change Orders are the only method of modifying the completion date(s) and Contract Times.

3.10.3 Submittal of a schedule, schedule revision or schedule update constitutes the Contractor's representation to the Owner, as of the date of the submittal, of the accurate depiction of all progress to date and that the Contractor will follow the schedule as submitted in performing the Work.

3.10.4 Schedule Updates. The Work Progress Schedule and the Submittal Schedule shall be updated monthly, as a minimum, to reflect progress to date and current plans for completing the Work. A paper and an electronic copy of the update shall be submitted to the Design Consultant and ODR as directed. The Owner has no duty to make progress payments unless accompanied by the updated Work Progress Schedule. The anticipated date of Substantial Completion shall show all extensions of time granted through Change Order(s) as of the date of the update. The Contractor, after coordination and consultation with the Owner, may revise the Work Progress Schedule logic only with the Owner's concurrence, which will not be unreasonably withheld, when, in the Contractor's judgment, it becomes necessary for the management of the Work. The Contractor shall identify all proposed changes to schedule logic to Owner and to the Design Consultant via an Executive Summary accompanying the updated schedule for review prior to implementation of any revisions.

3.10.4.1 Each schedule shall segregate the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by the Contractor, Owner, and Design Consultant. Each schedule activity shall be assigned a cost value consistent with the Schedule of Values so as to allow the Owner and Contractor to project cash flow for the Project.

3.10.4.2 Each schedule shall include activities representing manufacturing, fabrication, or ordering lead time for materials, equipment, or other items for which the Design Consultant is required to review submittals, shop drawings, product data, or samples.

3.10.4.3 Each schedule, other than the initial schedule, shall indicate the activities, or portions thereof, which have been completed; shall reflect the actual time for completion of such activities; and shall reflect any changes to the sequence or planned duration of all activities.

3.10.4.4 If any updated schedule exceeds the time limits set forth in the Contract Documents for Substantial Completion of the Work, the Contractor shall include with the updated schedule a statement of the reasons for the anticipated delay in Substantial Completion of the Work and the Contractor's planned course of action for completing the Work within the time limits set forth in the Contract Documents. If the Contractor asserts that the failure of the Owner or the Design Consultant to provide information to the Contractor is the reason for anticipated delay in completion, the Contractor shall also specify what information is required from the Owner or Design Consultant.

3.10.4.5 Neither the Owner or the Contractor shall have exclusive ownership of float time in the schedule, and all float time shall inure to the benefit of the project. The Contractor agrees to use its best efforts not to sequence the Work or assign activity duration so as to produce a schedule in which more than one-fourth of the remaining activities have no float time.

3.10.4.6 Submission of any schedule under this Contract constitutes a representation by the Contractor that as of the date of the submittal: (1) the schedule represents the sequence in which the Contractor intends to prosecute the remaining Work; (2) the schedule represents the actual sequence and duration used to prosecute the completed Work; (3) that to the best of its knowledge and belief the Contractor is able to complete the remaining Work in the sequence and time indicated; and, (4) that the Contractor intends to complete the remaining work in the sequence and time indicated.

3.10.5 Completion of Work. The Contractor is accountable for Substantially Completing the Work in the Contract Time, or as otherwise amended by Change Order.

3.10.5.1 If, in the judgment of the Owner, the Schedule update reflects that the Work is behind schedule and the rate of performance of the Work is inadequate to regain scheduled progress to insure timely Substantial Completion of the entire Work or a separable portion thereof, the Contractor, when so informed by the Owner, shall immediately take action to increase the rate of Work performance by: increasing working forces; increasing equipment or tools; increasing hours of work or number of shifts; expediting delivery of materials; changing, with the approval of the Owner, the schedule logic and Work sequences; or taking other action proposed if acceptable to Owner.

3.10.5.2 Within ten (10) calendar days after such notice from the Owner or the ODR, the Contractor shall notify the ODR in writing of the specific measures taken and/or planned to increase the rate of progress. The Contractor shall include an estimate as to the date of scheduled progress recovery and an updated Work Progress Schedule illustrating the Contractor's plan for achieving timely completion of the project.

3.10.5.3 Should the ODR deem the plan of action inadequate, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitations, (i) working additional shifts of overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents.

3.10.5.4 The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Substantial Completion of the Work within the Contract Time. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with

Extraordinary Measures required by the Owner under or pursuant to this Section, except as may be provided under the provisions of Article 4.3.11.

3.10.5.5 The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

3.10.6 If reasonably required by Owner, Contractor shall also prepare and furnish Project cash flow projections, manning data for critical activities, and schedules for the purchase and delivery of all critical equipment and material, together with periodic updating thereof.

3.10.7 The Contractor shall recommend to the Owner and to the Design Consultant a schedule for procurement of long-lead time items, which will constitute part of the Work as required to meet the project schedule

3.10.8 This Article pertains to construction phase schedules. Additional requirements for design phase scheduling for Construction Manager-at-Risk and Design Build contracts are outlined in Division 1 Project Planning and Scheduling Specification. Refer to Special Conditions and Division 1 General Administration Specifications for additional schedule requirements.

### **3.11 DOCUMENTS AND SAMPLES AT THE SITE.**

3.11.1 The Contractor shall maintain at the Site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Amendments, in good order and currently marked, to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Design Consultant and shall be delivered to the Design Consultant for submittal to the Owner upon completion of the Work.

3.11.2 Contractor shall at all times maintain job records, including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries, and job meeting minutes applicable to the Project. Contractor shall make such reports and records available to inspection by the Owner, Design Consultant, or their respective agents, within five (5) working days of request by Owner, Design Consultant, or their respective agents.

### **3.12 SHOP DRAWINGS, PRODUCE DATA AND SAMPLES**

3.12.1 Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared and furnished by the Contractor or its agents, manufacturers, suppliers or distributors, and which illustrate and detail some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

3.12.3 Samples are physical samples of materials, equipment, or workmanship that are representative of some portion of the Work, furnished by the Contractor to Owner to assist Owner and Design Consultant in the establishment of workmanship and quality standards by which the Work will be judged.

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required by the Contract Documents, the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Design Consultant is subject to the limitations of Section 4.2.8. Informational submittals upon which the Design Consultant is not expected to take responsive

action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Design Consultant without action.

3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Design Consultant Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Design Consultant without action.

3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and filed construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Design Consultant. The Design Consultant will review and return such submittals within ten (10 ) working days or within a reasonable period so as to not delay the project.

3.12.8 The Work shall be in accordance with approved submittals, except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Design Consultant's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Design Consultant in writing of such deviation at the time of submittal and (1) the Design Consultant has given written approval in the specific deviation as a minor change in the Work, or (2) a Change Order or Field Work Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Design Consultant's approval thereof.

3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Design Consultant on previous submittals. In the absence of such written notice, the Design Consultant's approval of a resubmission shall not apply to such revisions.

3.12.10 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Design Consultant will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Design Consultant. The Owner and the Design Consultant shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Design Consultant have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Design Consultant will review, approve or take other appropriate action on submittals only for the limited

purpose of checking of conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

### **3.13 USE OF SITE**

3.13.1 Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to areas permitted by law, ordinances, permits, or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.

3.13.2 Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

3.13.3 The Contractor will abide by all applicable rules and regulations of the Owner with respect to conduct, including smoking, parking of vehicles, security regulations and entry into adjacent facilities owned by the City.

### **3.14 CUTTING AND PATCHING**

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor, which consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.14.3 Any part of the finished Work damaged during installation or prior to Substantial Completion of the Work (or such earlier date established in Section 9.9) shall be repaired so as to be equal in quality, appearance, serviceability and other respects to an undamaged item or part of the Work. Where this cannot be fully accomplished the damaged item or part shall be replaced.

### **3.15 CLEANING UP.**

3.15.1 During the progress of the Work, Contractor shall keep the Site and surrounding area free from accumulations of waste materials, rubbish, and other debris resulting from the Work. Contractor shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements or renovated areas, including but not limited to, any floors, carpeting, ducts, fixtures, and ventilation units operated during construction, and shall clean exterior gutters, drainage, walkways, driveways and roofs of debris. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost therefore shall be charged to the Contractor

3.15.2 Prior to Substantial Completion of the Work, Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy, by Owner. Contractor shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements or renovated areas, including but not limited to, any floors, carpeting, ducts, fixtures, and ventilation units operated during construction, and shall clean exterior gutters, drainage, walkways, driveways and roofs of debris. Contractor shall restore to their original condition those portions of the Site not designated for alteration by the Contract Documents. If

the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost therefore shall be charged to the Contractor.

3.16 **ACCESS TO WORK.** The Contractor shall provide the Owner and Design Consultant access to the Work in preparation and in progress wherever located.

3.17 **PATENT FEES AND ROYALTIES.**

3.17.1 Contractor shall pay all license fees and royalties and assume all costs incident to the use of the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

3.18 **INDEMNITY PROVISIONS.**

Contractor covenants and agrees to **HOLD HARMLESS and UNCONDITIONALLY INDEMNIFY, PROTECT and DEFEND** the City, its elected officials, employees, officers, directors, volunteers and representatives of the City, individually or collectively, from and against any and all third party claims, demands, actions, liabilities, liens, losses, damages, costs and expenses, of every kind and character whatsoever, including without limitation by enumeration the amount of any judgment, penalty, interest, court costs and reasonable legal fees incurred in connection with the same, or the defense thereof, for or in connection with loss of life or personal injury (including employees of Contractor and of Owner) damage to property (other than the Work itself and including property of Contractor and of Owner), but only to the extent caused by the negligent acts or omissions of, or incident to or in connection with or resulting from the negligent acts or omissions of, Contractor, its agents, servants, and employees, or its subcontractors and their agents, servants, and employees, in connection with the Work to be performed, services to be rendered, or materials to be furnished, under this Contract. Notwithstanding anything to the contrary included herein, in no event shall the Contractor be liable for claims arising out of accidents resulting from the sole negligence of Owner, all without however, waiving any governmental immunity available to the City under Texas Law and without waiving any defenses of the parties under Texas Law.

3.18.2 In addition to the above, Contractor also covenants and agrees to **HOLD HARMLESS and UNCONDITIONALLY INDEMNIFY, PROTECT and DEFEND** the City, its elected officials, employees, officers, directors, volunteers and representatives of the City, individually or collectively, from and against any and all third party claims, demands, actions, liabilities, liens, losses, damages, costs and expenses, of every kind and character whatsoever, including without limitation by enumeration the amount of any judgment, penalty, interest, court costs and reasonable legal fees incurred in connection with the same, or the defense thereof, for or in connection with loss of life or personal injury (including employees of Contractor and of Owner) damage to property (other than the Work itself and including property of Contractor and of Owner), but only to the extent caused by the intentional or deliberate misconduct, grossly negligent, willful acts or omissions of, Contractor, its agents, servants, and employees, or its subcontractors and their agents, servants, and employees, or in connection with the Work to be performed, services to be rendered, or materials to be furnished, under this Contract, including but not limited to violations of any statute, regulation, ordinance or provision of this Contract. Notwithstanding anything to the contrary included herein, in no event shall the Contractor be liable for claims arising out of accidents resulting from the sole negligence of Owner, all without however, waiving any governmental immunity available to the City under Texas Law and without waiving any defenses of the parties under Texas Law.

3.18.3 **Intellectual Property Indemnification** Contractor shall protect, indemnify, and defend and/or handle at its own cost and expense any claim or action against City, its elected officials,

employees, officers, directors, volunteers and representatives of the City, individually or collectively, for infringement of any United States Patent, copyright or similar property right including, but not limited to, misappropriation of trade secrets and any infringement by Contractor and its employee or its subcontractors and their agents, servants, and employees, based on any deliverable or any other materials furnished hereunder by the Contractor, and used by either City or Contractor within the scope of this agreement (unless said infringement results directly from Contractor's compliance with City's written standards or specifications). Contractor does not warrant against infringement by reason of Owner's or Design Consultant's design of articles or their use in combination with other materials or in the operation of any process. Contractor shall have the sole right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise, unless otherwise mutually agreed upon and expressed in writing signed by the parties hereto. Contractor agrees to consult with the City Attorney during such defense or negotiations, and make good faith efforts to avoid any position adverse to the interest of the City. City will make available to Contractor any deliverables and/or works made for hire by Contractor which are necessary to the defense of Contractor against any claim of infringement for the duration of Contractor's legal defense.

3.18.4 If such infringement claim or action has occurred or, in Contractor's judgment is likely to occur, City shall allow the Contractor at Contractor's option and expense, (unless such infringement results directly from Contractor's compliance with City's written standards or specifications or by reason of City's or Design Consultants' design of articles or their use in combination with other materials or in the operation of any process for which the City shall be liable) to either: (a) procure for City the right to continue using said deliverable and/or materials; (b) modify such deliverable and/or materials to become non-infringing (provided that such modification does not adversely affect City's intended use of the deliverable and/or materials as contemplated hereunder); (c) replace said deliverable and/or materials with an equally suitable, compatible and functionally equivalent non-infringing deliverable and/or materials at no additional charge to City; or (d) if none of the foregoing alternatives is reasonably available to Contractor, upon written request City shall return the deliverable and/or materials in question to Contractor and Contractor shall refund all monies paid by City with respect to such deliverable and/or materials and accept return of same. If any such cure provided for in this Section shall fail to satisfy the third-party claimant, these actions shall not relieve Contractor from its defense and indemnity obligations set forth in this Article.

3.18.5 The indemnification obligations under this Article 3.18 shall not be limited in any way by the limits of any insurance coverage or any limitation on the amount or type of damages, compensation, or benefits payable by, for, or to Contractor or any subcontractor, supplier, or any other individual or entity under any insurance policy, workers' compensation acts, disability benefit acts, or other employee benefits acts.

**3.18.6 Workmen Safety.** The indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to the Owner, its agents, consultants, and representatives or the Design Consultant pursuant to State statutes for the safety of workmen and in addition, all Federal statutes and rules existing there under for protection, occupational safety and health to workmen. It is agreed that the primary obligation of the Contractor is to comply with these statutes in the performance by Contractor of the Work and that the obligations of the Owner, its agents, consultants, and representatives under said statutes are secondary to that of the Contractor.

**3.18.7 Other Provisions Regarding Indemnity.**

3.18.7.1 The provisions of this indemnification are solely for the benefit of the Parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

3.18.7.2 The indemnities contained herein shall survive the termination of this Contract for any reason whatsoever.

3.18.7.3 Contractor shall promptly advise the City in writing of any claim or demand against the City or Contractor, as the case may be, known to Contractor, related to or arising out of Contractor's activities under this Contract, and shall see to the investigation and defense of such claim or demand at Contractor's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving Contractor of any of its obligations under this Article.

3.18.7.4 Defense Counsel. City shall have the right to approve defense counsel, of which approval will not be unreasonably withheld, to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Contractor shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If Contractor fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf and Contractor shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

3.19 **REPRESENTATIONS AND WARRANTIES.** The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

3.19.1 that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;

3.19.2 that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

3.19.3 that it is authorized to do business in the State of Texas and properly licensed by all necessary governmental and public quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;

3.19.4 that the execution of the Contract and its performance thereof is within its duly authorized powers; and

3.19.5 that its duly authorized representative has visited the Site of the Work, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.

3.20 **BUSINESS STANDARDS.** Contractor, in performing its obligations under Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of Owner or affiliates. Contractor shall review, with Owner, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Contractor's employees and agents in their relations with Owner's employees, agents, and representatives, vendors, subcontractors, and other third parties, and those relating to the placement and administration of purchase orders and subcontracts.

#### **ARTICLE 4. ADMINISTRATION OF THE CONTRACT.**

4.1 **DESIGN CONSULTANT.**

4.1.1 Definition. A person registered as an Architect pursuant to Tex. Occupations Code Ann., Chapter 1051, as a landscape Architect pursuant to Texas Occupations Code, Chapter 1052, and/or a person licensed as a professional engineer pursuant to Texas Occupations Code, Chapter 1001, or a firm employed by Owner or Design-Build Contractor to provide professional Architectural or engineering services and exercising overall responsibility for the design of a Project or a significant portion thereof, and performing certain contract administration responsibilities as set forth in the Contract. The term "Design Consultant", unless the context clearly indicates otherwise, means an engineer or other Design Consultant in private practice retained for a specific project under a contractual agreement with the City.

4.1.2 Duties, responsibilities and limitations of authority of the Design Consultant as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Design Consultant. Consent shall not be unreasonably withheld. The Owner shall, and shall cause the Design Consultant to, exercise good faith and commercially reasonable standards in the administration, control, and approval of the Work.

4.1.3 If the employment of the Design Consultant is terminated, the Owner shall employ a new Design Consultant whose status under the Contract Documents shall be that of the former Design Consultant.

#### 4.2 **ROLE OF THE DESIGN CONSULTANT IN ADMINISTRATION OF THE CONTRACT.**

4.2.1 The Design Consultant will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Design Consultant will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

4.2.2 The Design Consultant will advise and consult with the Owner. The Owner's instruction to the Contractor may be issued through the Design Consultant, but the Owner reserves the right to issue instructions directly to the Contractor through other designated City representatives. Contractor understands that City may modify the authority of such Design Consultant as provided in the terms of its contract relationship with the Design Consultant, and the Director shall, in such event, be vested with powers formerly exercised by such Design Consultant, provided written notice of such modification shall be immediately served on the Contractor in writing. Nothing herein shall authorize independent agreements between Contractor and such Design Consultant, nor shall the Design Consultant be deemed to have a legal relationship with the Contractor.

4.2.3 The Design Consultant will make visits to the Site at intervals appropriate to the various stages of construction to operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and the Work. However, the Design Consultant will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Design Consultant will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1. The Design Consultant's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will generally conform to the Contract Documents.

4.2.4 The Design Consultant will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Design Consultant will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractor, or their agents or employees, or any other persons or entities performing portions of the Work

4.2.5 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communication have been specifically authorized, the Owner and Contractor shall endeavor to communicate with each other through the Design Consultant about matters arising out of or relating to the Contract. Communications by and with the Design Consultant's consultants shall be through the Design Consultant. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

4.2.6 Based on the Design Consultant's evaluations of the Contractor's Application for Payment, the Design Consultant will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

4.2.7 Except as otherwise provided in the Supplementary or Special Conditions, the Design Consultant and the Owner will have authority to reject Work that does not conform to the Contract Documents. Whenever the Design Consultant or Owner considers it necessary or advisable, the Design Consultant will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Design Consultant or Owner nor a decision made by either, in good faith, to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Design Consultant to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

4.2.8 The Design Consultant will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Design Consultant will perform these reviews in a timely fashion so as to not delay the Work. The Design Consultant will respond to submittals such as Shop Drawings, Product Data, and Samples pursuant to the procedures set forth in Division 1 of the Project Specifications. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Design Consultant's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Design Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Design Consultant, or any construction means, methods, techniques, sequences or procedures. The Design Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.9 The Design Consultant will prepare Change Orders and Field Work Directives, and with concurrence of the ODR, will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order, which the Contractor shall carry out promptly and record on the as-built record documents.

4.2.10 The Design Consultant and the Owner will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion. The Design Consultant will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance by the Contractor with the requirements of the Contract Documents.

4.2.11 Upon written request of the Owner or Contractor, the Design Consultant will issue its interpretation of the requirements of the plans and specifications. The Design Consultant's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required for the Design Consultant shall be furnished in compliance with this

Section 4.2, then no delay will be recognized on account of any failure by the Design Consultant to furnish such interpretations except for actual substantiated delays for which the Contractor is not responsible occurring more than 15 days after written request is made for the interpretations.

4.2.12 Interpretations and decisions of the Design Consultant will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

4.2.13 The Design Consultant's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by the Owner.

#### 4.3 CLAIMS AND DISPUTES.

4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. Except as contemplated by Section 4.3.10, every Claim of the Contractor, whether for additional compensation, additional time, or other relief, including but not limited to claims arising from concealed conditions, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the Contractor by his signature) of the Contractor, verifying the truth and accuracy of the Claim.. The responsibility to substantiate Claims shall rest with the party making the Claim.

4.3.2 Time Limit on Claims. Claims by the Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim. Claims by the Contractor must be initiated by written notice to the Design Consultant and the Owner. Claims by the Owner must be initiated by written notice to the Contractor.

4.3.3 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Sections 4.5.1 or 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which were not known to the Contractor and which differ materially from those indicated in the Contract Documents or the reports of investigations and tests of subsurface and latent physical conditions provided by Owner to Contractor prior to the preparation by Contractor of its Bid and referred to above or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents in the general vicinity of the Project site, then the Contractor shall notify the Owner and the Design Consultant of such conditions promptly before conditions are disturbed, and in no event less than 3 days after first observation of the conditions. The Design Consultant will promptly investigate such conditions and report its findings to the Owner. If the Owner and the Contractor cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to dispute resolution pursuant to Article 4.5.

4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided in this Section 4.3 shall be given before proceeding to execute the Work; provided that prior notice is not required for Claims relating to an emergency endangering life or property. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Design Consultant, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Design Consultant, (4) failure of payment by the Owner, (5)

termination of the Contract by the Owner for convenience, (6) Owner's suspension or (7) other reasonable grounds, a Claim shall be filed in accordance with this Section 4.3.

#### 4.3.6 Claims for Additional Time.

4.3.3.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided in this Section 4.3 shall be given. The Contractor's Claim shall include an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

4.3.3.2 The Contractor shall be entitled to an extension of the Contract Time for delays or disruptions due to unusually severe weather in excess of that normally experienced at the job site, as determined from climatological data set forth in Division 1 of the Project specifications. The Contractor shall bear the entire economic risk of all weather delays and disruptions, and shall not be entitled to any increase in the Contract Sum by reason of such delays or disruptions. Requests for an extension of time pursuant to this Section shall be submitted to the Design Consultant not later than the fifteenth (15<sup>th</sup>) day of the month following the month during which the delays or disruptions occurred, and shall include documentation and all details reasonably available demonstrating the nature and duration of the delays or disruptions and their effect on the critical path of the Schedule.

4.3.7 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible (including, with respect to the Owner, the acts or omissions of the Owner's separate contractors), written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding three (3) business days after the discovery of the injury or damage. The notice shall provide sufficient detail to enable the other party to investigate the matter.

4.3.8 Change in Unit Prices. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Field Work Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

4.3.9 Claims for Consequential Damages. Except as otherwise provided in this Contract, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards will apply both to claims by the Contractor and to claims by the Owner:

4.3.9.1 No consequential, indirect, incidental, punitive, or exemplary damages will be allowed, whether or not foreseeable, regardless of whether based on breach of contract, tort (including negligence), indemnity, strict liability, or other bases of liability.

4.3.9.2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated losses of labor efficiency, or on a comparison of planned manloading to actual manloading, or any other similar analysis that is used to show total cost or other damages.

4.3.9.3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong for which the other party is claimed to be responsible.

4.3.9.4 The maximum amount of any recovery for delay, to the extent damages for delay are not otherwise disallowed by the terms of the Contract, shall be as is provided in Section 8.3.2 hereof.

4.3.9.5 No damages will be allowed for home office overhead or other home office charges or any Eichleay formula calculation, except as expressly authorized by the Contract Documents.

4.3.9.6 No profit will be allowed on any damage claim, except as expressly authorized by the Contract Documents.

4.3.10 Subcontractor Pass-Through Claims. In the event that any Subcontractor of the Contractor asserts a claim to the Contractor that the Contractor seeks to pass through to the Owner under the Contract Documents, any entitlement to submit and assert the claim as to the Owner shall be subject to:

4.3.10.1 the requirements of Section 4.3 of these General Conditions; and

4.3.10.2 the following additional three requirements listed below, all three of which additional requirements shall be conditions precedent to the entitlement of the Contractor to seek and assert such claim against the Owner:

(i) the Contractor shall either (A) have direct legal liability as a matter of contract, common law, or statutory law to the Subcontractor for the claim that the Subcontractor is asserting or (B) the Contractor shall have entered into a written liquidating agreement with the Subcontractor, under which agreement the Contractor has agreed to be legally responsible to the Subcontractor for pursuing the assertion of such claim against the Owner under the Contract and for paying to the Subcontractor any amount that may be recovered, less Contractor's included markup (subject to the limits in the Contract Documents for any markup). The liability or responsibilities shall be identified in writing by the Contractor to the Owner at the time such claim is submitted to Owner, and a copy of any liquidating agreement shall be included by the Contractor in the claim submittal materials.

(ii) The Contractor shall have reviewed the claim of the Subcontractor prior to its submittal to Owner and shall have independently evaluated such claim in good faith to determine the extent to which the claim is believed in good faith to be valid. The Contractor shall inform the Owner that the Contractor has made a review, evaluation, and determination that the claim is made in good faith and is believed to be valid.

(iii) The Subcontractor making the claim to the Contractor shall certify to the Contractor and to the Owner that it has compiled, reviewed and evaluated the merits of such claim and that the claim is believed in good faith by the Subcontractor to be valid. A copy of the certification by the Subcontractor shall be included by Contractor in the claim submittal materials.

4.3.10.3 Any failure of the Contractor to comply with any of the foregoing requirements and conditions precedent with regard to any such claim shall constitute a waiver of any entitlement to submit or pursue such claim.

4.3.10.4 Receipt and review of a claim by the Owner under this Section shall not be construed as a waiver of any defenses to the claim available to the Owner under the Contract Documents or law.

4.3.11 **Owner's Right to Order Acceleration and to Deny Claimed and Appropriate Time Extensions, in Whole or in Part**. The Contractor acknowledges and agrees that Substantial Completion of the Work by or before the Scheduled Completion Date is of substantial importance to Owner. The following provisions, therefore, will apply:

(1) If the Contractor falls behind the approved construction schedule for whatever reason, the Owner shall have the right, in the Owner's sole discretion, to order the Contractor to develop a schedule recovery plan to alter its work sequences or to otherwise accelerate its progress in such a manner as to achieve Substantial Completion on or before the Contract Time completion date or such other date as Owner may reasonably direct and, upon receipt, the Contractor shall take all action necessary to comply with the order. In such event, any possible right, if any, of the Contractor to additional compensation for any acceleration shall be subject to the terms of this Section 4.3.11.

(2) In the event that the Contractor is entitled to an extension of Contract Time and has properly initiated a Claim for a time extension in accordance with Section 4.3(a) above, the Owner shall have the right, in the Owner's sole discretion, to deny all, or any part, of the Claim for extension of Contract Time and to order Contractor to exercise its commercially reasonable efforts to achieve Substantial Completion on or before the date that would have been required but for the existence of the event giving rise to the Claim by giving written notice to the Contractor provided within fourteen (14) days after receipt of the Contractor's Claim. If the Owner denies the Contractor's claim for an extension of Contract Time under this Subparagraph 4.3.11(2), either in whole or in part, the Contractor shall proceed to prosecute the Work in such a manner as to achieve Substantial Completion on or before the then existing Scheduled Completion Date. If, after initiating good faith acceleration efforts and through no fault of the Contractor, the Contractor is unable to achieve Substantial Completion within the originally scheduled Contract Time, the Owner will not be entitled to liquidated damages.

(3) If the Owner orders the Contractor to accelerate the Work under Section 4.3.11(2) above, and the Contractor would have been entitled to a time extension for a reason specifically allowed under the Contract Documents for an amount of time that would have justified approval by the Owner if not for the need and right to complete the Project within the stipulated period, the Contractor may initiate a Claim for schedule recovery or acceleration costs pursuant to Section 4.3.1. Any resulting Claim for these costs properly initiated by the Contractor under Section 4.3.1 above shall be limited to those reasonable and documented direct costs of labor, materials, equipment, and supervision solely and directly attributable to the actual recovery or acceleration activity necessary to bring the Work back within the then existing approved construction schedule. These direct costs include, but are not limited to, the premium portion of overtime pay additional crew, shift, or equipment costs if requested in advance by the Contractor and approved in writing by the Owner. A percentage markup for the prorated cost of premium on the existing performance and payment bonds and required insurance, profit and field overhead, not to exceed the markups permitted by this Contract, will be allowed on the claimed costs. **NO OTHER MARKUP FOR PROFIT, OVERHEAD (INCLUDING BUT NOT LIMITED TO HOME OFFICE OVERHEAD) OR ANY OTHER COSTS WILL BE ALLOWED ON ANY ACCELERATION CLAIM.** The Owner shall not be liable for any costs related to an acceleration claim other than those described in this Clause 4.3.11.

**4.3.12 Attorney's Fees. IN ACCORDANCE WITH SECTION 271.159 OF THE TEXAS LOCAL GOVERNMENT CODE, AS AMENDED, THE CONTRACTOR SHALL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES OR CERTAIN DIRECT OR CONSEQUENTIAL DAMAGES AS A PART OF ANY CLAIM MADE UNDER THE CONTRACT DOCUMENTS OR IN ANY SUBSEQUENT LAWSUIT OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING, AND CONTRACTOR HEREBY EXPRESSLY WAIVES SUCH CLAIMS.**

**4.3.13 No Waiver of Governmental Immunity. NOTHING IN THIS CONTRACT SHALL BE CONSTRUED TO WAIVE THE OWNER'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY STATE LAW.**

#### 4.4 RESOLUTION OF CLAIMS AND DISPUTES.

#### 4.4.1 Recommendation of Design Consultant.

4.4.1.1 Claims by the Contractor against the Owner and Claims by the Owner against the Contractor, including those alleging an error or omission by the Design Consultant but excluding those arising under Sections 10.3 and 10.5, shall be referred initially to the Design Consultant for consideration and recommendation to the Owner. An initial recommendation by the Design Consultant shall be required as a condition precedent to mediation or litigation of all Claims by the parties arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Design Consultant with no recommendation having been rendered by the Design Consultant.

4.4.1.2 The Design Consultant will review Claims and within 10 days of receipt of the Claim and take one or more of the following actions: (1) request additional supporting data from the party making the Claim; (2) issue an initial recommendation; (3) suggest a compromise; or (4) advise the parties that the Design Consultant is unable to issue an initial recommendation due to a lack of sufficient information or conflict of interest.

4.4.1.3 Following receipt of the Design Consultant's initial recommendation regarding a claim, the Owner and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum and/or Contract Time. If no agreement can be reached either party may request mediation of the dispute pursuant to Section 4.5.

4.4.1.4 If the Design Consultant requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall either provide a response or the requested supporting data, advise the Design Consultant when the response or supporting data will be furnished, or advise the Design Consultant that no response of supporting data will be furnished.

4.4.2 Waiver of Lien. It is understood that by virtue of this Contract, no mechanic, contractor, materialman, artisan, or laborer, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the building, or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract nor upon any of the land upon which said building or any of the improvements are so erected, built, or situated.

#### 4.5 **ALTERNATIVE DISPUTE RESOLUTION.**

4.5.1 Continuation of Work Pending Dispute Resolution. Each party is required to continue to perform its obligations under this Contract pending final resolution of any dispute arising out of or relating to this Contract unless it would be impossible or impracticable under the circumstances.

4.5.2 Requirement for Senior Level Negotiations. Before invoking mediation or any other alternative dispute process set forth herein the parties agree that they shall first try to resolve any dispute arising out of or related to this Contract through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. This step shall be a condition precedent to use of any other alternative dispute resolution process. If the parties' senior management representatives cannot resolve the dispute within thirty days after a party delivers a written notice of such dispute, then the parties shall proceed with the alternative dispute resolution process contained herein, including mediation and/or litigation. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

4.5.3 Mediation.

4.5.3.1 In the event that the Owner or the Contractor shall contend that the other has committed a material breach of this Contract, the party alleging such breach shall, as a condition precedent to filing any lawsuit, request mediation of the dispute.

4.5.3.2 Request for mediation shall be in writing, and shall request that the mediation commence not less than 30 or more than 90 days following the date of the request, except upon agreement of both parties.

4.5.3.3 In the event the Owner and the Contractor are unable to agree to a date for the mediation or to the identity of the mediator or mediators within 30 days following the date of the request for mediation, all conditions precedent in this Section 4.5 shall be deemed to have occurred.

4.5.3.4 The parties shall share the mediator's fee and any filing fees equally. Venue for any mediation or lawsuit arising under this Contract shall be in Bexar County, Texas Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof. No provision of this Contract shall waive any immunity or defense. No provision of this Contract is a consent to suit.

## **ARTICLE 5. SUBCONTRACTORS**

5.1 **DEFINITION.** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

### **5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

5.2.1 The Contractor shall, prior to entering into an agreement with such persons, notify the Director in writing of the names of all proposed first tier Subcontractors for the Work.

5.2.2 Contractor shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom Owner may have reasonable objection. A Subcontractor or other person or organization identified in writing to Owner prior to the Notice of Award and not objected to in writing by Owner prior to the Notice of Award will be deemed acceptable to Owner. Acceptance of any Subcontractor, other person, or organization by Owner shall not constitute a waiver of any right of Owner to reject defective Work. If Owner, after due investigation, has reasonable objection to any Subcontractor, other person or organization proposed by Contractor after the Notice of Award, the Contractor will be required to submit an acceptable substitute. The Contract Sum will be equitably adjusted, if permitted by applicable law, for any change in the price of the subcontract work resulting from such substitution. Contractor shall not be required to employ any Subcontractor, other person, or organization against whom Contractor has reasonable objection.

5.2.3 Contractor shall be fully responsible to Owner for all acts and omissions of his Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract Documents shall create any contractual relationship between Owner and any Subcontractor or other person or organization having a direct contract with Contractor, nor shall it create any obligation on the part of Owner to pay or to see to the payment of any moneys due any Subcontractor or other person or organization, except as may otherwise be required by law. Owner may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Contractor on account of specific Work done.

5.2.4 The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade.

5.2.5 All Work performed for Contractor by a Subcontractor will be pursuant to an appropriate agreement between Contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of Owner.

5.2.6 SBEDA/DBE Reporting and Auditing. During the term of the contract, the Contractor must report the actual payments to all SBEDA or DBE (as applicable) Subcontractors and Suppliers in the time intervals and format prescribed by the City of San Antonio. The City reserves the right, at any time during the term of this Contract, to request additional information, documentation or verification of payments made to such Subcontractors and Suppliers in connection with this Contract. Verification of amounts being reported may take the form of requesting copies of canceled checks paid to SBEDA or DBE Subcontractors and Suppliers and/or confirmation inquiries directly to the SBEDA or DBE participants. Proof of payments, such as copies of canceled checks must properly identify the project name or project number to substantiate a SBEDA or DBE payment for the Project.

5.2.7 Small Business Subcontractor Substitutions. See SBEDA or DBE Requirements in Supplementary Conditions for Substitution of Subcontractors. Failure to follow such procedures is an event of default under this Contract and may be grounds for termination.

5.2.8 Internet-based Project Management Systems. At its option, Owner may administer its design and construction management through an Internet-based management system. In such cases, the Contractor shall conduct communication through this media and perform all Project related functions utilizing this database system. This includes correspondence, submittals, requests for information, vouchers, or payment requests and processing, Amendment, Change Orders and other administrative activities. When such systems are employed, the Owner shall administer the software, shall provide training to Project Team Members, and shall make the software accessible via the Internet to all Project Team Members.

5.3 **SUBCONTRACTUAL RELATIONS.** By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Design Consultant. Each subcontract agreement shall preserve and protect the rights of the Owner and Design Consultant under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.4 **CONTINGENT ASSIGNMENT OF SUBCONTRACTS.**

5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

5.4.1.1 assignment is effective only after termination of the Contract by the Owner and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and

5.4.1.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increase in cost resulting from the suspension.

## **ARTICLE 6. CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTS.**

### **6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 4.3.

6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operation related to the Project with the Owner's own forces, the Owner shall be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

### **6.2 MUTUAL RESPONSIBILITY.**

6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and performance of their activities, and shall coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2 If part of the Contractor's Work depends, for proper execution or results, upon the construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Design Consultant apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, and damage to the Work or defective construction of a separate contractor.

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

6.2.5 Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

6.3 **OWNER'S RIGHT TO CLEAN UP.** If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Design Consultant will allocate the cost among those responsible.

## **ARTICLE 7. CHANGES IN THE WORK**

### **7.1 GENERAL.**

7.1.1 Changes in the Work may be accomplished after the execution of the Contract, and without invalidating the Contract, by Change Order, Field Work Directive or order for a minor change in the Work that does not affect the Contract Time or the Contract Sum, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Design Consultant; a Field Work Directive requires agreement by the Owner and Design Consultant and may or may not be agreed to by the Contractor; and an order for a minor change in the Work that does not affect the Contract Time or the Contract Sum may be issued by the Design Consultant alone.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly with the changed Work, unless otherwise provided in the Change Order, Field Work Directive or order for a minor change in the Work or in this Article 7.

### **7.2 CHANGE ORDERS.**

7.2.1 A Change Order is a written modification of the Contract prepared by the Design Consultant and signed by the Owner, Contractor and Design Consultant, (and approved by the City Council, if required) which authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Sum or the Contract Times and is issued on or after the Effective Date of the Agreement.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3. The Contractor and Subcontractors shall be entitled to include overhead and profit in any Change Order only as provided by Division 1 of the Project Specifications.

7.2.3 Acceptance of a Change Order by the Contractor shall constitute a full accord and satisfaction for any and all claims and costs of any kind, whether direct or indirect, including but not limited to impact, delay or acceleration damages, arising from the subject matter of the Change Order. Each Change Order shall be specific and final as to prices and extensions of time, with no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the change order. The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work. This Contract, as amended, forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. This release applies to claims related to the cumulative impact of all Change Orders and to any claim related to the effect of a change on unchanged Work.

### 7.3 FIELD WORK DIRECTIVES.

7.3.1 A Field Work Directive is a written order prepared by the Design Consultant, and signed by the Owner and Design Consultant, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract time, or both. The Owner may by Field Work Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with any changes to the Contract Sum and/or the Contract Time to be adjusted according to the terms of this Section 7.3.

7.3.2 A Field Work Directive shall be used in the absence of total agreement on the terms of a Change Order.

7.3.3 If the Field Work Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

7.3.3.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

7.3.3.2 unit prices stated in the Contract Documents or subsequently agreed upon;

7.3.3.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

7.3.3.4 as provided in Section 7.3.6.

7.3.4 Upon receipt of a Field Work Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Design Consultant of the Contractor's agreement or disagreement with the method, if any, provided in the Field Work Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.5 A Field Work Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be initially determined by the Design Consultant on the basis of reasonable costs and savings attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Design Consultant may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 shall be limited to the following:

7.3.6.1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by Law, agreement or custom, and workers' compensation insurance;

7.3.6.2 costs of materials, supplies and equipment, including cost of transportation, storage installation, maintenance, dismantling and removal, whether incorporated or consumed;

7.3.6.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others, including costs of transportation, installation, minor repairs and replacements, dismantling and removal;

7.3.6.4 Expenses incurred in accordance with Contractor's standard personnel policy for travel approved by the Owner in advance;

7.3.6.5 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and additional costs of supervision and field office personnel directly attributable to the change; and

7.3.6.6 Payments made by the Contractor to Subcontractors.

7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost of the deleted or change Work, plus the Contractor's allocated percent for profit and overhead as confirmed by the Design Consultant, subject to equitable adjustment recommended by the Design Consultant and approved by the Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase or decrease, if any, with respect to that change.

7.3.8 Pending final determination of the total cost of a Field Work Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Design Consultant will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

7.3.9 When the Owner and Contractor agree with the determination made by the Design Consultant concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4 **MINOR CHANGES TO THE WORK.** The Design Consultant will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

#### 7.5 **TIME REQUIRED TO PROCESS CHANGE ORDERS**

7.5.1 All responses by the Contractor to proposal requests from the Owner or Design Consultant shall be accompanied by a complete, itemized breakdown of costs. Responses to proposal requests shall be submitted sufficiently in advance of the required work to allow the Owner and the Design Consultant a minimum of thirty (30) calendar days after receipt by the Design Consultant to review the itemized breakdown and to prepare or distribute additional documents as may be necessary. Each of the Contractor's responses to proposal requests shall include a statement that the cost and additional time described and requested in the response represents the complete, total and final cost and additional Contract Time associated with the extra work, change, addition to, omission, deviation, substitution, or other grounds for seeking extra compensation or additional time under the Contract Documents, without reservation or further recourse.

7.5.2 All Change Orders require approval by either the City Council or, where authorized by the state law and City ordinance, by the City Manager or designee pursuant to Administrative Action. The approval process requires a minimum of forty-five (45) calendar days after submission to the Owner in final form with all supporting data. Receipt of a submission by Owner does not constitute acceptance or approval of a proposal, nor does it constitute a warranty that the proposal will be authorized by City Council Resolution or Administrative Action. **THE TIME**

**REQUIRED FOR THE APPROVAL PROCESS SHALL NOT BE CONSIDERED A DELAY AND NO EXTENSIONS TO THE CONTRACT TIME OR INCREASE IN THE CONTRACT SUM WILL BE CONSIDERED OR GRANTED AS A RESULT OF THIS PROCESS.** Pending the approval of a Change Order as described above, the Contractor will proceed with the work under a pending Change Order only if directed in writing to do so by the Owner.

## **ARTICLE 8. TIME**

### **8.1 DEFINITIONS.**

8.1.1 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. When the plural ("Contract Times") is used, it refers to milestones designated in the Work Progress Schedule.

8.1.2 Commencement of Work. The date of commencement of the Work is the date established in the Contract.

8.1.3 Substantial Completion. The date of Substantial Completion is the date certified by the Design Consultant and Owner, in accordance with Section 9.8, when the Work, or a designated portion thereof, is sufficiently complete in accordance with the Contract Documents so as to be operational and fit for the use intended by the Owner.

8.1.4 Day. The term "day" as used in the Contract Documents shall mean Calendar Day unless otherwise specifically defined. A Calendar Day is a day of 24 hours measured from midnight to the next midnight, unless otherwise specifically stipulated. A Working Day is a day of eleven hours as measured from seven o'clock a.m. to six o'clock p.m. on weekdays, except legal holidays.

### **8.2 PROGRESS AND COMPLETION.**

8.2.1 TIME LIMITS STATED IN THE CONTRACT DOCUMENTS ARE OF THE ESSENCE OF THE CONTRACT. By executing the Contract the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Contractor shall not knowingly, except by agreement with or the instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement is established by the Contract Documents or a Notice To Proceed given by the Owner.

8.2.3 The Contractor shall proceed with the Work expeditiously using adequate forces and shall achieve Substantial Completion within the Contract Time.

### **8.3 DELAYS AND EXTENSIONS OF TIME.**

8.3.1 Neither the Owner nor the Contractor, except as provided for in this Section 8.3.1, shall be liable to the other party for delay to the Contractor's Work by reason of unreasonably severe weather, fire, act of God, riot, strike, or any other cause beyond the Owner's control. Should any of these factors delay the Work's critical path, as evidenced by a time impact analysis developed by Contractor and verified by the Design Consultants, the Program Manager, and the ODR, Contractor shall receive an extension of the Contract Times equal to the delay if a written claim is made within five work days of the delaying event, and under no circumstances shall the Owner be liable to pay the Contractor any compensation for such delays.

8.3.2 Should the Contractor be delayed by the act, neglect or default of the Owner or the Design Consultants, and should any of these factors delay the Project's critical path, as

evidenced by a time impact analysis developed by Contractor and verified by the Design Consultants, the Program Manager and the ODR, Contractor shall receive an extension of the Contract Times equal to the delay if a written claim is made within twenty one (21) days. In addition, Contractor, upon timely notice to the City and substantiation by the Design Consultants, the Program Manager and the ODR, shall be compensated for its Project facilities and field management expenses on a per diem basis (said per diem includes the costs incurred by the Contractor to administer its Work and does not include costs associated for any tier of Subcontractor or Supplier to administer their Work. Compensation for the Subcontractor's and Supplier's compensable delay affecting the Project critical path shall be separate and apart from the per diem cost due and payable to the Contractor) for the particular Project delayed and for the period of the critical path delay attributable to the Owner-caused event. In no event will Contractor be entitled to home office or other off-site expenses or damages.

8.3.3 Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.

8.3.4 This Contract does not permit the recovery of damages by the Contractor for delay, disruption or acceleration, other than those described above in Section 8.3.2 and as provided under Section 4.3.11(3). Contractor agrees that Contractor shall be fully compensated for all delays solely by an extension of time or as contemplated in Section 8.3.2

## **ARTICLE 9 PAYMENTS AND COMPLETION**

9.1 **CONTRACT SUM.** The Contract Sum is stated in the Contract and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.2 **SCHEDULE OF VALUES.** Before the first Application for Payment, the Contractor shall submit to the Design Consultant a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Design Consultant may require. This schedule, unless objected to by the Design Consultant, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.3 **APPLICATIONS FOR PAYMENT.**

9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Design Consultant an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Design Consultant may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

9.3.1.1 As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Field Work Directives, or by interim determination of the Design Consultant, but not yet included in Change Orders.

9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the Site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Site shall be conditioned upon compliance by the Contractor with procedures reasonably satisfactory to the Owner to establish

the Owner's title to such materials and equipment or otherwise protect the Owner's interest. The Contractor shall be solely responsible for payment of all costs of applicable insurance, storage and transportation to the site for materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.**

9.3.4 In each Application for Payment, Contractor shall certify that there are no known liens or bond claims outstanding at the date of this requisition, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and that except for such bills not paid but so included, there is no known basis for the filing of any liens or bond claims relating to the Work, and that releases from all Subcontractors and Contractor's materialmen have been obtained in such form as to constitute an effective release of lien or claim under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by Owner to Contractor; provided that if any of the foregoing is not true and cannot be certified, Contractor will revise the certificate as appropriate and identify all exceptions to the requested certifications.

#### 9.4 CERTIFICATES FOR PAYMENT.

9.4.1 The Design Consultant will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Design Consultant determines is properly due, or notify the Contractor and Owner in writing of the Design Consultant's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Design Consultant to the Owner, based on the Design Consultant's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Design Consultant's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to any specific qualifications expressed by the Design Consultant. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Design Consultant has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made any examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### 9.5 DECISIONS TO WITHHOLD CERTIFICATION.

9.5.1 The Design Consultant may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner if, in the Design Consultant's opinion, the representations to the Owner required by Section 9.4.2 cannot be made. If the Design Consultant is unable to certify payment in the amount of the Application, the Design Consultant will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Design Consultant cannot agree on a revised amount, the Design Consultant will promptly issue a Certificate for Payment for the amount for which the Design Consultant is able to make such representations to the Owner. The Design Consultant may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may modify the whole or a part of a Certificate for Payment to such extent as may be necessary, in the Design Consultant's opinion, to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of:

9.5.1.1 defective Work not remedied;

9.5.1.2 third party claims filed or reasonable evidence indicating probable filing of such claims for which Contractor is responsible hereunder unless security acceptable to the Owner is provided by the Contractor;

9.5.1.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

9.5.1.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum and Contractor has failed to provide Owner adequate assurance of its continued performance within a reasonable time after demand;

9.5.1.5 damage to the Owner or another contractor;

9.5.1.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

9.5.1.7 persistent failure by the Contractor to carry out the Work in accordance with the Contract Documents.

The Owner will pay the undisputed portions of such Application for Payment within the time frames established in the Section 9.

9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment as provided for in subparagraph 9.5.1.

## 9.6 PROGRESS PAYMENTS.

9.6.1 After the Design Consultant has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Design Consultant.

9.6.2 The Contractor shall, within ten (10) days following receipt of payment from the Owner, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnishing and equipping of the improvements and the performance of the work, and shall, if requested, provide the Owner with evidence of such payment. Contractor's failure to make payments within such time shall constitute a material breach of this contract, unless the Contractor is able to demonstrate to Owner bona fide disputes associated with the unpaid subcontractor or supplier and its work. Contractor shall include a provision in each of its subcontracts imposing the same payment obligations on its Subcontractors as are applicable to the Contractor hereunder, and if the Owner so requests, shall provide copies of such

subcontractor payments to the Owner. If the Contractor has failed to make payment promptly to the Contractor's Subcontractors or for materials or labor used in the Work for which the Owner has made payment to the Contractor, the Owner shall be entitled to withhold payment to the Contractor to the extent necessary to protect the Owner.

9.6.3 The Design Consultant will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Design Consultant and Owner on account of portions of the Work done by such Subcontractor.

9.6.4 Neither the Owner nor Design Consultant shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law, if any.

9.6.5 Payments to material suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4 regarding Subcontractors.

9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work that was not performed or furnished in accordance with the Contract Documents.

9.6.7 The Contractor shall, as a condition precedent to any obligation of the Owner under this Contract, provide to the Owner payment and performance bonds in the full penal amount of the Contract in accordance with Texas Government Code Chapter 2253.

#### 9.7 FAILURE OF PAYMENT.

9.7.1 If the Design Consultant does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor the amount certified by the Design Consultant within seven (7) days after the date established in the Contract Documents, then the Contractor may, upon seven additional days' written notice to the Owner and Design Consultant, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

#### 9.8 SUBSTANTIAL COMPLETION.

9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. In the event Substantial Completion is not achieved by the designated date, or as that date may be extended by Change Order(s), Owner may withhold payment of sums necessary to pay the estimated liquidated damages due Owner until Substantial Completion is achieved. Owner shall also be entitled to deduct out of any sums due to Contractor any or all liquidated damages due Owner in accordance with the Contract Between the Owner and the Contractor or the Owner and the Construction Manager-at-Risk.

9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is Substantially Complete, the Contractor shall prepare and submit to the Design Consultant a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

9.8.3 Upon receipt of the Contractor's list, the Design Consultant will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the Design Consultant's or Owner's inspection discloses any item, whether or not included on the

Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon written notification by the Design Consultant. In such case, the Contractor shall then submit a request for another inspection by the Design Consultant or Owner to determine Substantial Completion.

9.8.4 When the Work or designated portion thereof is Substantially Complete, the Design Consultant or Owner will prepare a Certificate of Substantial Completion which shall (a) establish the date of Substantial Completion (which will be the date on which the Work met the requirements under the Contract Documents for Substantial Completion), (b) establish responsibilities of the Owner and Contractor, as agreed to by the Owner and Contractor, for security, maintenance, heat, utilities, damage to the Work and insurance, and (c) fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

9.8.5 The Certificate of Substantial completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

9.8.6 Within 30 days after Substantial Completion of the Work, upon application by the Contractor and with consent of surety, Owner will pay Contractor the retainage less 150 percent of the reasonable amount to complete Work that is incomplete or is not in accordance with the requirements of the Contract Documents, which amount will be established by Owner with consultation with the Design Consultants.

## **9.9 PARTIAL OCCUPANCY OR USE.**

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion Substantially Complete, the Contractor shall prepare and submit a list of items to be completed or corrected prior to final payment and submit such list to the Design Consultant as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The state of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Design Consultant.

9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Design Consultant shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.9.3 Unless expressly agreed upon in writing, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.9.4 Upon such partial occupancy or use, and upon Substantial Completion, the Owner will assume responsibility for maintenance, security and insuring that portion of the Work that it has put into use.

## **9.10 FINAL COMPLETION AND FINAL PAYMENT.**

9.10.1 When all of the Work is finally completed and ready for final inspection, the Contractor shall notify the Owner and the Design Consultant thereof in writing. Thereupon, the Design Consultant and Owner will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the Design Consultant will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and that the Contractor is entitled to the remainder of the unpaid Contract Sum, less any amount withheld pursuant to this Contract. If the Design Consultant is unable to issue its final Certificate for Payment for reasons for which the Contractor is responsible and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s), the reasonable cost of which may be deducted by the Owner from the Contractor's final payment.

9.10.2 The Contractor shall not be entitled to final payment unless and until it submits to the Design Consultant its affidavit that the payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property, might be responsible have been fully paid or otherwise satisfied or will be paid from final payment; releases and waivers of liens from all Subcontractors of the Contractor and of any and all other parties required by the Design Consultant or the Owner that are either unconditional or conditional on receipt of final payment, Certificates of insurance showing continuation of required insurance coverages; such other documents as Owner may request; and consent of Surety to final payment.

9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by Issuance of Change Orders affecting final completion, and the Design Consultant so confirms, the Owner shall, upon application by the Contractor and certification by the Design Consultant, and without terminating the Contract, make payment of the balance due for that portion of the work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Design Consultant prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.10.4 The Owner shall make final payment of all sums due the Contractor not more than thirty (30) days after the Design Consultant's execution of a final Certificate for Payment.

9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payees as unsettled at the time of final Application for Payment.

9.11 **AUDIT.** Contractor agrees to maintain adequate books, payrolls and records satisfactory to the Owner in connection with any and all Work performed hereunder. Contractor agrees to retain all such books, payrolls and records (including data stored in computer) for a period of not less than three (3) years after completion of the Work. At all reasonable times, Owner and its duly authorized representatives shall have access to all personnel of Contractor and all such books, payrolls and records, and shall have the right to audit same.

9.12 **ADDITIONAL INSPECTIONS.** In addition to any liquidated damages payable to the Owner by the Contractor, if: (1) the Design Consultant is required to make more than one inspection for Substantial Completion, (2) the Design Consultant is required to make more than one inspection for final completion, or (3) the Work is not substantially complete within sixty days after the date established for Substantial Completion in the Contract Documents, the Owner shall be entitled to deduct from the Contract Sum amounts paid to the Design Consultant for any additional inspections or services, provided that the Design Consultant undertook these services due to the fault or neglect of the Contractor..

## ARTICLE 10. PROTECTION OF PERSONS AND PROPERTY

### 10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. Contractor shall develop a safety program applicable to each job site and to the Work to be done, review such program with Owner in advance of beginning the Work, and enforce such program at all times. Further, Contractor shall comply with all applicable laws and regulations including but not limited to, the standards and regulations promulgated by the Secretary of labor under the Occupational Safety and Health Act of 1970 (OSHA) and any other legislation enacted for the safety and health of contractor employees. Owner shall have the right, but not the obligation, to inspect and verify Contractor's compliance with Contractor's responsibility for protecting the safety and health of its employees and subcontractor.

10.1.2 Contractor shall notify Owner immediately, by telephone with prompt confirmation in writing, of all injuries and fatalities, including but not limited to copies of all reports and other documents filed or provided to Contractor's insurers and the State of Texas in connection with such injuries or fatalities.

10.1.3 Contractor has adopted or will adopt its own policy to assure a drug and alcohol free work place while performing the Work. Contractor's employees, agents, and subcontractors shall not perform any service for Owner while under the influence of alcohol or any controlled substance. Contractor, its employees, agents, and subcontractors shall not use, possess, distribute, or sell illicit or unprescribed controlled drugs or drug paraphernalia, or misuse legitimate prescription drugs while performing the Work. Contractor, its employees, agents, and Subcontractors shall not use, possess, distribute, or sell alcoholic beverages while performing the Work or while on the site of the Work. Contractor will remove any of its employees from performing the Work any time there is suspicion of alcohol and/or drug use, possession, or impairment involving such employee, and at any time an incident occurs where drug or alcohol use could have been a contributing factor. Owner has the right to require Contractor to remove employees from performing the Work any time cause exists to suspect alcohol or drug use. In such cases, Contractor's employees may only be considered for return to work after the Contractor certifies, as a result of a for-cause test conducted immediately following removal, that said employee was in compliance with this Contract. Contractor will not use an employee to perform the Work who either refuses to take, or tests positive in, any alcohol or drug test.

10.1.4 Contractor will comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., Department of Transportation regulations, Department of Defense Drug-free Work-free Workforce Policy, Drug-Free Workplace Act of 1988). The presence of any firearms or other lethal weapons by any person is prohibited on the Project site, regardless of whether the owner thereof has a permit for a concealed weapon.

10.1.5 Both Owner and Contractor agree that these safety and health terms are of the highest importance, and that a breach or violation of any of the terms of this Section by Contractor will be a material and substantial breach of this Contract. In the event that Owner shall determine that Contractor has breached or violated the terms of this Section, then Owner shall determine, immediately upon written notice to Contractor, whether the Work shall be suspended as a result thereof. If the Work is suspended, the Work shall not recommence until Owner shall be satisfied that the safety provisions hereof shall not be breached or violated thereafter. If Owner shall terminate the Contract as a result of such breach or violation, the Owner and Contractor shall complete their obligations hereunder to one another in accordance with Section 14.2 "Termination by Owner."

10.1.6 Nothing contained in this Section shall be interpreted as creating or altering the legal duty of Owner to Contractor or to Contractor's agents, employees, Subcontractors, or third parties, or altering the status of Contractor as an independent contractor.

10.1.7 Notwithstanding either of the above provisions or whether Owner exercises its rights set forth herein, Owner does not warrant nor represent to Contractor, Contractor's employees or agents, any subcontractors, or any other third party that Contractor's safety policy meets the requirements of any applicable law, code, rule, or regulation, nor does Owner warrant that the proper enforcement of Contractor's policy will insure that no accidents or injuries will occur. In addition, any action by Owner under these provisions in no way diminishes any of Contractor's obligations under applicable law or the contract documents.

## 10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

10.2.1.1 employees on the Work and other persons who may be affected thereby;

10.2.1.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

10.2.1.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of Construction.

10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for the execution of the Work, the Contractor shall exercise extraordinary care and shall carry on such activities under the direct supervision of properly qualified personnel.

**10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents). The Contractor shall also HOLD HARMLESS and UNCONDITIONALLY INDEMNIFY, PROTECT and DEFEND the City, its elected officials, employees, officers, directors, volunteers and representatives of the City, individually or collectively, from and against any and all damage or loss to property (other than the Work itself and including property of the Contractor and of the Owner) referred to in Clauses 10.2.1.2 and 10.2.1.3 but only to the extent caused in whole or in part by the acts or omissions of Contractor, its agents, servants, and employees, or its Subcontractors and their agents, servants, and employees, or anyone directly or indirectly employed by them, or by any other person or entity for which they may be responsible under the Contract Documents, in connection with the Work to be performed, services to be rendered, or materials to be furnished, under this Contract, including but not limited to violations of any statute, regulation, ordinance or provision of this Contract. Notwithstanding anything to the contrary included herein, in no event shall the Contractor be liable for claims arising out of accidents resulting from the sole negligence of Owner, all 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 foregoing obligations of the Contractor are in addition to the Contractor's obligations under paragraph 3.18.

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Design Consultant.

10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

### 10.3 **EMERGENCIES.**

10.3.1 In an emergency affecting safety of persons or property, the Contractor shall exercise its best efforts to act to prevent or minimize threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.3 and Article 7.

### 10.4 **PUBLIC CONVENIENCE AND SAFETY.**

10.4.1 The Contractor shall place materials stored at the Project site and shall conduct the Work at all times in a manner that causes no greater obstruction to the public than is considered necessary by the Owner. Sidewalks or streets shall not be obstructed, except by special permission of the Owner. Materials excavated and construction materials or plants used in the performance of the Work shall be placed in a manner that does not endanger the Work or prevent free access to all fire hydrants, water mains and appurtenances, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, wastewater mains and appurtenances, and fire alarm or police call boxes in the vicinity.

10.4.2 The Owner reserves the right to remedy any neglect on the part of the Contractor in regard to public convenience and safety which may come to the Owner's attention, after twenty-four (24) hours notice in writing to the Contractor. In case of an emergency, the Owner shall have the right to immediately remedy any neglect without notice. In either case, the cost of any work done by or for the Owner to remedy the Contractor's neglect shall be deducted from the Contract Sum. The Contractor shall notify the City Traffic Control Department, the ODR and the Design Consultant when any street is to be closed or obstructed. The notice shall, in the case of major thoroughfares or street upon which transit lines operate, be at least forty-eight (48) hours in advance. The Owner reserves the right to postpone or prohibit any closure or obstruction of any streets or thoroughfares to the extent necessary for the safety and benefit of the traveling public. The Contractor shall, when directed by the Design Consultant or the Owner, keep any street or streets in condition for unobstructed use by City departments. When the Contractor is required to construct temporary bridges or make other arrangements for crossing over ditches or around structures, the Contractor's responsibility for accidents shall include the roadway approaches as well as the crossing structures.

### 10.5 **BARRICADES, LIGHTS AND WATCHMEN.**

10.5.1 If the Work is carried on, in, or adjacent to any street, alley or public place, the Contractor shall, at the Contractor's own cost and expense, furnish, erect and maintain sufficient barricades, fences, lights and danger signals, shall provide sufficient watchmen, and shall take such other precautionary measures as are necessary for the protection of persons or property and of the Work. All barricades shall be painted in a color that will be visible at night, and shall be illuminated by lights from sunset to sunrise. The term "lights," as used in this Section, shall mean flares, flashers, or other illuminated devices. A sufficient number of barricades with adequate markings and directional devices shall also be erected to keep vehicles from being driven on or into any Work under construction. The Contractor will be held responsible for all damage to the Work due to failure of barricades, signs, lights and watchmen to protect the Work. Whenever

evidence is found of such damage, the Design Consultant may order the damaged portion immediately removed and replaced by the Contractor at Contractor's cost and expense. The Contractor's responsibility for maintenance of barricades, signs, and lights, and for providing watchmen as required under this Section 10.5 shall not cease until the Project has been finally accepted by the Owner.

#### **10.6 PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED.**

10.6.1 In case it is necessary to change or move the property of the Owner or of any telecommunications or public utility, such property shall not be removed or interfered with until ordered to do so by the Design Consultant. The right is reserved to the owner of any public or private utilities to enter upon the Project site for the purpose of making such changes or repairs of their property that may become necessary during the performance of the Work. The Owner reserves the right of entry upon the Project site for any purpose, including repairing or relaying sewer and water lines and appurtenances, repairing structures, and for making other repairs, changes, or extensions to any of the Owner's property. The Owner's actions shall conform to the Contractor's current and approved schedule for the performance of the Work, provided that proper notification of schedule requirements has been given to the Owner by the Contractor.

#### **10.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS**

10.7.1 When existing storm sewers or drains have to be taken up or removed, the Contractor shall, at its expense, provide and maintain temporary outlets and connections for all public and private storm sewers and drains. The Contractor shall also provide for all storm sewage and drainage which will be received from these storm drains and sewers. For this purpose, the Contractor shall provide and maintain, at the Contractor's own expense, adequate pumping facilities and temporary outlets or diversions. The Contractor shall, at the Contractor's own expense, construct such troughs, pipes, or other structures that may be necessary and shall be prepared at all times to dispose of storm drainage and sewage received from these temporary connections until such time as the permanent connections are built and are in service. The existing storm sewers and connections shall be kept in service and maintained under the Contract, except where specified or ordered to be abandoned by the Design Consultant. All storm water and sewage shall be disposed of in a satisfactory and lawful manner so that no nuisance is created and that the Work under construction will be adequately protected.

#### **10.8 ARRANGEMENT AND CHARGE FOR WATER FURNISHED BY THE OWNER; ELECTRICITY FOR THE PROJECT.**

10.8.1 When the Contractor desires to use the Owner's water in connection with the Work, the Contractor shall make complete and satisfactory arrangements with the San Antonio Water Service and shall be responsible for the cost of the water the Contractor uses. Where meters are used, the charge will be at the regular established rate; where no meters are used, the charge will be as prescribed by City ordinance, or where no ordinance applies, payment shall be based on estimates made by the representatives of the San Antonio Water Service.

10.8.2 The Contractor shall make complete and satisfactory arrangements for electricity and metered electrical connections with the Owner, or with any retail electric provider in the event that separately metered electrical connections are required for the Project. The Contractor shall pay for all electricity used in the performance of the Work through separate metered electrical connections obtained by the Contractor through a retail electric provider.

#### **10.9 USE OF FIRE HYDRANTS.**

10.9.1 The Contractor, Subcontractors, and any other person working on the Project shall not open, turn off, interfere with, attach any pipe or hose to, or connect anything with any fire hydrant, stop valve, or stop cock, or tap any water main belonging to the Owner, unless duly authorized to do so by the City.

## **10.10 ENVIRONMENTAL COMPLIANCE.**

10.10.1 The Owner has developed an Environmental Management System (EMS), based upon International Standards Organization (ISO) Standard 14001. As part of the EMS, the Owner has adopted an environmental policy. The Contractor acknowledges receipt of the environmental policy as a part of the Bid Documents and shall adhere to the policy and provide information to the Owner in the form and at the times requested by the Owner in the furtherance of the policy.

10.10.2 The Contractor and its Subcontractors are deemed to have made themselves familiar with and shall at all times shall comply with any and all applicable federal, state or local laws, rules, regulations, ordinances, and rules of common law now in effect (including any amendments now in effect), relating to the environment, Hazardous Substances or exposure to Hazardous Substances, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. §§ 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A §§ 1201, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. §§ 2601, et seq.; the Clean Air Act, 42 U.S.C.A. §§ 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §§ 3808, et seq., and any current judicial or administrative interpretation of these laws, rules, regulations, ordinances, or rules of common law, including but not limited to any judicial or administrative order, consent decree, or judgment affecting the Project.

10.10.3 In the event the Contractor encounters on the Project site materials reasonably believed to be a Hazardous Substance that have not been rendered harmless, and the removal of such materials is not a part of the scope of Work required under the Contract Documents, the Contractor shall immediately stop Work in the affected area and report in writing the facts of such encounter to the Design Consultant and the Owner. Work in the affected area shall not thereafter be resumed except by written order of the Owner and written consent of the Contractor, unless and until the material is determined not to be a Hazardous Substance or the Hazardous Substance is remediated. Unless removal of such materials is a part of the scope of Work required under the Contract Documents, the Owner shall remediate the Hazardous Substance with a separate contractor or through a Change Order with the Contractor. If the Hazardous Substance exists in the affected area due to the fault or negligence of the Contractor or any of its Subcontractors, the Contractor shall be responsible for remediating the condition at the sole expense of the Contractor. If applicable, such remediation shall be in accordance with the Contractor's Spill Remediation Plan. An extension of the Contract Time for any delay in the progress schedule caused as a result of the discovery and remediation of a Hazardous Substance may be granted by the Owner only if the Project critical path is affected. Any request for an extension of the Contract Time related to the discovery and remediation of a Hazardous Substance is subject to the provisions of Section 4.3 and Article 8.

10.10.4 The Contractor shall be responsible for identification, abatement, cleanup, control, removal, remediation, and disposal of any Hazardous Substance brought into or upon the site by the Contractor or any Subcontractor or Supplier. The Contractor shall obtain any and all permits necessary for the legal and proper handling, transportation, and disposal of the Hazardous Substance and shall, prior to undertaking any abatement, cleanup, control, removal, remediation, and disposal, notify the Owner and the Design Consultant so that they may observe the activities; provided, however, that it shall be the Contractor's sole responsibility to comply with all applicable laws, rules, regulations, or ordinances governing the activities.

## **ARTICLE 11. INSURANCE AND BONDS.**

### **11.1 CONTRACTOR'S LIABILITY INSURANCE.**

11.1.1 Without limiting any of the other obligations or liabilities of the Contractor under the Contract Documents, the Contractor shall purchase and maintain, during the term of the Contract

and at the Contractor's own expense, the minimum liability insurance coverage described below with companies duly authorized or approved to do business in the State of Texas and otherwise satisfactory to the Owner. Contractor shall also require each Subcontractor performing work under the Contract, at the Subcontractor's own expense, to maintain during the term of the Contract levels of insurance that are necessary and appropriate for the Work performed, which levels of insurance comply with all applicable laws. The Subcontractor's liability insurance shall name the Contractor and the Owner as additional insureds by using endorsement CG 20 26 or broader. Certificates of insurance complying with the requirements prescribed in Section 11.1.2 which show the existence of each policy, together with copies of all policy endorsements showing the Owner as an additional insured, shall be delivered to the Design Consultant, who will in turn forward same to the Owner, before any Work is started. Contractor shall promptly furnish, upon the request of and without expense to the Owner, a copy of each policy required, including all endorsements.

11.1.1.1 Workers' Compensation, with statutory limits, with the policy endorsed to provide a waiver of subrogation as to the Owner; Employer's Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

11.1.1.2 Commercial General Liability Insurance, Including Personal Injury Liability, Independent Contractor's Liability, 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 (or Subcontractor's) liability for injury to or death of the Owner's employees and third parties, and for damage to property of third parties, with a combined bodily injury (including death) and property damage minimum limit of \$500,000 per occurrence, \$1,000,000 annual aggregate. If coverage is written on a claims-made basis, coverage shall be continuous (by renewal or extended reporting period) for no less than 60 months following completion of the contract and acceptance of work by the City. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the Project. The Owner and the Design Consultant shall be named as additional insureds 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 Owner. 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.

11.1.1.3 Business Automobile Liability Insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury (including death) and property damage minimum limit of \$500,000 per occurrence. Such insurance shall include coverage for loading and unloading hazards.

11.1.2 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates required under Section 11.1 shall contain a provision that coverages afforded under the policies will not be cancelled, nonrenewed, or materially changed until at least thirty (30) days prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage shall be furnished by the Contractor to the Owner with reasonable promptness in accordance with the Contractor's information and belief.

11.1.3 If any insurance company for the Contractor, which company provides insurance required under the Contract Documents, becomes insolvent or becomes the subject of any

rehabilitation, conservatorship, or liquidation or similar proceeding, the Contractor shall procure, immediately upon first notice of such occurrence and without cost to the Owner, 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.

## 11.2 PROPERTY INSURANCE

11.2.1 In addition to the insurance described in Sections 11.1 and 11.4, the 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, or 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, the Owner 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 the Contractor and naming the Owner and the Subcontractors, and Sub-Subcontractors as additional insureds as their interests may appear. The policy shall have endorsements as follows:

11.2.1.1 This insurance shall be specific as to coverage and not contributing insurance with any permanent insurance maintained on the property.

11.2.1.2 Loss, if any, shall be adjusted with and made payable to the Contractor or the Owner and Contractor as trustee for the insureds as their interests may appear.

11.2.1.3 The right of subrogation under the policy shall be waived as to the Design Consultant.

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

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

11.2.4 The Contractor shall provide to the Design Consultant for delivery to the Owner a certificate of insurance evidencing all property insurance policies procured under this Section 11.2 and all endorsements thereto before any exposure to loss may occur.

11.2.5 If any insurance company which provides insurance for the Contractor that is required under the Contract Documents becomes insolvent or becomes the subject of any rehabilitation, conservatorship, or liquidation or similar proceeding, the Contractor shall immediately cease the performance of the Work and shall procure, immediately upon first notice of such occurrence and without cost to the Owner, 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.

11.2.6 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial

occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or 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.

### 11.3 PERFORMANCE BOND AND PAYMENT BONDS

11.3.1 Subject to the provisions of Section 11.3.2, the Contractor shall, with the execution and delivery of the Building Construction Services Agreement, furnish and file with the Owner in the amounts required in this Section, the surety bonds described in Sections 11.3.1.1 and 11.3.1.2 below, which surety bonds shall be in accordance with the provisions of Chapter 2253, Texas Government Code, as amended. Each bond shall be signed by the Contractor, as Principal, and by an established corporate surety bonding company, as surety, meeting the requirements of Section 11.3.3 and approved by the Owner. The surety bonds shall be accompanied by an appropriate Power-of-Attorney clearly establishing the extent and limitations of the authority of each signer to so sign:

11.3.1.1 Performance Bond. A good and sufficient bond in an amount equal to 100% of the total Contract Sum, guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with Plans, Specifications and all other Contract Documents, including any extensions thereof, for the protection of the Owner. This bond shall also provide for the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of one (1) year from the date of final Completion or acceptance of the Work by the Owner or lesser or longer periods as may be otherwise designated in the Contract Documents.

11.3.1.2 Payment Bond. A good and sufficient bond in an amount equal to 100% of the total Contract Sum, guaranteeing the full and prompt payment of all claimants supplying labor or materials in the prosecution of the Work provided for in the Contract, and for the use and protection of each claimant.

11.3.2 If the Contract Sum, including Owner-accepted Alternates and allowances, if any, is greater than \$100,000, Performance and Payment Bonds in 100% of the Contract Sum are mandatory and shall be provided by the Contractor. If the Contract Sum is greater than \$25,000 but less than or equal to \$100,000, only a Payment Bond in 100% of the Contract amount is mandatory; provided, however, that the Contractor may elect to also furnish a Performance Bond in the same amount if the Contractor so chooses. If the Contract Sum is less than or equal to \$25,000, the Contractor may elect not to provide Performance and Payment Bonds; provided that in such event, no money will be paid to the Contractor until Final Completion of all Work by Owner. If the Contractor elects to provide Performance and Payment Bonds, the Contract Sum shall be payable to the Contractor through progress payments in accordance with these General Conditions.

11.3.3 No surety will be accepted by the Owner that is now in default or delinquent on any bonds or that is a party to any litigation against the Owner. All bonds shall be made and executed on the Owner's standard forms, shall be approved by the Owner, and shall be executed by not less than one corporate surety that is authorized and admitted to do business in the State of Texas, is licensed by the State of Texas to issue surety bonds, is listed in the most current United States Department of the Treasury List of Acceptable Sureties, and is otherwise acceptable to the Owner. Each bond shall be executed by the Contractor and the surety, and shall specify that legal venue for enforcement of each bond shall lie exclusively in Bexar County, Texas. Each surety shall designate an agent resident in Bexar County, Texas to which any requisite statutory notices may be delivered and on which service of process may be had in matters arising out of the suretyship.

11.3.4 The person or persons, partnership, company, firm, limited liability company, association, corporation, or other business entity to whom the Contract is awarded shall, within ten (10) days

after such award, sign the required Contract with the Owner and provide the necessary surety bonds and evidence of insurance as required under the Contract Documents. No Contract shall be binding on the Owner until it has been approved as to form by the City Attorney, executed for the Owner by the City Manager, the performance and payment bonds and evidence of insurance have been furnished as required by the Contract Documents, and the fully executed Contract has been delivered to the Contractor.

11.3.5 The failure of the Contractor to execute the Contract or deliver the required bonds and evidence of insurance within ten (10) days after the Contract is awarded or as soon thereafter as the Owner can assemble and deliver the Contract shall, at the Owner's option, constitute a material breach of the Contractor's bid proposal and the Owner may rescind the Contract award and collect or retain the proceeds of the bid security. By reason of the uncertainty of the market prices for materials and labor, and it being impracticable and difficult to determine accurately the amount of damages occurring to the Owner by reason of the Contractor's failure to execute and furnish the bonds and to sign the Contract within ten (10) days, the filing of a bid proposal shall constitute an acceptance of this Section 11.3.5. In the event the Owner should readvertise for bids, the defaulting Contractor shall not be eligible to bid, and the lowest responsible bid obtained in the readvertisement shall be the bid referred to in this Section.

#### 11.4 'UMBRELLA' LIABILITY INSURANCE

11.4.1 The Contractor shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring Contractor for an amount of not less than \$5,000,000 per occurrence combined limit Bodily Injury (including death) and Property Damage, that follows form and applies in excess of the primary coverage required hereinabove. The Owner and Design Consultant shall be named as additional insureds using endorsement CG 20 26 or broader. No aggregate shall be permitted for this type of coverage. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted.

#### 11.5 POLICY ENDORSEMENTS AND SPECIAL CONDITIONS

11.5.1 Each insurance policy to be furnished by the Contractor shall address the following required provisions within the certificate of insurance, which shall be reflected in the body of the insurance contract and/or by endorsement to the policy:

11.5.1.1 That the Owner and Design Consultant shall be named as additional insureds on all liability coverages, using endorsement CG 20 26 or broader. Where the Owner employs a Construction Manager on the Project, the Contractor and Subcontractor shall include the Construction Manager on all liability insurance policies to the same extent as the Owner and Design Consultant are required to be named as additional insureds.

11.5.1.2 That each insurance policy shall require that thirty (30) days prior to the expiration, cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to Owner. Contractor shall also notify Owner, within 10 days after receipt, of any notice of expiration, cancellation, nonrenewal or material change in coverage it receives from its insurer.

11.5.1.3 That the term "Owner" or "City of San Antonio" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of the Owner and the individual members, employees and agents thereof in their official capacities, while acting on behalf of Owner (the City of San Antonio).

11.5.1.4 That the policy phrase or clause "Other Insurance" shall not apply to Owner where Owner is an additional insured on the policy. The insurance coverage furnished by Contractor as required is considered to be primary insurance for purposes of the Project and the additional insureds named in the required policies.

11.5.1.5 That all provisions of the Contract Documents concerning liability, duty and standard of care, together with the indemnification provision, shall, to the maximum extent allowable in the insurance market, be underwritten by contractual liability coverage sufficient to include such obligations with the applicable liability policies.

11.5.1 Concerning the insurance to be furnished by the Contractor, it is a condition precedent to acceptability that:

11.5.2.1 All policies must comply with the applicable requirements and special provisions of this Article.

11.5.2.2 Any policy evidenced by a certificate of insurance shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements set forth herein, and the Owner's decision regarding whether any policy contains such provisions, contrary to this requirement, shall be final.

11.5.2.3 All policies required are to be written through companies duly authorized and approved to transact that class of insurance in the State of Texas and that are otherwise acceptable to the Owner.

11.5.2 The Contractor agrees to the following special provisions:

11.5.3.1 The Contractor hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against the Owner, it being the intention that the insurance policies shall protect all parties to the Contract and be primary coverage for all losses covered by the policies. This waiver of subrogation shall be included, by endorsement or otherwise, as a provision of all policies required under this Article 11.

11.5.3.2 Insurance companies issuing the insurance policies and the Contractor shall have no recourse against the Owner for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of Contractor.

11.5.3.3 Approval, disapproval or failure to act by the Owner regarding any insurance supplied by the Contractor (or any Subcontractors) shall not relieve the Contractor of any responsibility or liability for damage or accidents as set forth in the Contract Documents. The bankruptcy, insolvency or denial of liability of or by the Contractor's insurance company shall likewise not exonerate or relieve the Contractor from liability.

11.5.3.4 The Owner reserves the right to review the insurance requirements of this Article 11 during the effective period of this Contract and to adjust insurance coverages and their limits when deemed necessary and prudent by Owner's Risk Management Division based upon changes in statutory law, court decisions, or the claims history of the Contractor and the Subcontractors. The Contractor agrees to make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either party to this Contract or upon the underwriter of any such policy provisions). Upon request by the Owner, the Contractor shall exercise reasonable efforts to accomplish such changes in policy coverages, at the Owner's cost and expense.

11.5.3.5 No special payments shall be made for any insurance policies that the Contractor and Subcontractors are required to carry. Except as provided in Section 11.5.3.4, all amounts payable regarding the insurance policies required under the Contract Documents are included in the Contract Sum.

11.5.3 Any insurance policies required under this Article may be written in combination with any of the other policies, where legally permitted, but none of the specified limits may be lowered or otherwise negatively impacted by doing so, nor may any of the requirements or special provisions of this Article be limited or circumvented by doing so.

## **ARTICLE 12. UNCOVERING AND CORRECTION OF WORK**

### **12.1 UNCOVERING OF WORK**

12.1.1 If a portion of the Work is covered contrary to the Owner's or Design Consultant's written request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner or Design Consultant, be uncovered for the Owner's or Design Consultant's inspection and be replaced at the Contractor's expense without change in the Contract Time.

12.1.2 If a portion of the Work has been covered which the Design Consultant has not specifically requested in writing to inspect prior to its being covered, the Design Consultant may request to inspect such Work and the Contractor shall uncover it. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs.

### **12.2 CORRECTION OF WORK**

12.2.1 The Contractor shall promptly correct Work rejected by the Owner or Design Consultant as failing to conform to the requirements of the Contract Documents, whether inspected before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, and all additional testing, inspections, and compensation for the Design Consultant's services and expenses made necessary thereby.

12.2.2 If any of the Work is found to be defective or nonconforming with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Design Consultant or the Owner to do so unless the Owner has previously given the Contractor a written acceptance or waiver of the defect or nonconformity. The Contractor's obligation to correct defective or nonconforming Work remains in effect for:

12.2.2.1 one year after the date of Substantial Completion of the Work or designated portion of the Work;

12.2.2.2 one year after the date for commencement of warranties established by agreement in connection with partial occupancy under Section 9.9.1; or

12.2.2.3 the stipulated duration of any applicable special warranty required by the Contract Documents.

12.2.3 The one-year period described in Sections 12.2.2.1 and 12.2.2.2 shall be extended with respect to portions of the Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of the Work.

12.2.4 The obligations of the Contractor under this Paragraph 12.2 shall survive final acceptance of the Work and termination of this Contract. The Owner shall give notice to the Contractor promptly after discovery of a defective or nonconforming condition in the Work. The one-year period stated in Sections 12.2.2.1 and 12.2.2.2 does not limit the ability of the Owner to require the Contractor to correct latent defects or nonconformities in the Work, which defects or

nonconformities could not have been discovered through reasonable diligence by the Owner or the Design Consultant at the time the Work was performed or at the time of inspection for certification of Substantial Completion or final completion. The one year period also does not relieve the Contractor from liability for any defects or deficiencies in the Work that may be discovered after the expiration of the one year correction period.

12.2.5 The Contractor shall remove from the Project site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

12.2.6 If the Contractor fails to correct defective or nonconforming Work within a reasonable time after notice from the Owner or the Design Consultant, the Owner may correct it in accordance with Section 2.4. If the Contractor does not proceed with correction of defective or nonconforming Work within a reasonable time fixed by written notice from the Owner or the Design Consultant, the Owner may remove or replace the defective or nonconforming Work and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay the costs of removal and storage within ten days after written notice by the Owner or the Design Consultant, the Owner may, upon ten (10) additional days written notice, sell the materials and equipment at auction or at private sale and shall account for the proceeds after deducting costs and damages that should have been borne by the Contractor, including compensation for the Design Consultant's services and expenses made necessary as a result of the sale. If the proceeds of sale do not cover the costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments due to the Contractor then or thereafter are not sufficient to cover the deficiency, the Contractor shall pay the difference to the Owner.

12.2.7 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether the construction is completed or partially completed, that is caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.8 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year time period as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.2.9 Any Work repaired or replaced pursuant to this Article 12 shall be subject to the provisions of Article 12 to the same extent as Work originally performed or installed.

### 12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 The Owner may, in the Owner's sole discretion, accept Work which is not in accordance with the requirements of the Contract Documents instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable as determined by the Owner and the Design Consultant. The adjustment will be accomplished whether or not final payment has been made.

## ARTICLE 13. COMPLETION OF THE CONTRACT; TERMINATION; TEMPORARY SUSPENSION

13.1 **FINAL COMPLETION OF CONTRACT.** The Contract will be considered completed, except as provided in any warranty or maintenance stipulations, bond, or by law, when all the Work has been finally completed, the final inspection is made by the Design Consultant, and final acceptance and final payment is made by the Owner.

13.2 **WARRANTY FULFILLMENT.** Prior to the expiration of the specified warranty period provided for in the Contract Documents, the Design Consultant will make a detailed inspection of the Work and will advise the Contractor and the Contractor's Surety of the items that require correction. The Design Consultant will make a subsequent inspection and if the corrections have been properly performed, the Design Consultant will issue a letter of release on the maintenance obligations to the Contractor and the Surety. If for any reason the Contractor has not made the required corrections before the expiration of the warranty period, the warranty provisions as provided for in the Contract Documents shall remain in effect until the corrections have been properly performed and a letter of release issued.

13.3 **TERMINATION BY THE OWNER FOR CAUSE.**

13.3.1 Notwithstanding any other provision of these General Conditions, the Work or any portion of the Work may be terminated immediately by the Owner for any good cause after giving seven (7) days advance written notice and opportunity to cure to the Contractor, including but not limited to the following causes:

13.3.1.1 Failure or refusal of the Contractor to start the Work within ten (10) days after the date of written notice by the Owner to commence the Work.

13.3.1.2 A reasonable belief that the progress of the Work being made by the Contractor is insufficient to complete the Work within the specified time.

13.3.1.3 Failure or refusal of the Contractor to provide sufficient and proper equipment or construction forces to properly execute the Work in a timely manner.

13.3.1.4 A reasonable belief that the Contractor has abandoned the Work.

13.3.1.5 A reasonable belief that the Contractor has become insolvent, bankrupt, or otherwise financially unable to carry on the Work.

13.3.1.6 Failure or refusal on the part of the Contractor to observe any material requirements of the Contract Documents or to comply with any written orders given by the Design Consultant or the Owner as provided for in the Contract Documents.

13.3.1.7 Failure or refusal of the Contractor to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by the Design Consultant.

13.3.1.8 A reasonable belief by the Owner that collusion exists or has occurred for the purpose of illegally procuring the contract or a Subcontractor, or that a fraud is being perpetrated on the Owner in connection with the construction of Work under the Contract.

13.3.1.9 Repeated and flagrant violation of safe working procedures.

13.3.2 When the Work or any portion of the Work is terminated for any of the causes itemized above or for any other cause except termination for convenience pursuant to Section 13.3.5, the Contractor shall, as of the date specified by the Owner, discontinue the Work or portion of the Work as the Owner shall designate, whereupon the Surety shall, within fifteen (15) days after the written notice of termination for cause has been served upon the Contractor and the Surety or its authorized agents, assume the obligations of the Contractor for the Work or that portion of the Work which the Owner has ordered the Contractor to discontinue and may:

13.3.2.1 perform the Work with forces employed by the surety;

13.3.2.2 with the written consent of the Owner, tender a replacement contractor to take over and perform the Work, in which event the surety shall be responsible for and pay the amount of any costs required to be incurred for the completion of the Work that are in excess of the amount of funds remaining under the Contract as of the time of the termination; or

13.3.2.3 with the written consent of the Owner, tender and pay to the Owner in settlement the amount of money necessary to finish the balance of uncompleted Work under the Contract, correct existing defective or nonconforming work, and compensate the Owner for any other loss sustained as a result of Contractor's default.

In the event of termination for cause involving Articles 13.3.2.1 and 13.3.2.2, the Surety shall assume the Contractor's place in all respects, and the amount of funds remaining unpaid under the Contract shall be paid by the Owner for all Work performed by the surety or the replacement contractor in accordance with the terms of the Contract Documents, subject to any rights of the Owner to deduct any costs, damages, or liquidated or actual damages that the Owner may have incurred, including but not limited to additional fees and expenses of the Design Consultant and attorneys fees, as a result of such termination..

13.3.3 The balance of the Contract Sum remaining at the time of the Contractor's default and of the termination shall become due and payable to the surety as the Work progresses, subject to all of the terms, covenants, and conditions of the Contract Documents. If the surety does not, within the time specified in Section 13.3.2, exercise its obligation to assume the obligations of the Contract, or that portion of the Contract which the Owner has ordered the Contractor to discontinue, then the Owner shall have the power to complete the Work by contract or otherwise, as it may deem necessary. The Contractor agrees that the Owner shall have the right to take possession of or use any or all of the materials, plant, tools, equipment, supplies, and property of every kind provided by the Contractor for the purpose of the Work, and to procure other tools, equipment, labor, and materials for the completion of the Work, and to charge to the account of the Contractor the expenses of completion and labor, materials, tools, equipment, and incidental expenses. The expenses incurred by the Owner to complete the Work shall be deducted by the Owner out of the balance of the Contract Sum remaining unpaid to or unearned by the Contractor. The Contractor and the surety shall be liable to the Owner for any costs incurred in excess of the balance of the Contract Sum for the completion and correction of the Work, and for any other costs, damages, expenses (including but not limited to additional fees of the Design Consultant and attorney's fees), and liquidated or actual damages, as the case may be, incurred as a result of the termination.

13.3.4 The Owner shall not be required to obtain the lowest bid for the Work of completing the Contract as described in Section 13.3.3, but the expenses to be deducted from the Contract Sum shall be the actual cost of such Work and the other damages as provided in Section 13.3.3. In case the Owner's costs and damages are less than the sum which would have been payable under the Contract if the same had been completed by the Contractor, then the Owner may pay to the Contractor (or the Surety, in the event of a complete termination for cause) the difference, provided that the Contractor (or the Surety) shall not be entitled to any claim for damages or for loss of anticipated profits. In case such costs for completion and damages shall exceed the amount which would have been payable under the Contract if the same had been completed by the Contractor, then the Contractor and his Sureties shall pay the amount of the excess to the Owner on notice from the Owner for the excess amount owed. When only a particular part of the Work is being carried on by the Owner by contract or otherwise under the provisions of this Section, the Contractor shall continue the remainder of the Work in conformity with the terms of the Contract and in such manner as not to hinder or interfere with the performance of workmen employed and provided by the Owner.

13.3.5 The right to terminate this Contract for the convenience of the Owner (including but not limited to non-appropriation of funding) is expressly retained by the Owner. In the event of a termination for convenience, the Owner shall deliver at least ten (10) days advance written notice

of the termination for convenience to the Contractor. Upon the Contractor's receipt of such written notice, the Contractor shall cease the performance of the Work and shall take reasonable and appropriate action to secure and protect the Work in place. The Contractor shall then be paid by the Owner in accordance with the terms and provisions of the Contract Documents an amount not to exceed the actual labor costs incurred, the actual cost of all materials stored at the Project site or away from the Project site as approved by the Owner but not yet paid for and which can not be returned, plus applicable overhead and profit, and actual, reasonable, and documented termination costs, if any, paid by the Contractor in connection with the Work in place which is completed and in conformance with the Contract Documents to the date of termination for convenience, less all amounts previously paid for the Work. No amount shall ever be due to the Contractor for lost or anticipated profits on any part of the Work not performed.

#### **13.4 TEMPORARY SUSPENSION OF THE WORK**

13.4.1 The Work or any portion of the Work may be temporarily suspended by the Owner, for a time period not to exceed ninety days, immediately upon written notice to the Contractor for any reason, including but not limited to:

13.4.1.1 the causes described in Sections 13.3.1.1 through 13.3.1.9 above;

13.4.1.2 under other provisions in the Contract Documents that require or permit temporary suspension of the Work;

13.4.1.3 situations where the Work is threatened by, contributes to, or causes an immediate threat to public health, safety, or security; or

13.4.1.4 other unforeseen conditions or circumstances.

13.4.2 The Contractor shall immediately resume the temporarily suspended Work when ordered in writing by the Owner to do so. The Owner shall not under any circumstances be liable for any claim of the Contractor arising from a temporary suspension due to a cause described in Article 13.4.1 above; provided, however, that in the case of a temporary suspension for any of the reasons described under Articles 13.4.1.2 through 13.4.1.4, where the Contractor is not a contributing cause of the suspension or where the provision of the Contract Documents in question does not specifically provide that the suspension is at no cost to the Owner, the Owner will make an equitable adjustment for the following items, provided that a claim is properly made by the Contractor under Section 4.3 of these General Conditions:

13.4.2.1 an equitable extension of the Contract Time, not to exceed the actual delay caused by the temporary suspension as determined by the Design Consultant and the Owner;

13.4.2.2 an equitable adjustment to the Contract Sum for the actual, necessary, and reasonable costs of properly protecting any Work that is finished or partially finished during the period of the temporary suspension (no profit and overhead shall be allowed on top of these costs); and

13.4.2.3 if it becomes necessary to move equipment from the Project site and then return it to the Project site when the Work is ordered to be resumed, an equitable adjustment to the Contract Sum for the actual, necessary, and reasonable cost of these moves; provided, however, that no adjustment shall be due if the equipment is moved to another Project site of the Owner.

### **ARTICLE 14. MISCELLANEOUS PROVISIONS**

#### **14.1 GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS**

14.1.1 This Contract shall be governed by the laws and case decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

14.1.2 This Contract is entered into subject to and controlled by the Charter and ordinances of the City of San Antonio and all applicable laws, rules, and regulations of the State of Texas and the Government of the United States of America. The Contractor shall, during the performance of the Work, comply with all applicable City codes and ordinances, as amended, and all applicable State and Federal laws, rules and regulations, as amended.

#### **14.2 SUCCESSORS AND ASSIGNS**

14.2.1 The Owner and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the promises, covenants, terms, conditions, and obligations contained in the Contract Documents. The Contractor shall not assign, transfer, or convey its interest or rights in the Contract, in part or as a whole, without the written consent of the Owner. If the Contractor attempts to make an assignment, transfer, or conveyance without the Owner's written consent, the Contractor shall nevertheless remain legally responsible for all obligations under the Contract Documents. The Owner shall not assign any portion of the Contract Sum due or to become due under this Contract without the written consent of the Contractor, except where assignment is compelled by court order or other operation of law.

#### **14.3 WRITTEN NOTICE.**

14.3.1 Any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by facsimile transmission or by mail, postage prepaid, or by overnight delivery to an officer, management level employee,, or other designated representative of either party. Mailed notices shall be addressed to the parties at an address designated by each party, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed received as of three (3) days after mailing.

#### **14.4 RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY OWNER**

14.4.1 The duties and obligations imposed on the Contractor by the Contract Documents and the rights and remedies available to the Owner under the Contract Documents shall be in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or made available by law.

14.4.2 No action or failure to act by the Owner shall constitute a waiver of a right afforded the Owner under the Contract Documents, nor shall any action or failure to act by the Owner constitute approval of or acquiescence in a breach of the Contract by Contractor, except as may be specifically agreed in writing by Change Order or Supplemental Agreement.

#### **14.5 INTEREST**

14.5.1 The Owner shall not be liable for interest on any progress or final payment to be made under the Contract Documents, except as may be provided by the applicable provisions of the Prompt Payment Act, Chapter 2251, Texas Government Code, as amended, subject to Section 9.6.1 of these General Conditions.

#### **14.6 INDEPENDENT MATERIALS TESTING AND INSPECTION.**

14.6.1 In some circumstances, the City will retain, independent of the Contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the Project by the City. Such consultants will be selected in accordance with Section 2254.004 of the Government Code. The professional services, duties,

and responsibilities of those independent consultants will be described in the agreements between the City and those consultants. The provision of inspection services by City shall not reduce or lessen Contractor's responsibility for the Work or its duty to establish and implement a program to monitor the quality of construction to guard the City against defects and deficiencies in the Work, required above. Contractor is fully and solely responsible for constructing the Project in strict accordance with the Construction Documents.

**14.7 OFFICERS OR EMPLOYEES OF THE OWNER NOT TO HAVE FINANCIAL INTEREST IN ANY CONTRACT OF THE OWNER**

14.7.1 Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency, such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity. Pursuant to the subsection above, the Contractor warrants and certifies, and this Contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. The Contractor further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code. Any violation of this article shall constitute malfeasance in office, and any officer or employee of Owner guilty thereof shall thereby forfeit his office or position. Any violation of this section, with the knowledge, express or implied, of the person, persons, partnership, company, firm, association or corporation contracting with the Owner shall render the Contract involved voidable by the Owner's City Manager or City Council.

**14.8 VENUE**

14.8.1 This Contract is performed in Bexar County, Texas, and if legal action is necessary to enforce this Contract, exclusive venue shall lie in Bexar County, Texas.

**14.9 INDEPENDENT CONTRACTOR**

14.9.1 In performing the Work under this Contract, the relationship between the Owner and the Contractor is that of an independent contractor. The Contractor shall exercise independent judgment in performing the Work and is solely responsible for setting working hours, scheduling or prioritizing the Work flow and determining the means and methods of performing the Work, subject only to the requirements of the Contract Documents. No term or provision of this Contract shall be construed as making the Contractor an agent, servant, or employee of the Owner, or making the Contractor or any of the Contractor's employees, agents, or servants eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the Owner provides to its employees.

**14.10 NONDISCRIMINATION**

14.10.1 As a condition of this Contract, the Contractor covenants that he will take all necessary actions to insure that, in connection with any Work under this Contract, the Contractor and its Subcontractors will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. The Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, the Contractor shall keep, retain and safeguard all records relating to his Contract or Work performed thereunder for a minimum

period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the Owner, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

#### **14.11 GIFTS TO PUBLIC SERVANTS**

14.11.1 The Owner may terminate this Contract immediately if the Contractor has offered, conferred, or agreed to confer any benefit on a City of San Antonio employee or official that the City of San Antonio employee or official is prohibited by law from accepting.

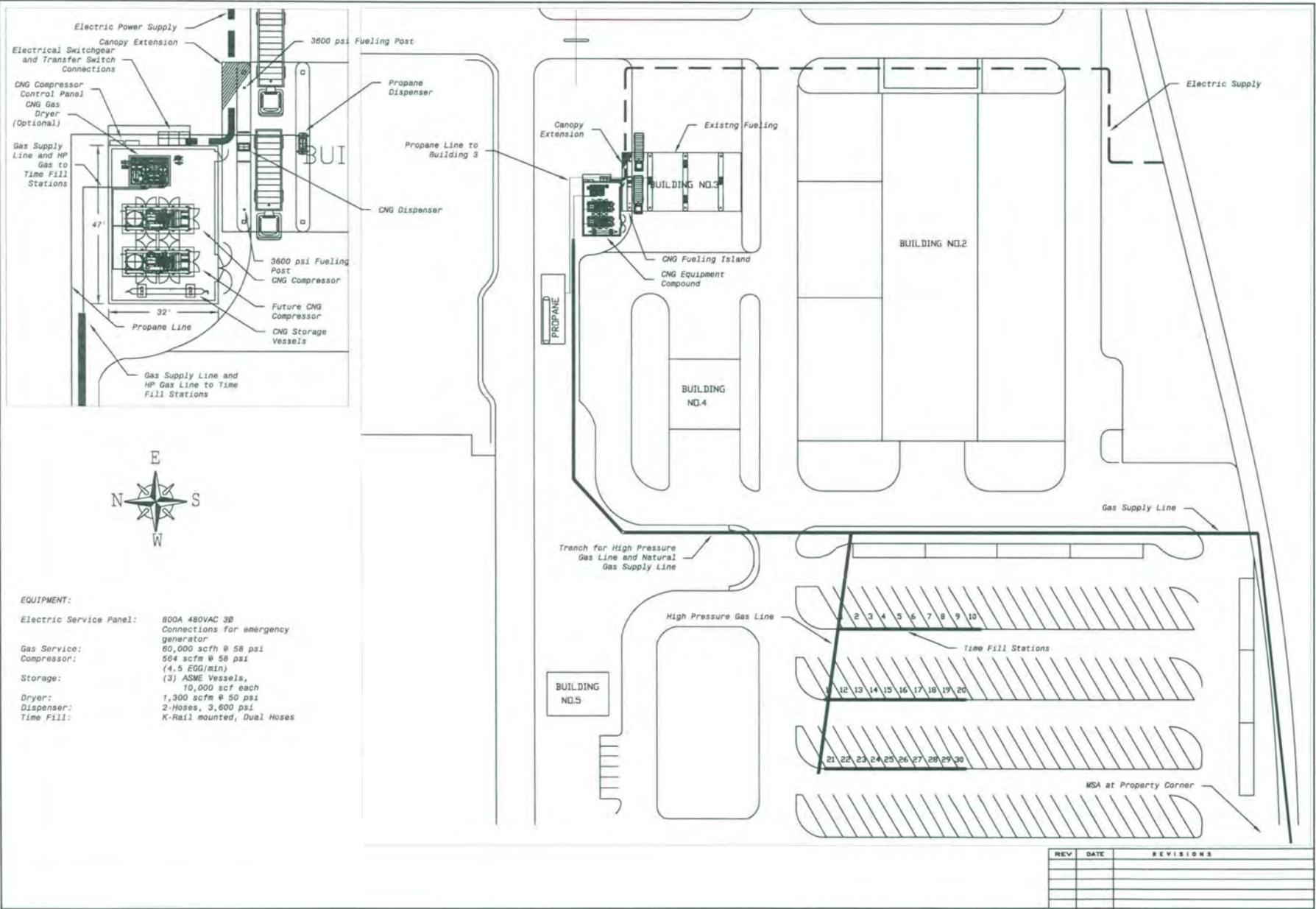
14.11.2 For purposes of this Article, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

14.11.3 Notwithstanding any other legal remedies, the Owner may require the Contractor to remove any employee of the Contractor from the Project who has violated the restrictions of this Article or any similar State or Federal law, and may obtain reimbursement for any expenditures made to the Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City of San Antonio employee or official.

#### **ARTICLE 15. RIGHT TO AUDIT CONTRACTOR'S RECORDS**

15.1 By execution of the Building Construction Services Agreement, the Contractor grants the Owner the right to audit, at the Owner's election, all of the Contractor's records and billings relating to the performance of the Work under the Contract Documents. The Contractor agrees to retain its Project records for a minimum of three (3) years following completion of the Work. The Owner agrees that it will exercise the right to audit only at reasonable hours. Any payment, settlement, satisfaction, or release provided under this Contract shall be subject to the Owner's rights as may be disclosed by any audit.

**Exhibit V**  
**Plans and Specifications**



- EQUIPMENT:**
- Electric Service Panel: 800A 480VAC 3Ø  
Connections for emergency generator
  - Gas Service: 60,000 scfm @ 58 psi
  - Compressor: 564 scfm @ 58 psi  
(4.5 EGG/min)
  - Storage: (3) ASME Vessels,  
10,000 scf each
  - Dryer: 1,300 scfm @ 50 psi
  - Dispenser: 2-Hoses, 3,600 psi
  - Time Fill: K-Rail mounted, Dual Hoses

| REV | DATE | REVISIONS |
|-----|------|-----------|
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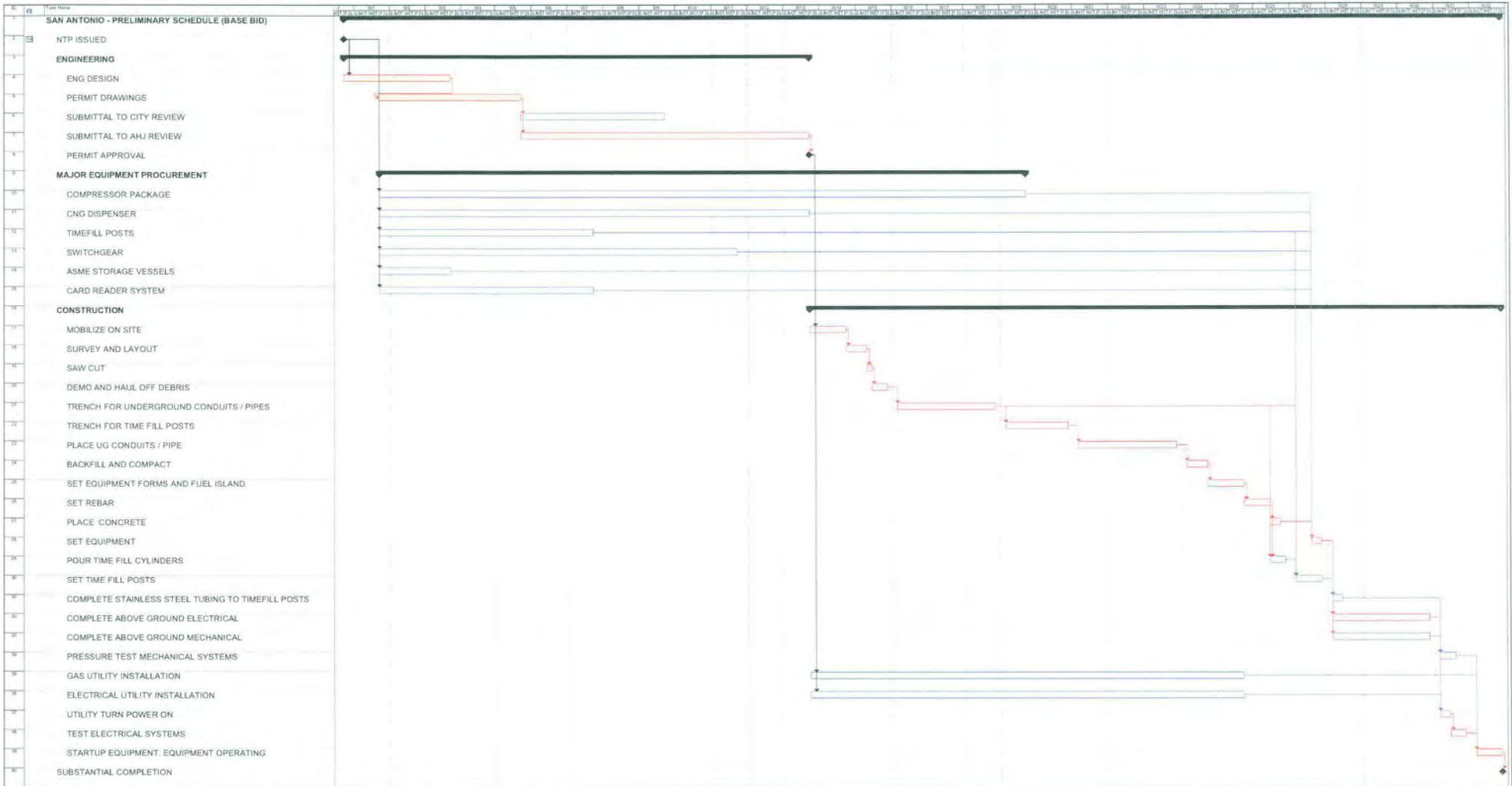
3020 OLD RANCH PARKWAY  
 SUITE 200  
 SEAL BEACH, CA 90740  
 TEL: (562) 493-2804  
 FAX: (562) 493-4532

Clean Energy™

CNG FUELING STATION  
 City of San Antonio  
 10303 Tool Yard  
 San Antonio, TX  
 Site Plan 2

Date: 11/29/07  
 Drawn by: JLS  
 Scale: NTS  
 Sheet / No: GA-1B  
 1 of 1

**Exhibit VI**  
**Schedule for the Project**



**Exhibit VII**  
**Schedule of Values**

**CONTINUATION SHEET**

AIA DOCUMENT G703

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing

Contractor's signed Certification is attached.

In tabulation below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

| A        | B  | C               | D                     | E                | F                                |
|----------|--|-----------------|-----------------------|------------------|----------------------------------|
| ITEM No. | DESCRIPTION OF WORK                          | SCHEDULED VALUE | WORK COMPLETED        |                  |                                  |
|          |  |                 | Previous Applications | This Application |                                  |
|          |  |                 |                       | Work in Place    | Stored Materials (not in D or E) |
| 1        | General Conditions                           | \$ 35,000.00    | \$0.00                | \$0.00           |                                  |
| 2        | Saw cut and demo                             | \$ 15,000.00    | \$0.00                | \$0.00           |                                  |
| 3        | Concrete house keeping pads                  | \$ 35,000.00    | \$0.00                | \$0.00           |                                  |
| 4        | Electrical Underground                       | \$ 75,000.00    | \$0.00                | \$0.00           |                                  |
| 5        | Mechanical underground                       | \$ 35,000.00    | \$0.00                | \$0.00           |                                  |
| 6        | Backfill and compaction                      | \$ 22,000.00    | \$0.00                | \$0.00           |                                  |
| 7        | Concrete/asphalt patching                    | \$ 25,000.00    | \$0.00                | \$0.00           |                                  |
| 8        | Above ground electrical                      | \$ 32,000.00    | \$0.00                | \$0.00           |                                  |
| 9        | Above ground mechanical systems              | \$ 15,000.00    | \$0.00                | \$0.00           |                                  |
| 10       | Terminations                                 | \$ 22,000.00    | \$0.00                | \$0.00           |                                  |
| 11       | Installation of cabling and wire             | \$ 22,000.00    | \$0.00                | \$0.00           |                                  |
| 12       | Engineering and Design                       | \$ 25,000.00    | \$0.00                | \$0.00           |                                  |
| 13       | Canopy                                       | \$ 47,000.00    | \$0.00                | \$0.00           |                                  |
| 14       | Equipment delivery- storage                  | \$ 50,000.00    | \$0.00                | \$0.00           |                                  |
| 15       | Equipment delivery- genset connection option | \$ 5,000.00     | \$0.00                | \$0.00           |                                  |
| 16       | Equipment delivery- CNG Compressor           | \$ 272,000.00   | \$0.00                | \$0.00           |                                  |
| 17       | Equipment delivery- switchgear               | \$ 25,000.00    | \$0.00                | \$0.00           |                                  |
| 18       | Equipment- timefill posts (15 dual posts)    | \$ 120,000.00   | \$0.00                | \$0.00           |                                  |
| 19       | Equipment - fast fill dispenser              | \$ 36,000.00    | \$0.00                | \$0.00           |                                  |
| 20       | Equipment- card reader                       | \$ 15,000.00    | \$0.00                | \$0.00           |                                  |
| 21       | Equipment- security camera system            | \$ 10,000.00    | \$0.00                | \$0.00           |                                  |
| 22       | Equipment- fittings, pipe, tubing, valves    | \$ 19,944.00    | \$0.00                | \$0.00           |                                  |
| 23       | City Allowance                               | \$ 22,000.00    | \$0.00                | \$0.00           |                                  |
| 24       |  |                 |                       |                  |                                  |
| 25       |  |                 |                       |                  |                                  |
| #REF!    |  |                 |                       |                  |                                  |
|          |  | \$979,944.00    | \$0.00                | \$0.00           | \$0.00                           |

APPLICATION NUMBER: TBD  
 APPLICATION DATE: TBD  
 PERIOD FROM: TBD  
 TO: TBD  
 ARCHITECT'S PROJECT NO: TBD

| G  |         | H                       | I         |
|--|---------|-------------------------|-----------|
| TOTAL COMPLETED AND STORED TO DATE (D + E + F) | % G / C | BALANCE TO FINISH C - G | RETAINAGE |
| \$0.00   | 0.00%   | \$35,000.00             | \$0.00    |
| \$0.00   | 0.00%   | \$15,000.00             | \$0.00    |
| \$0.00   | 0.00%   | \$35,000.00             | \$0.00    |
| \$0.00   | 0.00%   | \$75,000.00             | \$0.00    |
| \$0.00   | 0.00%   | \$35,000.00             | \$0.00    |
| \$0.00   | 0.00%   | \$22,000.00             | \$0.00    |
| \$0.00   | 0.00%   | \$25,000.00             | \$0.00    |
| \$0.00   | 0.00%   | \$32,000.00             | \$0.00    |
| \$0.00   | 0.00%   | \$15,000.00             | \$0.00    |
| \$0.00   | 0.00%   | \$22,000.00             | \$0.00    |
| \$0.00   | 0.00%   | \$22,000.00             | \$0.00    |
| \$0.00   | 0.00%   | \$25,000.00             | \$0.00    |
| \$0.00   | 0.00%   | \$47,000.00             | \$0.00    |
| \$0.00   | 0.00%   | \$50,000.00             | \$0.00    |
| \$0.00   | 0.00%   | \$5,000.00              | \$0.00    |
| \$0.00   | 0.00%   | \$272,000.00            | \$0.00    |
| \$0.00   | 0.00%   | \$25,000.00             | \$0.00    |
| \$0.00   | 0.00%   | \$120,000.00            | \$0.00    |
| \$0.00   | 0.00%   | \$36,000.00             | \$0.00    |
| \$0.00   | 0.00%   | \$15,000.00             | \$0.00    |
| \$0.00   | 0.00%   | \$10,000.00             | \$0.00    |
| \$0.00   | 0.00%   | \$19,944.00             | \$0.00    |
| \$0.00   | 0.00%   | \$22,000.00             | \$0.00    |
| \$0.00   | 0.00%   | \$979,944.00            | \$0.00    |

**Exhibit VIII**  
**Small Business Economic Development Advocacy (SBEDA) Program**

## ATTACHMENT 2

### SMALL BUSINESS CONTRACT COMPLIANCE MEASURES ON NON-FEDERALLY FUNDED PROJECTS

For Alternative Construction Delivery Methods

#### **Clean Energy's SBEDA Plan**

As of one of the nation's largest vehicular natural gas providers, CE has a significant potential to help diverse businesses grow and to strengthen the state and local economies in the communities it serves. CE has been committed to ensuring the participation of small businesses and minority-owned companies in all of its contracts, both in the private and public sector. Clean Energy is committed to providing Women, Minority and African American owned business enterprises with economic opportunities to supply products and services required by CE.

Due to the relatively recent development of technology and industrial application of CNG fueling stations, there are few, if any, proven manufacturers of CNG compressors and equipment that are SBEs, WBE or AABE certified. However, CE seeks the active involvement of small and minority owned businesses in the construction, installation, engineering, electrical and other components that do not require specialized expertise in CNG operations.

#### ***Economic Impact***

In an effort to provide opportunities, assist and encourage all SBEs to participate in the CNG refueling station bidding process, CE has requested estimates from various local San Antonio SBEs and WBEs for civil engineering, electrical and construction services.

CE's headquarters are located in Seal Beach, California. However, all operation and management of CE's San Antonio CNG field technician will be handled out of the Dallas, Texas office. Once the CNG fueling station's infrastructure grows over the next two years in San Antonio, CE will open a local office and inventory warehouse.

CE will recruit and hire one qualified person to provide all required maintenance services for the Northeast CNG refueling station. This technician, based in San Antonio, will be trained by CE's experienced service technicians, attend appropriate equipment training courses, and receive appropriate certifications. As needed, CE will shift qualified personnel from other territories to meet the initial needs of this project.

#### ***SBEDA Experience***

CE has extensive experience contracting for natural gas to several of its stations. Because the natural gas commodity represents more than 50% of the bundled rate delivered to each customer, using a MWBE natural gas marketer/broker to procure and schedule the station's natural gas is an excellent way to exceed all MWBE goals over the life of the DBOM contract.

For example, when CE was awarded the DFW CNG Station over five years ago, the airport's MWBE goal was 20%. Because a majority of the station's costs are equipment, this is a very difficult goal to meet. However, because it was a DBOM contract, CE not only selected several MWBE contractors to build the station, we also contracted with Tiger Natural Gas, a MWBE natural gas marketer/broker, on a year-to-year basis to supply all of the station's natural gas.

Each year, CE rebids the natural gas commodity contract to several MWBE marketer/brokers to ensure we are getting a competitive price. At DFW, CE contracts with Atmos Energy to transport natural gas that is coordinated and scheduled by Tiger Natural Gas Inc. CE's overall percentage contracted to MWBE at DFW now exceeds 50% over the first five years -- far exceeding the airport's goal.

If COSA is interested in having this service accommodated, CE will coordinate with CPS Energy to allow third-party natural gas to be transported to the utility's "city gate" receipt point and transported within their system.

***SBEDA Utilization***

As stated above, CE supports SBE, WBE and AABE participation in CE's own contracting program. CE has solicited a number of service estimate requests from various local WBEs and SBEs. CE will identify the subcontractors for this project during the Phase Two portion of this RFQ.

***Emerging-Diversity Business Plan***

Clean air education and environmental stewardship is at the core value of CE's business model. When CE enters a new market for our natural gas technology services, we strive to implement an outreach program that involves non-profit, local and small minority-owned companies to participate with CE on development of its projects. We do this by participating in and sponsoring local educational efforts that promote clean air initiatives, then identifying opportunities within the bid specs that can be filled by local and SBE companies.

Just recently, CE sponsored and showcased at two events held by the local Alamo Area Council of Government (AACOG): Clean Cities - a Natural Gas Trash Workshop and "Advancing the Choice" Natural Gas: Fueling the Future.



July 30, 2007

Clean Energy  
Attn: Regan Noll, Account Manager  
8117 Preston Rd., Suite 202  
Dallas, TX 75225

Dear Mr. Noll,

The Alamo Area Council of Governments and Alamo Area Clean Cities Coalition would like to thank Clean Energy for participation and sponsorship of the *Advancing the Choice: Fueling Our Future* seminar held July 26, 2007. The seminar would not have been possible without the sponsorship of Clean Energy and the willingness of yourself to attend and provide your expertise on natural gas refueling infrastructure. I also appreciate your willingness to showcase a CNG-fueled vehicle.

I would also like to thank you for your personal attention and support during the past six months for the City of San Antonio's process of converting a portion of refuse haulers to CNG. You attended the CNG workshop held at the AACOG offices on February 16, 2007, where Clean Energy sponsored lunch; as well as attended several City Council meetings showing support for the City's decision.

Throughout the previous months, I appreciate Clean Energy's interest and assistance in promoting the use of natural gas in the San Antonio region. Clean Energy continues to demonstrate a willingness to assist the Clean Cities program in advancing the development of alternative fuels infrastructure in Texas.

Again, I thank Clean Energy for sponsorship and participation in both the CNG workshop and *Advancing the Choice* seminar.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew P. Hudgins", is written over a faint, rectangular stamp or watermark.

Andrew P. Hudgins  
Alamo Area Council of Governments  
Clean Cities Coordinator



**BAIN MEDINA BAIN**  
ENGINEERS & SURVEYORS

7073 SAN PEDRO  
SAN ANTONIO, TEXAS 78216  
210-494-7223  
FAX 210-490-5120  
WWW.BMBI.COM

July 26, 2007

Dear Mr. Noll

Thank you for contacting Bain Medina Bain, Inc. (BMB) in regard to the City of San Antonio's Request for Design Build Qualifications for the Compressed Natural Gas Refueling Facility. We at Bain Medina Bain, Inc. feel that our skills in civil engineering and surveying for site design could aid in the success of this CNG station project.

Utilizing our expertise, Bain Medina Bain, Inc. looks forward to providing estimate pricing to be a part of Clean Energy's team to design and build the CNG refueling station in San Antonio.

Sincerely,

Pamela Bain  
President  
Bain Medina Bain, Inc.



## Gerard Electric, Inc.

14275 IH 10 East  
Schertz, TX 78154  
210-661-8241 (Office) - 210-661-8202 (Fax)

---

July 27, 2007

Mr. Reagan Noll  
Clean Energy  
8117 Preston Road  
Suite 202  
Dallas, TX 75225

Dear Mr. Noll:

Thank you for contacting Gerard Electric in regards to the City of San Antonio's Request for Design Build Qualifications for the Compressed Natural Gas Refueling Facility.

Gerard Electric looks forward to providing estimate pricing to be a part of Clean Energy's team to design and build the refueling station in San Antonio using our expertise.

Sincerely,

Edward Moore  
Vice President



July 30, 2007

Mr. Reagan Noll  
Clean Energy  
8117 Preston Road  
Suite 202  
Dallas, TX 75225

Dear Mr. Noll,

Thank you for contacting Rentz Electric in regards to the City of San Antonio's Request for Design Build Qualifications for the Compressed Natural Gas Refueling Facility.

Rentz Electric looks forward to providing estimate pricing to be a part of Clean Energy's team to design and build the refueling station in San Antonio using our expertise.

Sincerely,



Jerry Rentz  
President

**VICKREY & ASSOCIATES, Inc.**  
CONSULTING ENGINEERS

July 27, 2007

Mr. Reagan Noll  
Clean Energy  
8117 Preston Rd. #202  
Dallas, TX 75225

**RE: City of San Antonio Request for Design Build Qualifications for the Compressed Natural Gas Refueling Facility**

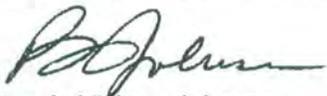
Dear Mr. Noll,

Thank you for contacting Vickrey & Associates, Inc. (V&A) in regards to the City of San Antonio's Request for Design Build Qualifications for the Compressed Natural Gas (CNG) Refueling Facility. We at V&A feel that our skills in civil engineering and surveying could aid in the success of this CNG station project.

Utilizing our expertise, V&A looks forward to providing estimate pricing to be a part of Clean Energy's team to design and build the CNG refueling station in San Antonio.

Sincerely,

VICKREY & ASSOCIATES, INC.



Brenda Vickrey Johnson  
President

BVJ/JJ/yc



**Exhibit IX**  
**Labor Wage Rates for Bexar County**

General Decision Number: TX070003 08/31/2007 TX3

Superseded General Decision Number: TX20030003

State: Texas

Construction Type: Building

County: Bexar County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes and apartments up to and including 4 stories). (Use current heavy & highway general wage determination for Paving & Utilities Incidental to Building Construction).

| Modification Number | Publication Date |
|---------------------|------------------|
| 0                   | 02/09/2007       |
| 1                   | 05/11/2007       |
| 2                   | 07/20/2007       |
| 3                   | 08/31/2007       |

ASBE0087-001 01/01/2006

|  | Rates    | Fringes |
|--|----------|---------|
| Asbestos/Insulator Worker<br>(Includes application of all insulating materials, protective coverings, coatings, and finishings to all types of mechanical systems.)..... | \$ 19.67 | 6.37    |

BRTX0001-004 05/01/2007

|                 | Rates    | Fringes |
|-----------------|----------|---------|
| BRICKLAYER..... | \$ 23.50 | 1.50    |

\* ELEC0060-001 12/04/2006

|   | Rates    | Fringes |
|---|----------|---------|
| Cable splicer.....  | \$ 21.85 | 7.60    |
| ELECTRICIAN (Including pulling and installing cable through conduit for low voltage)..... | \$ 21.60 | 7.60    |

ELEV0081-001 01/01/2005

|                                       | Rates     | Fringes  |
|---------------------------------------|-----------|----------|
| Elevator Constructor<br>MECHANIC..... | \$ 26.885 | 12.115+A |

FOOTNOTE; A = UNDER 5 YEARS EMPLOYMENT, 6% BHR; OVER 5 YEARS  
 EMPLOYMENT, 8% BHR. PAID HOLIDAYS : New Year's Day,  
 Memorial Day, Independence Day, Labor Day, Thanksgiving  
 Day, Friday after Thanksgiving Day and Christmas Day.

-----  
 ENGI0450-001 04/01/1994

|                            | Rates    | Fringes |
|----------------------------|----------|---------|
| Power equipment operators: |          |         |
| Cranes.....                | \$ 12.95 | 3.30    |

-----  
 \* IRON0066-001 06/01/2007

|   | Rates    | Fringes |
|---|----------|---------|
| IRONWORKER (Excluding metal<br>building erectors) |          |         |
| Structural.....                                   | \$ 17.40 | 5.00    |

-----  
 \* MARB0002-001 07/01/2005

|                  | Rates    | Fringes |
|------------------|----------|---------|
| TILE SETTER..... | \$ 18.50 | 6.10    |

-----  
 PLUM0142-001 07/01/2005

|  | Rates    | Fringes |
|--|----------|---------|
| Plumbers and Pipefitters<br>(Including HVAC WORK)..... | \$ 26.18 | 6.16    |

-----  
 \* SFTX0669-001 01/01/2005

|  | Rates    | Fringes |
|--|----------|---------|
| SPRINKLER FITTER (Fire<br>Sprinklers)..... | \$ 22.62 | 10.50   |

-----  
 SHEE0067-001 04/01/2007

|   | Rates    | Fringes |
|---|----------|---------|
| Sheet metal worker (Including<br>HVAC Duct Work)..... | \$ 23.70 | 9.74    |

-----  
 \* SUTX1988-002 11/01/1988

|  | Rates    | Fringes |
|--|----------|---------|
| Acoustical Ceiling Installer.....  | \$ 12.26 |         |
| CARPENTER (Excluding<br>Acoustical Ceiling Installer<br>& Drywall Hanger)..... | \$ 10.64 |         |

|   |          |      |
|---|----------|------|
| CEMENT MASON/CONCRETE FINISHER...                   | \$ 11.46 |      |
| DRYWALL HANGER.....                                 | \$ 11.88 |      |
| GLAZIER.....  | \$ 10.78 | 1.40 |
| IRONWORKER (Excluding Metal<br>Building Assemblers) |          |      |
| Reinforcing.....                                    | \$ 10.19 | 3.57 |
| Laborers:   |          |      |
| Mason Tenders.....                                  | \$ 8.36  | 1.78 |
| Mortar Mixers.....                                  | \$ 8.99  |      |
| PLASTERER'S TENDERS.....                            | \$ 8.68  |      |
| Unskilled.....                                      | \$ 7.06  |      |
| LATHER.....   | \$ 15.25 |      |
| PAINTER (Excluding<br>Tapers/Finishers).....        | \$ 8.01  |      |
| PLASTERER.....                                      | \$ 15.25 |      |
| Power equipment operators:                          |          |      |
| Front End Loader.....                               | \$ 7.36  |      |
| Roofers:  |          |      |
| Kettlemen.....                                      | \$ 8.85  |      |
| Roofers.....  | \$ 8.14  |      |
| Waterproofers.....                                  | \$ 6.88  |      |
| Sheet Metal Worker                                  |          |      |
| Other Work.....                                     | \$ 11.62 |      |
| Taper/Finisher.....                                 | \$ 7.99  |      |
| TRUCK DRIVER.....                                   | \$ 7.10  |      |

-----  
WELDERS - Receive rate prescribed for craft performing  
operation to which welding is incidental.  
=====

Unlisted classifications needed for work not included within  
the scope of the classifications listed may be added after  
award only as provided in the labor standards contract clauses  
(29CFR 5.5 (a) (1) (ii)).

-----  
In the listing above, the "SU" designation means that rates  
listed under the identifier do not reflect collectively  
bargained wage and fringe benefit rates. Other designations  
indicate unions whose rates have been determined to be  
prevailing.  
-----

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

General Decision Number: TX070043 02/09/2007 TX43

Superseded General Decision Number: TX20030043

State: Texas

Construction Types: Heavy and Highway

Counties: Bell, Bexar, Brazos, Comal, Coryell, Guadalupe, Hays, McLennan, Travis and Williamson Counties in Texas.

Heavy (excluding tunnels and dams) and Highway Construction Projects (does not include building structures in rest area projects). \*NOT TO BE USED FOR WORK ON SEWAGE OR WATER TREATMENT PLANTS OR LIFT/PUMP STATIONS IN BELL, CORYELL, McLENNAN AND WILLIAMSON COUNTIES.

Modification Number      Publication Date  
 0                              02/09/2007

SUTX2005-001 01/03/2005

|   | Rates    | Fringes |
|---|----------|---------|
| Air Tool Operator.....                                  | \$ 16.00 | 0.00    |
| Asphalt Distributor Operator...                         | \$ 12.09 | 0.00    |
| Asphalt paving machine operator                         | \$ 11.82 | 0.00    |
| Asphalt Raker.....                                      | \$ 9.96  | 0.00    |
| Asphalt Shoveler.....                                   | \$ 10.56 | 0.00    |
| Broom or Sweeper Operator.....                          | \$ 9.74  | 0.00    |
| Bulldozer operator .....                                | \$ 11.04 | 0.00    |
| Carpenter.....  | \$ 12.25 | 0.00    |
| Concrete Finisher, Paving.....                          | \$ 10.53 | 0.00    |
| Concrete Finisher, Structures..                         | \$ 10.95 | 0.00    |
| Concrete Paving Curbing                                 |          |         |
| Machine Operator.....                                   | \$ 14.00 | 0.00    |
| Concrete Paving Finishing                               |          |         |
| Machine Operator.....                                   | \$ 12.00 | 0.00    |
| Concrete Rubber.....                                    | \$ 10.88 | 0.00    |
| Crane, Clamshell, Backhoe,<br>Derrick, Dragline, Shovel |          |         |
| Operator.....   | \$ 13.66 | 0.00    |
| Electrician.....  | \$ 24.11 | 0.00    |
| Flagger.....  | \$ 9.49  | 0.00    |
| Form Builder/Setter, Structures                         | \$ 10.88 | 0.00    |
| Form Setter, Paving & Curb.....                         | \$ 9.89  | 0.00    |
| Foundation Drill Operator,<br>Truck Mounted.....        | \$ 15.00 | 0.00    |
| Front End Loader Operator.....                          | \$ 11.36 | 0.00    |
| Laborer, common.....                                    | \$ 9.34  | 0.00    |
| Laborer, Utility.....                                   | \$ 10.12 | 0.00    |
| Mechanic.....   | \$ 14.74 | 0.00    |
| Mixer operator, Concrete Paving                         | \$ 15.25 | 0.00    |
| Mixer operator.....                                     | \$ 10.83 | 0.00    |
| Motor Grader Operator, Fine<br>Grade.....               | \$ 15.26 | 0.00    |
| Motor Grader Operator, Rough...                         | \$ 12.96 | 0.00    |
| Oiler.....  | \$ 14.71 | 0.00    |
| Painter, Structures.....                                | \$ 11.00 | 0.00    |
| Pavement Marking Machine<br>Operator.....               | \$ 11.52 | 0.00    |
| Pipelayer.....  | \$ 10.49 | 0.00    |
| Planer Operator.....                                    | \$ 17.45 | 0.00    |
| Reinforcing Steel Setter,                               |          |         |

|   |          |      |
|---|----------|------|
| Paving.....   | \$ 15.50 | 0.00 |
| Reinforcing Steel Setter,<br>Structure.....                     | \$ 14.00 | 0.00 |
| Roller Operator, Pneumatic,<br>Self-Propelled.....              | \$ 9.34  | 0.00 |
| Roller Operator, Steel Wheel,<br>Flat Wheel/Tamping.....        | \$ 9.60  | 0.00 |
| Roller Operator, Steel Wheel,<br>Plant Mix Pavement.....        | \$ 10.24 | 0.00 |
| Scraper Operator.....   | \$ 9.93  | 0.00 |
| Servicer.....   | \$ 11.41 | 0.00 |
| Sign Installer (PGM).....                                       | \$ 14.85 | 0.00 |
| Slip Form Machine Operator.....                                 | \$ 15.17 | 0.00 |
| Spreader Box operator.....                                      | \$ 10.39 | 0.00 |
| Structural Steel Worker.....                                    | \$ 13.41 | 0.00 |
| Tractor operator, Crawler Type.....                             | \$ 11.10 | 0.00 |
| Traveling Mixer Operator.....                                   | \$ 10.04 | 0.00 |
| Trenching machine operator,<br>Heavy.....                       | \$ 14.22 | 0.00 |
| Truck Driver Tandem Axle Semi-<br>Trailer.....                  | \$ 10.95 | 0.00 |
| Truck driver, lowboy-Float.....                                 | \$ 15.30 | 0.00 |
| Truck driver, Single Axle,<br>Heavy.....                        | \$ 11.88 | 0.00 |
| Truck driver, Single Axle,<br>Light.....                        | \$ 9.98  | 0.00 |
| Wagon Drill, Boring Machine,<br>Post Hole Driller Operator..... | \$ 14.65 | 0.00 |
| Welder.....   | \$ 14.26 | 0.00 |
| Work Zone Barricade Servicer...\$                               | 11.15    | 0.00 |

-----  
 =====  
 Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

-----  
 In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

-----  
 WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

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and 3.) should be followed.

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Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====  
END OF GENERAL DECISION

**Exhibit X**  
**Contractor Personal Titles, Hourly Rates, and DSE Multipliers**

### Clean Energy Personal Titles, Hourly Rates, and DSE Multipliers

| <b>TITLE</b>                  | <b>RATES</b> | <b>FRINGES</b> |
|-------------------------------|--------------|----------------|
| President and CEO.....        | \$425.51     | \$109.40       |
| Senior Vice President.....    | \$177.64     | \$47.32        |
| Vice President.....           | \$113.26     | \$31.17        |
| Assistant Vice President..... | \$70.41      | \$19.07        |
| Engineering Manager.....      | \$67.92      | \$19.80        |
| Operations Manager.....       | \$47.37      | \$13.74        |
| Account Manager.....          | \$25.86      | \$8.26         |
| Service Technician.....       | \$38.69      | \$12.47        |



CMS or Ordinance Number: CN0040002548

TSLGRS File Code:1025-08-A

Document Title:

CONT - In May 2007, Texas Emissions Reduction Plan (TERP) grant program, administered by the Texas Commission on Environmental Quality (TCEQ),

**Commencement Date:**

**8/23/2007**

**Expiration Date:**

**8/31/2008**

**GENERAL CONDITIONS**  
**for**  
**Emissions Reduction Incentive Grant**

**ARTICLE 1. DEFINITIONS**

Unless defined herein, terms in this Agreement and Contract Documents will have the meanings provided in the *Uniform Grant Management Standards (UGMS)*. The following terms have the meanings indicated.

1.1. *Activity Life* - the period established by the TCEQ and designated in the Approved Application, that is used to determine the emissions reductions and cost effectiveness of the activity. The start date for the Activity Life will be established by the TCEQ. The TCEQ will notify the PERFORMING PARTY of the Activity Life start and end dates for each activity upon completion of all reimbursements under this Agreement and submission by the PERFORMING PARTY and acceptance by TCEQ of the final disposition verification forms, if required. For replacement and repower activities, the TCEQ will normally set the start date of the Activity Life on the date the TCEQ receives notification that the vehicle, equipment, and/or engine being replaced was disposed of. For other types of activities, the start date will normally be set as the date on which the grant-funded purchases are completed and the reduced-emissions vehicle, equipment, engine, retrofit device, and/or infrastructure were placed into service. Where applicable under the provisions of this Agreement, references to the Activity Life for a Demonstration of New Technology Project will be considered the same as the term of the Grant Activities and this Agreement.

1.2. *Administrative Requirements* - means those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from Grant Activities requirements, which concern matters that pertain to the specific Grant Activities approved by TCEQ

1.3. *Annual Usage* - the use factor designated by the TCEQ in the Approved Application, based on either the hours of operation, miles traveled, or fuel consumption.

1.4. *Approved Application* - the application for emissions reduction incentive grant submitted by the PERFORMING PARTY and approved by the TCEQ, including any amendments or supplemental conditions added to the application in order for it to be approved. An Approved Application may include one or more Supplemental Activity Application Forms, which pertain to the individual activities to be conducted under the grant.

1.5. *Baseline Cost* - a specific amount designated by the TCEQ in the Approved Application to reflect the costs that would otherwise be incurred by the PERFORMING PARTY in the normal course of business, as determined according to the provisions of the *Guidelines for the Emissions Reduction Incentive Grants (RG-388)*.

1.6. *Contract Documents* - the contract documents are composed of the TCEQ Grant Agreement for Emissions Reduction Incentive Grants, the General Conditions for Emissions Reduction Incentive Grants, the *Guidelines for Emissions Reduction Incentive Grants*, the Special Conditions for Emissions Reduction Incentive Grant, the Approved Application Summary, the completed Approved Application, and any amendments to those documents. Together, the Contract Documents form the contractual agreement between the parties.

1.7. *Contract Amount* - the maximum amount of funds which may be reimbursed by the TCEQ to the PERFORMING PARTY for completion of the Grant Activities in accordance with the Contract Documents.

1.8. *Contract Period* - the number of days or dates stated in the Agreement to complete the Grant Activities so that final payment is appropriate.

1.9. *Effective Date of the Agreement* - the date indicated in the Agreement on which the Agreement becomes effective; but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

1.10. *Eligible Counties* - the counties designated as affected counties in §386.001(2), Texas Health and Safety Code, and the additional counties included in a non-attainment area designated by the TCEQ. The eligible counties are listed in the *Guidelines for the Emissions Reduction Incentive Grants* (RG-388).

1.11. *Final Completion* - the Grant Activities are completed in the judgment of TCEQ.

1.12. *Grant Activity/Activities* - each separate lease, purchase, replacement, repower, retrofit, add-on, purchases of qualifying fuel, purchase and installation of infrastructure, process and technology development and utilization, and related goods and services described in the Approved Application, including each separate Supplemental Activity Application Form that may be attached to the application.

1.13. *Grant Equipment* - the equipment, real property, vehicles, qualifying fuel, infrastructure, processes and technology and the related goods and services in a Grant Activity for which the cost of purchase, lease, or utilization is reimbursed by the TCEQ under the Agreement. The term includes replacements for the Grant Equipment which is lost, stolen, or irreparably damaged.

1.14. *Incremental Costs* - the cost of an approved activity less a baseline cost that would otherwise be incurred by the PERFORMING PARTY in the normal course of business, as determined according to the provisions of the *Guidelines for the Emissions Reduction Incentive Grants*.

1.15. *Intellectual Property* - (1) any and all inventions, discoveries, improvements, or creations for which copyright, trade secret, patent or other proprietary rights may be acquired, (2) any photographs, graphic designs, plans, drawings, specifications, computer programs, computer files, documentation, technical reports, operating manuals, or other materials, and (3) any other work fixed in any tangible medium of expression which can be perceived, reproduced, or otherwise communicated for which copyright, trade secret, patent or other proprietary rights may be acquired.

1.16. *Intellectual Property Rights* - patent, trademarks, trade secret rights, confidential information rights or any other proprietary rights to which a person may be entitled or may actually possess. Intellectual Property Rights include all rights of ownership and original authorship throughout the world.

1.17. *Intracoastal Waterway* - The intracoastal waterway of Texas, as designated by official maps and charts published by the State of Texas.

1.18. *Minor Change* - a written document which provides for minor changes in the work in accordance with these General Conditions, but which does not involve a change in the Contract Amount or the Contract Period.

1.19. *NO<sub>x</sub>* - Oxides of nitrogen (NO<sub>x</sub>) are a class of pollutants formed when fuel is burned at a very high temperature (above 1200 °F), such as in automobiles and power plants. For air pollution purposes, it is composed primarily of nitric oxide (NO), nitrogen dioxide (NO<sub>2</sub>) and other oxides of nitrogen, and it plays a major role in the formation of ground-level ozone in the atmosphere through a complex series of reactions with volatile organic compounds (VOCs).

1.20. *Notice to Proceed* - A written notice given by the TCEQ to the PERFORMING PARTY that confirms that adequate funding is available to support the Agreement.

1.21. *Optimum Performance* - The level of performance at which Grant Equipment functions in order to achieve the anticipated emissions reductions.

1.22. *Project Life* - the period established by the TCEQ, based on the longest-running Activity Life of the Grant Activities under this Agreement, and used to determine the combined emissions reductions and cost-effectiveness for all of the activities funded under this Agreement. However, for Demonstration of New Technology Projects, the Project Life is the Contract Period.

1.23. *Project Representative* - the Project Representative of the TCEQ and the PERFORMING PARTY, as designated in writing elsewhere in the Agreement. All communications, original contracts and related documents, and written correspondence to the PERFORMING PARTY will be addressed and delivered to the PERFORMING PARTY Project Representative or his or her designee.

1.24. *Repower* - replacement of an existing diesel engine with a different engine, according to the criteria of the *Guidelines for the Emissions Reduction Incentive Grants*.

1.25. *State* - means the State of Texas.

1.26. *Termination* - means a permanent end and cessation of the Agreement either because the Contract Period has expired or because all requirements of this Agreement are completed within the sole discretion of the TCEQ or finally because the Agreement is ended by action of the TCEQ for cause or for convenience. The *Date of Termination* is the date of expiration of the Contract Period, or the date of

completion all requirements of this Agreement, or the effective date of action by the TCEQ ending the Agreement for cause or for convenience.

1.27. *TCEQ* - the Texas Commission on Environmental Quality.

1.28. *Written Amendment* - a document signed by the PERFORMING PARTY and the TCEQ which authorizes an addition, deletion or revision in the work, or an adjustment in the Contract Amount or the Contract Period, issued on or after the Effective Date of the Agreement.

## **ARTICLE 2. GOVERNING STANDARDS**

This Agreement is subject to: (1) Chapter 386, Texas Health and Safety Code, (2) the Uniform Grant and Contract Management Act, Texas Government Code, Section 783.001 et seq., and the Uniform Grant and Contract Management Standards for State Agencies, 1 Texas Administrative Code, Section 5.141 et seq., (3) the *Guidelines for the Emissions Reduction Incentive Grants* (RG-388) and (4) Appropriations Act of the 79th Texas Legislature pertaining to appropriation of funds to TCEQ for grants, etc. and grants by state agencies; (5) Texas Government Code Chapter 2261 (pertaining to cost reimbursement contracts); (6) Local Government Code Chapter 391 and implementation rules and of the Governors office of Budget and Planning (pertaining to costs for entities defined as Councils of Government, etc); (7) (Texas Government Code Section 556.0055 (pertaining to lobbying); (8) *TCEQ Allowable Expenditure Guidelines* (pertaining to allowable costs for cost reimbursement contracts and grants); (9) Rules and guidelines of the office of the Governor of Texas (implementing Local Government Code Chapter 391); (10) TCEQ rules and policies (pertaining to TCEQ contracts and grants); and other applicable Federal and State rules and statutes.

## **ARTICLE 3. ELIGIBILITY FOR COST REIMBURSEMENT**

3.1. The TCEQ will reimburse the PERFORMING PARTY for those costs which are eligible for reimbursement in accordance with all requirements. Costs are considered eligible for reimbursement when the TCEQ, in its sole discretion, determines that the costs are the reasonable, necessary, actual, and allowable costs of implementing the Grant Activities approved by the TCEQ in the Approved Application. Costs must be included in the Approved Application to be eligible for reimbursement. Determinations of eligibility for reimbursement are solely within the discretion of the TCEQ.

### ***Procurement***

3.2. The Performing Party agrees to follow all the requirements of the Uniform Grant Management Standards (UGMS) just as if Performing Party were a covered local government grantee (except that the applicable cost principles are those listed as corresponding to Performing Party's classification in UGMS, Part III State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart C, \_\_\_.22 Allowable Costs, e.g., for-profit organization, private non-profit, etc.). The UGMS document is located on the internet at the following address:

<http://www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS062004.doc>

### ***Reasonable Costs***

3.3. To be reimbursable, a cost must be reasonable. Reasonableness of costs depends upon a variety of considerations and circumstances, including:

- 3.3.1. whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or the contract performance;
- 3.3.2. generally accepted sound business practices, arm's length bargaining, and Federal and State laws and regulations;
- 3.3.3. the contractor's responsibilities to the TCEQ, other customers, the owners of the business, employees, and the public at large; and
- 3.3.4. any significant deviations from the contractor's established practices.

3.4. As evidence that costs are reasonable, the PERFORMING PARTY may submit, if requested, three separate written bids or quotes from uninterested parties.

### ***Necessary Costs***

3.5. Necessary costs include costs which are directly attributable to the implementation of the Grant Activities and must be included in the Approved Application.

3.6. Unless expressly authorized by the TCEQ, necessary costs do not include:

- 3.6.1. the cost of money;
- 3.6.2. the interest charges on a purchase money loan, or on a deferred payment purchase agreement; or
- 3.6.3. the cost of converting from a lease to a purchase at the end of the lease period.

### ***Actual Costs***

3.7. The criteria for actual costs include:

- 3.7.1. the direct incremental costs of implementing the Grant Activities; or
- 3.7.2. the true price charged by a vendor/contractor to the PERFORMING PARTY for implementing the Grant Activities.

3.8. Unless expressly authorized by the TCEQ, actual costs do not include:

- 3.8.1. amounts deducted from the true price of the purchase or lease acquisition of Grant Equipment whether as discounts, rebates, refunds or otherwise;
- 3.8.2. amounts which the PERFORMING PARTY owes or agrees to pay the vendor or contractor for any purpose other than the implementation of Grant Activities;
- 3.8.3. amounts in the charges which the vendor/contractor intends to return to PERFORMING PARTY in the form of cash, goods, services, gifts, intangibles, discounts or any other items of value;
- 3.8.4. baseline Costs as defined in the Contract Documents and the *Guidelines for Emissions Reduction Incentive Grants*, and identified in the Approved Application; or
- 3.8.5. amounts which are reimbursed by other public sources or for which tax credits or other public financial incentives are received by the PERFORMING PARTY.

3.9. The PERFORMING PARTY'S documentation of expenses is required under Article 7 of these General Conditions.

***Allowable Costs***

3.10. In order to be allowable, costs must be included in the Approved Application, and must satisfy the requirements of: this Agreement, the UGMS, the TCEQ *Allowable Expenditure Guidelines*, state agency rules, and all applicable state and federal laws.

3.11. If travel costs are authorized in the Approved Application, reimbursement of travel costs may not exceed the amounts explained in this section.

3.11.1. Reimbursement for lodging and meals within the State of Texas is to be based on actual expenses but may not exceed the reimbursements allowed for state employees under the State of Texas Travel Allowance Guide.

3.11.2. Reimbursement for lodging and meals when traveling outside of the State of Texas is to be based on actual expenses but may not exceed the maximum established in the federal General Services Administration travel regulations.

3.11.3. Mileage reimbursement rates are also established in the State of Texas Travel Allowance Guide.

3.12. If indirect costs are authorized in the Approved Application, the PERFORMING PARTY shall comply with the UGMS requirements pertaining to Indirect Cost Rates.

***Consulting (Application Assistance) Fees***

3.13. Any fees charged by a consultant for preparation of a grant application, either directly or as an addition to the cost basis of the grant-funded vehicle, equipment, or engine, are the sole responsibility of the PERFORMING PARTY or the vendor and are not an allowable cost under this Agreement. All purchase decisions must be based on sound business practices and arm's length bargaining. It is generally considered acceptable for an applicant to accept assistance from a vendor or an agent of a vendor in preparing an application, as long as any decision by the applicant to purchase the grant-funded vehicle or equipment from that vendor is made independently and meets the other reasonableness provisions in the grant contract. However, if the consultant is paid directly by the applicant to complete the application documents and to act as the PERFORMING PARTY's agent for the grant process, purchases of grant-funded vehicles or equipment from an entity in which the consultant has an interest will not normally be considered appropriate by the TCEQ under the reasonableness requirements of the grant contract.

***Preapproval of Costs***

3.14. The TCEQ may request additional details regarding costs listed in the Approved Application and may require that the PERFORMING PARTY obtain preapproval of specific costs from the TCEQ prior to incurring those costs.

3.15. Prior to executing a subcontract to be funded under this Agreement, and if requested by the TCEQ, the PERFORMING PARTY must submit the subcontract scope of work to the TCEQ for review and must receive approval from the TCEQ before proceeding with the contract.

***Additional Evidence***

3.16. The TCEQ may at any time before or after reimbursement, as necessary in its sole discretion, request additional evidence concerning costs.

***Additional Criteria for Reimbursement***

3.17. The TCEQ may at any time, in its sole discretion, in the best interests of the state establish additional criteria and requirements for reimbursement of costs.

***Costs in Approved Application are Maximum Amounts, Not a Guarantee***

3.18. Amounts of costs stated in the Approved Application are maximum amounts of reimbursement. By stating the amounts, TCEQ does not 1) guarantee payment of those amounts or 2) waive the requirements for reimbursement which must subsequently and continually be satisfied by the PERFORMING PARTY. The amount of costs for which reimbursement may be requested is the lesser of 1) the costs stated in the Approved Application or 2) the actual eligible costs.

***No Entitlement to Funds***

3.19. The PERFORMING PARTY has a continuing obligation to satisfy the requirements for reimbursement. Neither a request for reimbursement nor TCEQ's payment of reimbursement nor any other action will establish an entitlement in the PERFORMING PARTY to payment from the TCEQ.

3.20. By paying a request for reimbursement, the TCEQ does not waive any requirements for the reimbursement of costs. The TCEQ may at any time before or after reimbursement, in its sole discretion, request additional evidence concerning costs. The TCEQ may audit the records of the PERFORMING PARTY and may also audit the PERFORMING PARTY'S performance as to the Grant Activities, and the administrative requirements.

***Offsets for debts owed to the State***

3.21. The TCEQ may offset against reimbursement payments, any amounts owed by the PERFORMING PARTY or its principals to the TCEQ or the State of Texas, whether owed under this program or otherwise.

3.22. The PERFORMING PARTY shall notify the TCEQ, in its Request for Reimbursement, of any financial incentive received by the PERFORMING PARTY which was not included in the Approved Application, if that incentive will offset the cost of the proposed project, including tax credits or deductions, other grants, or any other public financial assistance. The TCEQ, in reimbursing the PERFORMING PARTY, may reduce the amount of authorized incremental costs eligible for reimbursement, by the value of any additional financial incentive received by the PERFORMING PARTY, without an Amendment to this Agreement.

***Leases and lease-purchase agreements***

3.23. For any grant activity where the Grant Equipment will be acquired and used under a lease or lease-purchase agreement, the period of the lease agreement must extend for at least the Activity Life or, if the lease terminates before the end of the Activity Life, the lease agreement must include a binding commitment for the PERFORMING PARTY to pay any remaining costs and to take ownership of and title to the Grant Equipment. An option to buy at the end of the lease term, without a binding commitment on the part of the PERFORMING PARTY, shall not be sufficient to satisfy this provision.

***Child Support***

3.24. Under Section 231.006 of the Texas Family Code, a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive a state-funded grant or loan. By executing this Grant Agreement, the PERFORMING PARTY certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**ARTICLE 4. PERFORMING PARTY'S RESPONSIBILITIES TO THE TCEQ - GRANT ACTIVITIES**

4.1. All Grant Activities for which reimbursement is requested must be completed as set forth in the Approved Application, including any supplemental conditions attached thereto.

***Annual Usage for Activity Life***

4.2. With the exception of Demonstration of New Technology Projects, and as a condition of receiving reimbursement grant funds, the PERFORMING PARTY agrees to fully implement the Grant Activities and utilize the Grant Equipment during the entire Activity Life according to the standards set forth in this Agreement and as required under the Guidelines.

***Professional Quality***

4.3. The PERFORMING PARTY shall be responsible for the professional quality, technical accuracy, timely completion and the coordination of all Grant Activities under this Agreement.

***Supervision and Superintendence:***

4.4. The PERFORMING PARTY is responsible for the supervision, inspection and direction of the Grant Activities in a competent and efficient manner, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Grant Activities in accordance with the Contract Documents. The PERFORMING PARTY shall be solely responsible for the means, methods, techniques, sequences and procedures of the Grant Activities. The PERFORMING PARTY shall be responsible to see that the completed implementation of the Grant Activities complies accurately with the Contract Documents.

### *Materials & Equipment*

4.5. Unless otherwise specified in the Contract Documents, the PERFORMING PARTY will assume full responsibility for all materials, equipment, labor, transportation, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the implementation and completion of the Grant Activities.

4.6. Unless otherwise expressly agreed by the TCEQ, all Grant Equipment will be of good quality and as provided in the Contract Documents. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned, and maintained in accordance with instructions of the applicable manufacturer and supplier, except as otherwise provided in the Contract Documents.

4.7. The PERFORMING PARTY agrees to maintain the Grant Equipment as necessary to keep the Grant Equipment in good condition and functioning at optimum performance during the Activity Life.

4.8. Unless otherwise expressly agreed by the TCEQ, the PERFORMING PARTY must obtain and maintain a policy of insurance for the Activity Life which is sufficient to provide for replacement of Grant Equipment which is lost, stolen, or irreparably damaged. Governmental entities may use an established self-insurance program to satisfy this requirement. For Demonstration of New Technology Projects, this insurance must be maintained for the Contract Period. If requested by the TCEQ, the PERFORMING PARTY shall provide proof of insurance coverage. The TCEQ may approve alternative forms of insurance to comply with this requirement, including evidence of self-insurance. The TCEQ may also waive this requirement, at its sole discretion, for certain types of entities. Previously submitted certificates of insurance coverage may be amended to reflect newly extended coverage. A failure to comply with this requirement is considered a material breach of the Agreement. By stating at any place in this Agreement that any particular non-compliance is a material breach, TCEQ does not limit the acts or omissions which may constitute a material breach.

4.9. Upon the occurrence of a repairable malfunction of or damage to Grant Equipment which affects emissions reductions during the Activity Life, the PERFORMING PARTY will cause the Grant Equipment to be repaired and restored to the level of optimum performance.

4.10. Upon the occurrence of loss, theft, or irreparable damage of Grant Equipment during the Activity Life, the PERFORMING PARTY will cause the lost, stolen, or damaged Grant Equipment to be replaced with similar equipment which achieves the same optimum performance or better. The PERFORMING PARTY will cause the replacement Grant Equipment to be in operation no later than 60 consecutive days from the occurrence of loss, theft or damage, unless the TCEQ expressly agrees to a longer period. Replacement Grant Equipment is subject to all the requirements of the applicable to Grant Equipment contained in this Agreement.

## **ARTICLE 5. PERFORMING PARTY'S RESPONSIBILITIES - ADMINISTRATIVE REQUIREMENTS**

### *Access to Records, Grant Equipment, and Vehicles, Equipment, and Engines Being Replaced*

5.1 State Auditor's Office. The PERFORMING PARTY understands that acceptance of funds under this Agreement acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit on investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor with access to any information the State auditor considers relevant to the investigation or audit. The PERFORMING PARTY further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. The PERFORMING PARTY will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the PERFORMING PARTY and the requirement to cooperate is included in any subcontract it awards under this Agreement. The PERFORMING PARTY will include in all subcontracts for work under this Agreement a requirement that subcontractors will provide access to all relevant financial records including bank statements.

5.2. The PERFORMING PARTY shall allow access to all Grant Equipment, including equipment, vehicles, engines, retrofit systems, infrastructure, and other items to be reimbursed under this Agreement, by the TCEQ, the State of Texas, the State Auditor's Office, and any of their authorized representatives for the purpose of review, on-site inspection, and/or audit. In addition, the PERFORMING PARTY shall allow access to all vehicles, equipment, and engines being replaced under this Agreement.

### *Maintenance of Records*

5.3. The PERFORMING PARTY shall maintain books, records, documents, and other evidence reasonably pertinent to performance of the Grant Activities and requirements of the Agreement, including the Agreement or amendments thereto. All financial records will be maintained in accordance with generally accepted accounting principles, the UGMS, and this Agreement. The PERFORMING PARTY shall also maintain the financial information and data used in the preparation or support of any request for reimbursement (direct and indirect), price or profit analysis for this Agreement, and a copy of any cost information or analysis submitted to the TCEQ. The PERFORMING PARTY shall allow access to all the material including bank statements and records by the TCEQ, the State of Texas, the State Auditor's Office, and any of their authorized representatives for the purpose of review, inspection, audit, excerpts, transcriptions, and/or copying during normal business hours. The PERFORMING PARTY shall provide appropriate facilities and equipment for such access and inspection.

5.4. The PERFORMING PARTY agrees to the disclosure of all information and reports resulting from access to records under this Agreement.

5.5. Records under this Article shall be maintained by the PERFORMING PARTY during performance of Grant Activity under this Agreement, for the Project Life as set forth in this Agreement, and for three (3) years after the ending date of the Project Life. If any litigation, claim, negotiation, audit, cost recovery, or other action (including actions concerning costs of items to which an audit exception has been taken) involving such records has been started before the expiration of the three year period, such

records must be retained until completion of the action or resolution of all issues which arise from it, or until the end of the regular three year period, whichever is later.

5.6. Subject to the obligations and conditions set forth in this Agreement, title to real property and equipment (together hereafter referred to in this Article as "property") acquired under this Agreement by the PERFORMING PARTY will vest upon acquisition in the PERFORMING PARTY.

5.7. The PERFORMING PARTY may develop and use its own property management system, which must comply with all applicable federal, state, and local laws, rules, and regulations. If an adequate system for accounting for property owned by the PERFORMING PARTY is not in place or is not used properly, the Property Accounting System Manual issued by the State Comptroller of Public Accounts will be used as a guide for establishing such a system. The property management system used by the PERFORMING PARTY must meet the requirements set forth in this section.

5.7.1. Property records of Grant Equipment must be maintained that include a description of the property, a serial number or other identification number, the source of property, usage and mileage (separated by location of usage and mileage), who holds title, the acquisition date, and the cost of the property, percentage of TCEQ participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

5.7.2. The PERFORMING PARTY will conduct a physical inventory of all Grant Equipment no less frequently than once every two years during the Activity Life and the results of such inventories reconciled with the appropriate property records. Property control procedures utilized by the PERFORMING PARTY must include adequate safeguards to prevent loss, damage, or theft of the Grant Equipment.

#### ***Accounting Systems***

5.8. The PERFORMING PARTY shall have an accounting system which accounts for costs in accordance with generally accepted accounting standards or principles and complies in all material respects with applicable State law, regulations, and policies relating to accounting standards or principles. The PERFORMING PARTY must account for costs in a manner consistent with such standards or principles. This system shall provide for the identification, accumulation, and segregation of allowable and unallowable project costs among projects.

#### ***PERFORMING PARTY'S Representative***

5.9. The PERFORMING PARTY will identify in writing a Project Representative as the person authorized to receive and respond to inquiries and requests from the TCEQ, to manage the Grant Activities being performed, and to act on behalf of the PERFORMING PARTY.

5.10. The PERFORMING PARTY agrees to make arrangements necessary to ensure that its authorized Project Representative, or someone to whom that person has delegated his or her authority, is available at all times for consultation with the TCEQ. Written notice of any such delegation will be provided to the TCEQ.

***Personnel***

5.11. PERFORMING PARTY shall provide competent, suitably qualified personnel, whether employees or contractors to implement the Grant Activities as required by the Contract Documents. PERFORMING PARTY must at all times maintain good discipline and order on the location of Grant Activities.

***Intellectual Property Requirements***

5.12. *{This Section is not applicable to this project. The Section number is retained for numbering continuity.}*

***Permits***

5.13. Unless otherwise provided in the Contract Documents, the PERFORMING PARTY shall obtain and pay for all transportation, construction, and operating permits and licenses required for this performance of this Agreement. Failure to comply with a permit or administrative order issued by the TCEQ or other state agency may result in a determination, within the sole discretion of the TCEQ, that the best interests of the state are served by withholding reimbursement or by the application of other remedies under this Agreement

***Laws and Regulations***

5.14. The PERFORMING PARTY shall give all notices and comply in all material respects with all Laws and Regulations applicable to furnishing and performance of the Grant Activities. Except where otherwise expressly required by applicable Laws and Regulations, TCEQ shall not be responsible for monitoring PERFORMING PARTY's compliance with any Laws or Regulations.

***Data and Publicity***

5.15. All data and other information developed under this Agreement shall be furnished, upon request, to the TCEQ and shall be public data and information except to the extent that it is exempted from public access by the Texas Public Information Act, Texas Government Code, Chapter 552. Upon termination of this Agreement, if requested by the TCEQ, all copies of data and information developed under this Agreement shall be furnished, at no charge to the TCEQ, to include databases for which the costs of preparation are reimbursed under this Agreement, and become the property of the TCEQ.

5.16. The PERFORMING PARTY agrees to notify TCEQ prior to releasing any information to the news media regarding the Grant Activities.

***Safety and Protection***

5.17. Where applicable, the PERFORMING PARTY shall be responsible for requiring employees, contractors, and subcontractors to maintain and supervise all necessary safety precautions and programs in connection with the Grant Activities. The PERFORMING PARTY shall take all necessary safety precautions.

5.18. In performing the Grant Activities hereunder, the PERFORMING PARTY undertakes performance for its own benefit and not as agent for the TCEQ.

*Lobbying Activities*

5.19. As set forth in these Contract Documents, and in accordance with the UGMS and State law, the PERFORMING PARTY shall not use funds provided under this Agreement to support lobbying or political activity either directly or indirectly.

5.20. The PERFORMING PARTY will acknowledge the financial support of the TCEQ whenever a Grant Activity reimbursed, in whole or part, is publicized or reported in news media or publications.

**ARTICLE 6. TCEQ'S RESPONSIBILITIES**

6.1. The Executive Director of the TCEQ will identify a person authorized to give direction to the PERFORMING PARTY and act on behalf of the TCEQ.

6.2. The TCEQ will not supervise, direct or have control or authority over, nor be responsible for, PERFORMING PARTY's means, methods, techniques, sequences or procedures relating to the implementation project or the Safety precautions and programs incident thereto, or for any failure of PERFORMING PARTY to comply with Laws and Regulations applicable to the furnishing or performance of the work. TCEQ will not be responsible for PERFORMING PARTY's failure to perform or furnish the work in accordance with the Agreement.

6.3. Unless authorized in writing by the TCEQ in accordance with this Agreement, no waiver of any obligation of the PERFORMING PARTY shall bind the TCEQ. Any such authorized waiver shall not constitute a continuing waiver of the obligation.

**ARTICLE 7. REQUEST FOR REIMBURSEMENT**

7.1. Eligible expenses must have been incurred by the PERFORMING PARTY prior to the termination date of this Agreement. In order to receive reimbursement for eligible expenses, the PERFORMING PARTY shall submit no more frequently than monthly, a completed TCEQ Request for Reimbursement form, to be made available to the PERFORMING PARTY by the TCEQ. The request and forms shall be mailed or delivered to:

Texas Commission on Environmental Quality  
TERP Emissions Reduction Incentive Grants  
Air Quality Division, MC-204  
Implementation Grants Section  
PO Box 13087  
Austin, TX 78711-3087

7.2. The Request for Reimbursement Form shall include all required supplemental forms and shall list, for each activity, the total expenses obligated under a lease or financing agreement, the total activity expenses incurred to date, the baseline cost, and the incremental costs incurred to date. The report shall also list and explain any additional financial incentive received by the PERFORMING PARTY that

directly offsets the activity costs reported by the PERFORMING PARTY, including tax credits or deductions, other grants, or any other public financial assistance.

7.3. Except as provided for under Section 7.5. below, to be eligible for reimbursement under this Agreement, a cost must have been incurred and paid by the PERFORMING PARTY prior to claiming reimbursement from TCEQ. A cost may not be considered incurred until the Grant Equipment and/or goods and services included under the cost have been received and accepted by the PERFORMING PARTY. The cost must have been paid by the PERFORMING PARTY prior to claiming reimbursement.

***Replacement Projects Costs***

7.4. For replacement projects, the TCEQ will reimburse the PERFORMING PARTY for no more than eighty (80) percent of the eligible incremental costs for the purchase of the replacement vehicle or equipment under this Agreement.

7.5. Subject to approval by the TCEQ, the PERFORMING PARTY may assign the payments due from the TCEQ directly to the supplier, subcontractor, financing or leasing company, or other entity from which the goods or services were procured, leased, or financed by the PERFORMING PARTY. A properly completed Texas Application for Payee Identification Number and Notice of Assignment must be completed and submitted with, or prior to submission of, the Request for Reimbursement form. Under this option, the Grant Equipment and/or goods and services included under a cost must have been received and accepted by the PERFORMING PARTY, and the PERFORMING PARTY must have an obligation to pay the expense. Sufficient supporting documentation must be submitted, as outlined in the form instructions, to document that the goods or services were received and that the payment amount is owed to the entity designated to receive the payment from the state.

7.6. For new purchase or lease category activities where a baseline cost applies, and unless otherwise approved by TCEQ, the costs incurred or otherwise obligated under a lease or financing agreement must exceed the value of the baseline costs before the TCEQ will reimburse eligible incremental costs. In addition, if financial incentives are received by the PERFORMING PARTY that directly offset the activity costs being reported, including tax credits or deductions, other grants, or any other public financial assistance, reimbursement of eligible incremental costs will be made only after the costs incurred or obligated under a lease or financing agreement exceed both the value of any baseline costs that apply and the value of the financial assistance received.

7.7. A final Request for Reimbursement form, indicating in the appropriate box that it is the final request, shall be submitted to the TCEQ by no later than forty-five (45) days after the termination date of this Agreement. The TCEQ, in its sole discretion, may accept and pay a reimbursement request submitted after this deadline.

7.8. All Request for Reimbursement forms shall contain sufficient identification of and information concerning the costs incurred or obligated under a lease or financing agreement and paid so as to enable the TCEQ to ascertain the eligibility of a particular cost and to enable subsequent audit thereof. Supporting documentation materials, as directed by the TCEQ in the instructions accompanying the

forms, shall be attached to the report forms to clearly show that the cost was incurred and, except where the payment is assigned to another entity, paid.

***Purchase/Payment Documents***

7.9. In accordance with the terms of the Contract, for any purchase, lease, lease-purchase, and deferred payment purchase, the PERFORMING PARTY must submit any supporting documentation required or requested by TCEQ. In order to receive payment for each Request for Reimbursement, the PERFORMING PARTY is specifically required to submit the following supporting documents:

7.9.1. canceled checks or wire transfers;

7.9.2. written purchase and lease agreements;

7.9.3. Bills of Sale or Receipts for Delivery;

7.9.4. for deferred payment purchases and lease agreements, statements of account status showing the account in good standing and the equipment is in possession of the PERFORMING PARTY;

7.9.5. Uniform Commercial Code (UCC) Financing Statement (Form UCC1) filing, if applicable. (The UCC allows a creditor to notify other creditors about a debtor's assets used as collateral for a secured transaction by filing a public notice (financing statement) with a particular filing office.); and

7.9.6. other documentation requested by TCEQ in order to support the assertions in the request for reimbursement.

7.10. The TCEQ may waive the requirement for submission of any supporting documents that are not applicable to the PERFORMING PARTY.

7.11. If the requests for reimbursement do not satisfactorily demonstrate the accomplishment of the required tasks, or that costs are allowable, eligible, actual, and incurred costs, the TCEQ may reject the request, until such time as the deficiencies have been corrected. Satisfactory accomplishment of a task is within the judgment of the TCEQ; however, such judgment must be reasonable.

7.12. The TCEQ is not obligated to make payment until the request for reimbursement is approved by the TCEQ. Further, the TCEQ reserves the right to suspend or withhold all or part of a payment or all payments as authorized by the Contract Documents.

## **ARTICLE 8. PROJECT STATUS AND COMPLETION**

If requested by the TCEQ, the PERFORMING PARTY shall provide information on the status and completion of grant activities. The PERFORMING PARTY shall provide such information on the form or in a format requested by the TCEQ, and within a reasonable time frame as may be requested by the TCEQ.

## **ARTICLE 9. GRANT EQUIPMENT**

9.1. The Grant Equipment, including equipment, vehicles, engines, retrofit systems, infrastructure, and other items to be reimbursed under this Agreement, are listed in the Approved Application. For on-road vehicle replacement or repower projects only, the PERFORMING PARTY may substitute a different replacement vehicle and/or engine for the unit listed in the Approved Application, as long as the substitute unit meets all eligibility and other requirements, is of the same weight category, has the same or better certified NO<sub>x</sub> emissions rate, and will result in the same or better NO<sub>x</sub> emissions reductions as the unit listed. For other project types and categories, the PERFORMING PARTY may not substitute different Grant Equipment for the units listed in the Approved Application without approval from the TCEQ. This provision includes conformance with the NO<sub>x</sub> emissions of the engines as listed in the Approved Application. The PERFORMING PARTY understands that, in some cases, engines of the same make, model, and model year may be certified to different NO<sub>x</sub> emissions standards, and that the TCEQ's approval of the application does not constitute final verification that an engine meets the required certified NO<sub>x</sub> emissions rate.

9.2. The TCEQ may accept and approve an application for funding that does not include all of the information asked for in the application forms, including identifying information for equipment, vehicles, or engines. The TCEQ may withhold issuance of a Notice to Proceed, pending the PERFORMING PARTY providing additional information needed to make the Approved Application complete. Additional identifying information provided by the PERFORMING PARTY and accepted by the TCEQ will apply to the PERFORMING PARTY's compliance with the provisions of Section 9.1. of this Article.

### ***New Purchase or Lease Category***

9.3. The engine installed on Grant Equipment purchased or leased under the New Purchase or Lease category must be certified to a NO<sub>x</sub> emissions level that is at least 25 percent below the federal emissions standard for that category of engine, at the time that the Grant Equipment is purchased or leased and delivered to the PERFORMING PARTY. The PERFORMING PARTY understands that the federal emissions standards change on specific dates and that delivery of the Grant Equipment after the date of the change may result in the engine not meeting this requirement and being ineligible for reimbursement from the TCEQ.

### ***Trade-In of Equipment or Engines***

9.4. Unless approved in writing by the TCEQ prior to the PERFORMING PARTY requesting reimbursement, the trade-in of equipment, vehicles, or engines to satisfy part of the PERFORMING PARTY's financial obligation for the purchase of the new equipment may not be considered a payment

under the General Conditions, Article 7.3, of this Agreement, for purposes of receiving reimbursement of qualifying expenses.

#### *Activity Life*

9.5. The PERFORMING PARTY agrees to keep and use the Grant Equipment purchased or leased under this Agreement for the Activity Life as set forth in the Approved Application, regardless of the financing or leasing arrangements used for the purchase or lease of the Grant Equipment, and subject to the more specific provisions contained in the General Conditions, Article 15, of this Agreement.

### **ARTICLE 10. USE OF VEHICLES, EQUIPMENT, AND ENGINES BEING REPLACED**

10.1. Unless otherwise accepted by the TCEQ in accordance with Section 10.2. of this Article, the PERFORMING PARTY agrees to dispose of the vehicles, equipment, and engines being replaced by destroying or otherwise rendering them permanently inoperable by drilling a hole through the engine block and cutting the frame rails or other structural components of the vehicle or equipment.

10.1.1. Destruction of the engine may include sending the engine to a remanufacture facility operated or authorized by the original engine manufacturer. The remanufacture of the engine must include removing all parts and using the old block to build a remanufactured engine with a new serial number.

10.1.2. Unless otherwise approved and accepted by the TCEQ, the vehicle or piece of equipment being replaced under a replacement activity must be in operating condition at the time the application is signed and submitted to the TCEQ by the PERFORMING PARTY.

10.2. The TCEQ may, but is not obligated to, approve an alternative to scrapping the vehicle, equipment, or engine being replaced under this Agreement to deal with special circumstances and to best further the goals to the TERP program. The TCEQ is not obligated to offer, consider, or approve such an arrangement.

10.3. The vehicles, equipment, and/or engines being replaced shall be destroyed within 90 days of the reimbursement payment being issued by the TCEQ for the replacement expenses. The TCEQ may grant an extension to this deadline without a change to this Agreement.

10.4. The PERFORMING PARTY shall submit on forms to be made available by the TCEQ information to verify the final disposition of the vehicles, equipment, and engines replaced under this Agreement. The final disposition information forms shall be submitted with the request for reimbursement or within 30 days after completion of the disposition, whichever occurs later. Unless otherwise agreed to by the TCEQ, the PERFORMING PARTY must submit photographs of the vehicles, equipment and/or engines being destroyed, both before and after the vehicles, equipment and/or engines are destroyed or rendered inoperable.

10.5. Failure of the PERFORMING PARTY to comply with the provisions of Sections 10.1, 10.2, 10.3, or 10.4 of this Article will constitute a material failure to conform to the requirements of this Agreement. The remedies available under Article 19, General Conditions of this Agreement, may be invoked by the TCEQ for noncompliance with the provisions of this Article.

***Credit For Replaced Vehicles Or Equipment***

10.6. In determining the expenses eligible for reimbursement under this Agreement, the cost of replacement or repower activities shall be reduced by the value of any credit or other financial compensation received by the PERFORMING PARTY for the sale or trade-in of the destroyed vehicles, equipment, or engines being replaced, including the parts from those vehicles, equipment, or engines. for the sale of the scrapped vehicles, equipment, engines being replaced, or trade-in of engines for remanufacture.

10.7. The scrappage value or other value received for the old vehicle, equipment, or engine is considered a cost of performing the Grant Activities and as such must satisfy the cost guidelines of Article 3 of the General Conditions of this Agreement. The value received for the vehicle or equipment being replaced must be the result of arms-length bargaining with the entity disposing of the replaced vehicle or equipment.

10.7.1. For on-road vehicle and non-road equipment replacement activities, the TCEQ may use a default scrappage value of \$1,000 in lieu of the actual value and in lieu of the PERFORMING PARTY reporting the value to the TCEQ.

10.8. Unless a default value is used by the TCEQ under Section 10.7.1. of this Article, the PERFORMING PARTY must list on the financial reporting forms any financial remuneration or other items or services of value received in exchange for the replaced vehicle or equipment including, but not limited to, cash, goods, services (including the services provided by a consultant to assist in preparing and/or submitting a grant application), gifts, intangibles, discounts, or any other items of value.

***Purchase Agreements And Subcontracts***

10.9. If requested by the TCEQ, the PERFORMING PARTY must provide the TCEQ with copies of purchase agreements or subcontracts for cost items to be reimbursed under this Agreement, prior to the PERFORMING PARTY entering into a final purchase agreement and/or subcontract.

**ARTICLE 11. INSTALLATION AND USE OF IDENTIFYING MARK OR TRACKING DEVICE**

11.1. If this Agreement (or a prior Agreement of which this Agreement is a continuation) requires that equipment purchased with TERP grant funds be used in a particular geographic area for a period of time, then, upon request by TCEQ, PERFORMING PARTY shall install, or permit TCEQ or its contractor to install, a prominently placed identifying mark on the equipment, identifying it as TERP-funded equipment and containing such other information as TCEQ shall specify, and/or a device for tracking the location of that equipment during that period of time.

11.2. TCEQ shall remove the mark or device within a reasonable time upon the expiration of the required use period.

11.3. Prior to installing or requiring the installation of a tracking device, TCEQ shall notify PERFORMING PARTY and shall specify the nature of the device and the information which will be recorded and maintained by TCEQ using the device.

11.4. PERFORMING PARTY may inspect the information recorded and maintained by the tracking device, upon request with reasonable notice to TCEQ.

11.5. TCEQ recognizes that PERFORMING PARTY may consider the information recorded and maintained by the tracking device to contain confidential trade secret information. Therefore, TCEQ shall not release any of the information collected by the tracking device to any party outside TCEQ, except as required under the Public Information Act or other applicable law. TCEQ shall inform PERFORMING PARTY of any Public Information Act request for the information and refer the request to the Office of the Attorney General for a ruling on whether the information contains protected trade secret information. TCEQ is not responsible for making arguments regarding trade secret status to the Attorney General, but PERFORMING PARTY may do so.

11.6. If PERFORMING PARTY does not install the device within a reasonable time of the TCEQ request or refuses to permit access to its equipment for the installation of the device, PERFORMING PARTY shall promptly return all TERP grant funds used to purchase the equipment.

## **ARTICLE 12. TERMINATION**

12.1. For purposes of availability of funding and completion of TCEQ's obligations to reimburse the PERFORMING PARTY for authorized expenses, this Agreement shall terminate upon the expiration of the contract period or upon payment of reimbursement for completion of all grant activities, whichever is earlier, unless otherwise terminated by an act performed in accordance with the Contract Documents.

12.2. This Agreement may be terminated in whole or in part by the TCEQ for cause by the PERFORMING PARTY, which may include without limitation a material failure to comply with the requirements of the Contract Documents. Unless advance notice of intent to terminate will place funds of the state at increased risk, the TCEQ will provide a minimum of ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate and a reasonable opportunity for the PERFORMING PARTY to correct such non-compliance prior to termination.

12.3. This Agreement may be terminated in whole or part by the TCEQ if any delay or failure of performance of the Grant Activities by either PERFORMING PARTY or the TCEQ is caused by a *force majeure* event, as determined by the TCEQ in its sole discretion.

12.4. This Agreement may be terminated in whole or in part by the TCEQ for its convenience. Circumstances in which this may occur include without limitation the Texas Legislature's withdrawal of the appropriation for this project or the depletion of the Texas Emissions Reduction Plan Fund, which

results in the unavailability of funds to complete this project. To the extent feasible, in the sole discretion of the TCEQ, the TCEQ will provide a minimum of ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate.

12.5. If after termination for the PERFORMING PARTY'S material failure to comply with the requirements of the Contract Documents, it is determined that the PERFORMING PARTY had not so failed, the termination shall be deemed to have been effected for the convenience of the TCEQ.

12.6. The PERFORMING PARTY acknowledges that certain requirements of this Agreement shall survive an event of termination. The PERFORMING PARTY agrees and obligates to performance of grant activities in accordance with the Contract Documents beyond the termination of this Agreement and through the end of the Activity Life of each Activity included in the Approved Application for which reimbursement has been requested. TCEQ reserves the right to assert any remedies available by law and under this contract for PERFORMING PARTY's performance of the grant activities for the length of the Activity Life of all grant activities.

12.7. In accordance with this Agreement, the PERFORMING PARTY does not have an expectation or entitlement of continued receipt of financial assistance under this Agreement. Therefore, PERFORMING PARTY waives any claim for damages arising from or resulting from TCEQ's termination of this Agreement for any reason.

12.8. If, during the Contract Period, the PERFORMING PARTY chooses to not complete the Grant Activities and withdraw from the obligations under this Agreement, the PERFORMING PARTY may terminate this Agreement by providing ten (10) days written notice to the TCEQ and returning any reimbursements already received.

### **ARTICLE 13. LONG-TERM MONITORING AND REPORTING**

13.1. As a condition of receiving grant funds, the PERFORMING PARTY agrees to monitor the use of Grant Equipment, including the use of Qualifying Fuel, for the Activity Life. However, this requirement does not apply to a Demonstration of New Technology Project, where the obligation to report ends with the termination of the Agreement.

13.2. As a condition of receiving grant funds, the PERFORMING PARTY agrees to submit properly completed Monitoring Reports to the TCEQ, on forms provided by TCEQ, for the Project Life. The Monitoring Reports shall have attached properly completed individual reports on the use of Grant Equipment, including Qualifying Fuel, for each activity, for the life of that activity (Activity Life). The PERFORMING PARTY will submit the required reports on the date specified by the TCEQ in the reporting instructions.

## **ARTICLE 14. INDEMNIFICATION**

To the extent permitted by law, the PERFORMING PARTY agrees to indemnify and hold harmless the State of Texas and the TCEQ, including its employees and officers, against and from any and all liability, loss, or damage arising out of actions of the PERFORMING PARTY in the performance of this Agreement.

## **ARTICLE 15. ACHIEVING EMISSIONS REDUCTIONS**

15.1. The provisions of Section 386.055, Texas Health and Safety Code, apply to the emissions reductions generated over the Activity Life of each activity funded under this Agreement. The PERFORMING PARTY agrees that the emissions reductions generated by each activity over the Activity Life are transferred to the state implementation plan, or to the PERFORMING PARTY as provided under Section 386.056, Texas Health and Safety Code, and those reductions are permanently retired.

15.2. The PERFORMING PARTY agrees that if, during the Activity Life, the annual and total NO<sub>x</sub> emissions reductions achieved within the Eligible Counties by the Grant Activities do not meet the amounts calculated by the TCEQ and listed in the Approved Application Summary of this Agreement, the TCEQ will be entitled to a return of a pro rata share of the reimbursement funds, based on the failure to achieve expected emissions reductions. Unless an alternative method is approved by the TCEQ, the determination of whether the NO<sub>x</sub> emissions reduction requirements have been met will be based on the total annual usage and the percentage of annual usage of the Grant Equipment (including qualifying fuel) within the eligible counties marked in the Approved Application or, for marine vessels, within the Texas Intracoastal Waterway and bays adjacent to the eligible counties marked in the Approved Application. The decision on whether a return of funds is necessary will be at the sole discretion of the TCEQ.

15.3. The PERFORMING PARTY agrees that failure to adequately monitor the annual usage of Grant Equipment and/or failure to submit properly completed Monitoring Reports during the Project Life may be considered evidence that the expected emissions reductions have not been achieved. In such instances, and after being provided written notice and a reasonable opportunity to provide the required monitoring information, the PERFORMING PARTY agrees that the TCEQ will be entitled to a return of a pro rata share of the reimbursement grant funds, based on the failure to achieve expected emissions reductions within the Eligible Counties. The decision on whether a return of funds is necessary will be at the sole discretion of the TCEQ.

15.4. The PERFORMING PARTY agrees that failure to properly destroy or dispose of a vehicle, piece of equipment, marine vessel, locomotive, or engine replaced under this Agreement, in accordance with the destruction requirements or the provisions of an alternative disposition plan approved by the TCEQ may be considered evidence that the expected emissions reductions have not been achieved. In such instances, and after being provided written notice, the PERFORMING PARTY agrees that the TCEQ will be entitled to a return of a pro rata share of the reimbursement grant funds, based on the failure to achieve expected emissions reductions within the Eligible Counties. The decision on whether a return of funds is necessary will be at the sole discretion of the TCEQ.

15.5. The PERFORMING PARTY agrees to operate the Grant Equipment over the Activity Life no less than 75 percent of the annual usage within the eligible counties marked in the Approved Application and approved by the TCEQ. The TCEQ may authorize changes to the designated eligible counties of use. Annual usage shall be determined according to the usage factor listed in the Approved Application and used to calculate the emissions reductions for the grant including: annual miles of operation for on-road vehicles, except in some cases where annual fuel may be used; annual hours of operation for non-road equipment, stationary equipment, on-vehicle electrification and idle reduction infrastructure, marine vessels and engines; and annual fuel use for locomotives. The usage factor for on-site infrastructure will be the factor normally used for the type of vehicle or equipment using the infrastructure. The PERFORMING PARTY agrees that failure to meet this requirement may be considered evidence that the terms of this Agreement have not been met.

15.6. The PERFORMING PARTY agrees that during the Activity Life, prior to selling, trading, or transferring ownership of Grant Equipment (excluding qualifying fuel) or related property, or transferring operation of Grant Equipment outside of an Eligible County, the PERFORMING PARTY will notify the TCEQ in writing of its intentions.

15.7. The PERFORMING PARTY agrees that if, during the Activity Life, Grant Equipment (excluding qualifying fuel) is sold, traded, transferred to another owner, or transferred to another operational location outside of the eligible counties, the TCEQ will be entitled to a return of a pro rata share of the reimbursement funds provided to the PERFORMING PARTY. The decision on whether a return of funds is necessary will be at the sole discretion of the TCEQ. The decision by TCEQ on whether to require return of a share of the reimbursement funds may include consideration of whether the Grant Equipment will continue to be used within the eligible counties, or in the case of marine equipment, within the Texas Intracoastal Waterway and bays adjacent to the eligible counties. In lieu of a return of a share of the grant funds, one alternative that may be authorized by the TCEQ would be for the PERFORMING PARTY to obtain a binding agreement from a new owner of the Grant Equipment to continue to use the equipment subject to the terms of this Agreement related to use within the eligible counties for the percentage of use and total annual usage originally agreed to by the PERFORMING PARTY and to monitor and report on the annual usage.

15.8. In accordance with the requirements of UGMS, during the term of this Agreement, the PERFORMING PARTY will not dispose of the equipment acquired with grant funds under this Agreement without written consent from the TCEQ.

15.9. The provisions of this Article do not apply to Demonstration of New Technology Projects.

## **ARTICLE 16. DISPOSITION OF EQUIPMENT OR REAL PROPERTY - DEMONSTRATION PROJECTS**

*{This Article is not applicable to this project. The Article number is retained for numbering continuity.}*

## **ARTICLE 17. RELEASE OF CLAIMS**

The final Request for Reimbursement and Financial Status Report shall include a signed and executed Release of Claims, releasing all claims for payment of any funds due and payable by the TCEQ, upon TCEQ's payment of the final Request for Reimbursement.

## **ARTICLE 18. AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS**

The Contract Documents may be amended to provide for additions, deletions, and revisions in the Grant Activities or to modify the General Conditions thereof in one or more of the following ways: a formal Written Amendment or a Minor Change.

## **ARTICLE 19. REMEDIES AVAILABLE TO THE TCEQ**

19.1. In accordance with Chapter 2261 Texas Government Code, the following Schedule of Remedies applies to this contract in the event of the substandard performance of Grant Activities or other material failure to conform to the requirements of the contract or applicable law:

19.1.1. Reject substandard performance and request corrections without charge to the TCEQ;

19.1.2. Issue notice of substandard performance or other non-conforming act or omission;

19.1.3. Request and receive return of any over payments or inappropriate payments;

19.1.4. Reject reimbursement request and suspend payment pending accepted revision of substandard performance or non-conformity;

19.1.5. Suspend all or part of the Work and/or payments pending accepted revision of substandard performance or non-conformity;

19.1.6. Reject reimbursement request and withhold and retain all or partial payments for recovery of administrative costs or to be returned to the TERP fund as authorized by state law; and/or

19.1.7. Terminate the contract, demand and receive: return of all equipment purchased with contract funds, return of all unexpended funds, and repayment of improperly expended funds.

### ***Cumulative Remedies***

19.2. TCEQ may avail itself of any remedy or sanction provided in this contract or in law to recover any losses rising from or caused by the PERFORMING PARTY's substandard performance or any material non-conformity with the contract or the law. The remedies and sanctions available to either party in this contract shall not limit the remedies available to the parties under law.

## ARTICLE 20. STANDARDS FOR PERFORMING PARTY'S PERFORMANCE

20.1. In accordance with Texas Government Code Chapter 2261, the TCEQ is required to monitor the PERFORMING PARTY's performance under this Agreement. The PERFORMING PARTY agrees that the standards set forth below are appropriate standards for the PERFORMING PARTY's performance during the Agreement.

20.1.1. **Quality and Accuracy.** Standard: PERFORMING PARTY'S Grant Activities conform to the requirements of this Agreement.

20.1.2. **Timeliness.** Standard: PERFORMING PARTY'S Grant Activities are completed on schedule.

20.1.3. **Reports and Administrative and Financial Operations.** Standard: PERFORMING PARTY's administrative and financial operations comply with all obligations in law and in this Agreement, including, but not limited to, record-keeping, reimbursement requests, audits, allowable costs, payments to subcontractors, and restricted expenditures.

20.1.4. **Communication.** Standard: PERFORMING PARTY's accessibility, responsiveness, and cooperativeness with respect to any contract-related concerns communicated by the TCEQ; and including the PERFORMING PARTY's demonstrated relationship with subcontractors.

20.1.5. **Other.** Standard: Other factors unique to the type of project, as determined by the TCEQ.

20.2. The TCEQ will monitor the PERFORMING PARTY's performance and evaluate the level of compliance with the standards utilizing the performance measures set forth below.

20.2.1. **Exceeds Expectations.** PERFORMING PARTY fully complied with all the standards on a consistent basis.

20.2.2. **Satisfactory Performance.** PERFORMING PARTY's performance complied with all of the standards, with only typical errors, delays, or other problems that needed to be corrected.

20.2.3. **Marginal Performance.** PERFORMING PARTY's performance was acceptable, although a significant number of deficiencies had to be corrected before the contract requirements could be considered met.

20.2.4. **Unsatisfactory Performance.** PERFORMING PARTY's performance was not acceptable, even after attempts to correct deficiencies.

### ***Contractor Evaluation***

20.3. The TCEQ will prepare a written evaluation of the performance of the PERFORMING PARTY upon completion of all reimbursements under this Agreement and upon the completion of the Project Life, or more frequently, as deemed necessary by the TCEQ. A copy of the evaluation will be provided to the PERFORMING PARTY and a copy retained in the TCEQ's contract files. The content of the evaluation shall be wholly within the sole discretion of the TCEQ. The PERFORMING PARTY may provide a written statement which explains or disagrees with the evaluation, which will be incorporated into the evaluation. The PERFORMING PARTY waives any claim for damages against TCEQ for the evaluation.

20.4 The performance rating on the contractor evaluations may be considered by the TCEQ in evaluating an application from the PERFORMING PARTY for additional funding under this program. The PERFORMING PARTY understands that a rating of marginal or unsatisfactory performance may have a negative impact on decisions regarding funding for additional projects applied for by the PERFORMING PARTY.

## **ARTICLE 21. MISCELLANEOUS**

### ***Computation of Times***

21.1. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a federal holiday, such day will be omitted from the computation.

21.2. A calendar day of twenty-four (24) hours measured from midnight to the next midnight will constitute a day.

### ***Notice of Claim***

21.3. Should the TCEQ or the PERFORMING PARTY suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose or sovereign immunity.

### ***Survival of Obligations***

21.4. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Grant Activities and termination or completion of the Agreement.

21.5. Notwithstanding any provisions relating to assignment in the Uniform Commercial Code, no delegation by a party hereto of any duties or obligations nor assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to an extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. This Agreement is not transferable or otherwise assignable by the PERFORMING PARTY without the written consent of the TCEQ and any attempted transfer without such consent is void.

21.6. Subject to the provisions of Article 12, General Conditions, the TCEQ and the PERFORMING PARTY each binds itself, its successors, assigns and agents to the other party hereto, successors, assigns and representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

21.7. The parties hereby agree that this Agreement does not waive the State's sovereign immunity relating to suit, liability, and the payment of damages. No TCEQ personnel or agents are authorized to waive sovereign immunity by accepting, on behalf of TCEQ, goods or services which are not required under the Contract Documents or any conforming amendment. The parties further agree that all claims, suits or obligations arising under or related to this Agreement are subject to and limited to the availability of funds appropriated by the Texas Legislature for that respective claim, suit, or obligation.

21.8. The PERFORMING PARTY acknowledges and agrees that this Agreement has been executed, and will be administered in Travis County, Texas. The PERFORMING PARTY also acknowledges and agrees that any permissible cause of action involving this Agreement will arise solely in Travis County. If a legal action related to this claim is permissible and there are two (2) or more counties of proper venue under the rules of mandatory, general, or permissive venue, and one such county is Travis County, the PERFORMING PARTY hereby agrees to venue in Travis County. This provision does not waive the TCEQ's sovereign immunity.

21.9. Any provision of the Contract Documents held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon TCEQ and PERFORMING PARTY, who agree that Contract Documents are reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### ***Bankruptcy***

21.10 If the PERFORMING PARTY files for bankruptcy, the PERFORMING PARTY shall immediately notify TCEQ in writing according to the Notice provisions AND send notification by certified mail directly to TCEQ Bankruptcy Program. The PERFORMING PARTY'S notice to the bankruptcy program must include the appropriate contract number(s).

— End of General Conditions —

**SPECIAL CONDITIONS**  
**for**  
**Emissions Reduction Incentive Grant**

**ARTICLE 1. SPECIAL CONDITIONS**

The Performing Party agrees to these Special Conditions.

*{This Article is not applicable to this project. The Article number is retained for numbering continuity.}*

— End of Special Conditions —

*This page intentionally left blank.*

**APPROVED APPLICATION SUMMARY**  
**for**  
**Emissions Reduction Incentive Grant**

**ARTICLE 1. APPROVED APPLICATION**

The attached Approved Application contains information on the activities to be conducted and the expenses that will be reimbursed under this Agreement. The information and data provided in the original application submitted by the PERFORMING PARTY may have been altered after submittal to the TCEQ, to ensure that the information in the application is accurate. The PERFORMING PARTY has reviewed the Approved Application (a Contract Document) and, by signing this Agreement, ratifies, adopts, and agrees to all such alterations.

**ARTICLE 2. ACTIVITY NUMBERS**

This Article will be completed by addition of an Approved Application Summary, issued through a Minor Change or a formal written Amendment to be provided by the TCEQ with the Notice to Proceed. This Approved Application Summary shall assign activity numbers to each activity contained within the Approved Application. The provisions of Article 5 of the TERP Grant Agreement apply and all funding provided under this Agreement is contingent upon the issuance of a Notice to Proceed along with the Approved Application Summary.

**ARTICLE 3. EMISSIONS REDUCTIONS AND COST-EFFECTIVENESS**

This Article will be completed by addition of an Approved Application Summary, issued through a Minor Change or a formal written Amendment to be provided by the TCEQ with the Notice to Proceed. This Approved Application Summary shall include a list of the emissions reductions and cost-effectiveness calculations for each activity contained within the Approved Application. The provisions of Article 5 of the TERP Grant Agreement apply and all funding provided under this Agreement is contingent upon the issuance of a Notice to Proceed along with the Approved Application.

— End of Approved Application Summary —

# APPROVED APPLICATION

Application Number  
2007-2-0333-ER

Contract Number  
582-7-70810-0333

Texas Commission on Environmental Quality (TCEQ)  
TEXAS EMISSIONS REDUCTION PLAN (TERP)

EMISSIONS REDUCTION INCENTIVE GRANT APPLICATION

FORM 1: Signature Page

1. Applicant Legal Name:

2. Name & phone number of person who can answer questions about this application:

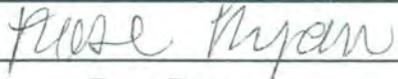
3. If applicable, name and phone number of the consultant or dealer who prepared this application:

4. Primary Area for the Project? Please only check ONE.

- Austin Area (Williamson, Travis, Bastrop, Caldwell, Hays)  
 Beaumont-Port Arthur Area (Hardin, Orange, Jefferson)  
 Dallas - Ft. Worth Area (Denton, Collin, Tarrant, Dallas, Rockwall, Kaufman, Ellis, Johnson, Parker)  
 Houston-Galveston-Brazoria Area (Brazoria, Fort Bend, Waller, Montgomery, Liberty, Chambers, Galveston, Harris)  
 San Antonio Area (Comal, Guadalupe, Wilson, Bexar)  
 Tyler-Longview Area (Upshur, Gregg, Rusk, Smith, Harrison)

**Authorized Official: Applicant or an individual authorized to apply for the grant**

I hereby certify that, to the best of my knowledge and belief, all information provided in this application and any attachments is true and correct. I further understand that, prior to incorporating these forms and information into a grant contract, the data and information may be revised by the TCEQ for accuracy, and that our acceptance of a grant contract will constitute agreement with those revisions.

|                                      |  |
|--------------------------------------|--|
| Signature of Authorized Official:    |  |
| Printed Name of Authorized Official: | Rose Ryan  |
| Authorized Official's Title:         | Interim Director   |
| Date of Signature:                   | 5-30-07  |

If you have questions on how to fill out this form or about the Texas Emissions Reduction Plan (TERP) program, please contact us at 1-800-919-TERP (8377).

Upon submission, all proposals become the property of the State of Texas and as such become subject to the Texas Open Records Act, V.T.C.S. art. 6252-17a.

Personal Information Policy: Individuals are entitled to request and review their personal information the agency gathers on its forms. They may also have any errors in their information corrected. To review such information, contact the TCEQ TERP program at 1-800-919-TERP (8377).

Do NOT alter forms. Altered forms will be void.

This form is only valid for the application period of April 2, 2007 through June 1, 2007.

**EMISSIONS REDUCTION INCENTIVE GRANT APPLICATION**

**FORM 2: Activity Information**

Each activity requires a separate *Supplemental Activity Application Form*.

**1. Supplemental Activity Attachments**

Each activity (purchase, replacement, repower, or retrofit/add-on) will require a separate Supplemental Activity Application Form. Please note, a project application may not contain activities from more than one emissions source (on-road, non-road, marine, locomotive, or stationary). Separate applications will be required for each type of emissions source activity.

Indicate which Supplemental Activity Attachments are included with this application.

Lease/Purchase, Replacement, Repower, Retrofit, Add-on Technology Projects (Only one source allowed.)

\_\_\_\_\_ On-road Heavy Duty Vehicles (Form 10430a)

\_\_\_\_\_ Non-road Heavy Duty Equipment (Form 10430b)\*

*Public Works Projects*

Check only if all equipment in this application will be used on public works projects.

\_\_\_\_\_ Marine Vessels (Form 10430c)

\_\_\_\_\_ Locomotives (Form 10430d)

\_\_\_\_\_ Stationary Equipment (Form 10430e)

Infrastructure Projects (The following may be combined with the sources listed above if applicable.)

  X   Refueling (Form 10430f)

\_\_\_\_\_ On-Site Electrification & Idle Reduction (Form 10430g)

\_\_\_\_\_ On-Vehicle Electrification & Idle Reduction (Form 10430h)

\* Applications for non-road equipment that will be used on public works projects may be ranked and selected separate from other projects. In order to qualify for this consideration, all activities included in an application must be for non-road equipment that will be used on public works projects.

**2. Total number of Supplemental Activity Application Forms attached:**

(Total number of projects/activities included in this application)

1

| 3. Project Grant Amount  | Applicant's Request | Approved by TCEQ |
|--|---------------------|------------------|
| <b>Total Incremental Cost of the Project</b><br>(totals from the attached Supplemental Activity Forms) | \$1,010,000         | \$ Same          |
| <b>Total Grant Amount Requested</b><br>(totals from the attached Supplemental Activity Forms)          | \$336,475           | \$ Same          |

*Completion of this section is optional.*

| 4. NO <sub>x</sub> Reductions and Cost Per Ton                                    | Applicant's Estimate          | Approved by TCEQ |
|---|-------------------------------|------------------|
| Applicant's estimated total NO <sub>x</sub> reductions for the project (in tons): | 61.18 tons of NO <sub>x</sub> | 169.2033         |
| Applicant's estimate of the cost per ton of NO <sub>x</sub> reduced*:             | \$5,500/ton                   | \$ 11988.58      |

\*Grants for locomotive may not exceed \$2,500 per ton of NO<sub>x</sub> reduced. Grants for marine vessels may not exceed \$4,000. Grants for non-road projects may not exceed \$10,000. All other projects may not exceed \$5,500 per ton of NO<sub>x</sub> reduced.

# EMISSIONS REDUCTION INCENTIVE GRANT APPLICATION

## FORM 3: Applicant Information

|  |                      |   |                |  |
|--|----------------------|---|----------------|--|
| <b>1. Applicant Legal Name:</b> <i>(Must match name on Form 1)</i>   | City of San Antonio  |   |                |  |
| <b>2. Payee Identification Number (PIN):</b> Indicate the type of number you are providing to be used for your PIN.  |                      |   |                |  |
| Provide <u>one</u> (1) of the following numbers: <i>Individuals must provide their SSN. All other entities must provide an FEI number.</i>   |                      |   |                |  |
| A. Federal Employer's Identification (FEI) Number: _____   |                      |   |                |  |
| B. Social Security Number (SSN): _____   |                      |   |                |  |
| <b>3. Is the applicant currently reporting any Texas tax to the Comptroller's Office other than unemployment (e.g., sales tax, franchise tax)?</b>   |                      |   |                |  |
| <input type="checkbox"/> Yes, enter Texas Taxpayer Number _____<br><input checked="" type="checkbox"/> No  |                      |   |                |  |
| <b>4. Mailing Address for Grant Payments :</b> Include individual or entity name, address, city, state, and zip code.  |                      |   |                |  |
| City of San Antonio  | 10303 Tool Yard Road | San Antonio   | TX             | 78283                                  |
| <i>(Name)</i>  | <i>(Address)</i>     | <i>(City)</i>   | <i>(State)</i> | <i>(Zip)</i>                           |
| <b>5. Ownership Codes:</b> Check only one (1) ownership type that applies to <u>this</u> application and matches the legal name.   |                      |   |                |  |
| <input type="checkbox"/> <b>I - Individual Recipient (not owning a business)</b>   |                      | <input type="checkbox"/> <b>J - Joint Venture</b>                                     |                |  |
| <input type="checkbox"/> <b>S - Sole Ownership (individual owning a business)</b>  |                      | <input type="checkbox"/> <b>L - Limited Partnership</b>                               |                |  |
| Owner's Name: _____  |                      | Texas File #: _____   |                |  |
| Owner's SSN: _____   |                      | <input type="checkbox"/> <b>T - Texas Corporation / Limited Liability Corporation</b> |                |  |
|  |                      | Texas Charter #: _____  |                |  |
| <input type="checkbox"/> <b>P - Partnership, if checked, enter two partner's names and Social Security Numbers (SSN). If a partner is a corporation, use the corporation's Federal Employer's Identification (FEI) Number.</b> |                      | <input type="checkbox"/> <b>A - Professional Association</b>                          |                |  |
| Name: _____  |                      | Texas Charter #: _____  |                |  |
| SSN/FEI#: _____  |                      | <input type="checkbox"/> <b>C - Professional Corporation</b>                          |                |  |
|  |                      | Texas Charter #: _____  |                |  |
| Name: _____  |                      | <input checked="" type="checkbox"/> <b>O - Out-of-State Corporation</b>               |                |  |
| SSN/FEI#: _____  |                      | <input checked="" type="checkbox"/> <b>G - Governmental Entity</b>                    |                |  |
| <input type="checkbox"/> <b>N - Other (explain):</b> _____   |                      | <input type="checkbox"/> <b>U - State Agency/University</b>                           |                |  |
|  |                      | <input type="checkbox"/> <b>R - Foreign (outside of USA)</b>                          |                |  |
| <b>6. Do you plan to assign your grant payments to a third party "Assignee":</b>   |                      |   |                |  |
|  |                      |   | Yes            | <input checked="" type="checkbox"/> No |
| If "yes", you must submit a completed "Notice of Assignment" and a "Texas Application for Payee Identification Number (AP-152)". These forms will be provided for you to complete and submit if you are awarded a grant.       |                      |   |                |  |
| <b>7. Describe Applicant's Primary Business Type:</b> (i.e., transit system, gravel hauling, excavation, school, etc.)   |                      |   |                |  |
| City Government providing services such as refuse collection to it citizens  |                      |   |                |  |
| <b>8. Date Business Founded/Started:</b>   |                      |   |                |  |
| Attach any materials (ex: brochures, website address) that provide general information about your business.  |                      |   |                |  |

# EMISSIONS REDUCTION INCENTIVE GRANT APPLICATION

## FORM 4: Contact Information

| 1. Authorized Official <small>The person signing this application.</small> |                               |                     |                      |                    |
|--|-------------------------------|---------------------|----------------------|--------------------|
| Name: (Mr. or Ms.)   | Rose Ryan                     | Title:              | Interim Director     |                    |
| Mailing Address:   | 1940 Grandstand               | San Antonio         | TX                   | 78238              |
|  | <small>Street Address</small> | <small>City</small> | <small>State</small> | <small>Zip</small> |
| Physical Address:<br><small>(for express delivery)</small>                 |                               |                     |                      |                    |
|  | <small>Street Address</small> | <small>City</small> | <small>State</small> | <small>Zip</small> |
| Contact Phone #s:  | 210-207-6412                  | Fax:                | 210-207-6411         |                    |
| Email Address:   | rose.ryan@sanantonio.gov      |                     |                      |                    |

| 2. Designated Project Representative <small>The applicant or an employee of the applicant who will serve as the grant contact and will be responsible for receiving and submitting grant documents. May not be a consultant or dealer.</small> |                               |                     |                      |                    |
|--|-------------------------------|---------------------|----------------------|--------------------|
| Name: (Mr. or Ms.)   | Rose Ryan                     | Title:              | Interim Director     |                    |
| Mailing Address:   | 1940 Grandstand               | San Antonio         | TX                   | 78238              |
|  | <small>Street Address</small> | <small>City</small> | <small>State</small> | <small>Zip</small> |
| Physical Address:<br><small>(for express delivery)</small>   |                               |                     |                      |                    |
|  | <small>Street Address</small> | <small>City</small> | <small>State</small> | <small>Zip</small> |
| Contact Phone #s:  | 210-207-6412                  | Fax:                | 210-207-6411         |                    |
| Email Address:   | rryan@sanantonio.gov          |                     |                      |                    |

| 3. Financial Officer (if applicable)                       |                               |                     |                      |                    |
|--|-------------------------------|---------------------|----------------------|--------------------|
| Name: (Mr. or Ms.)   |                               | Title:              |                      |                    |
| Mailing Address:   |                               |                     |                      |                    |
|  | <small>Street Address</small> | <small>City</small> | <small>State</small> | <small>Zip</small> |
| Physical Address:<br><small>(for express delivery)</small> |                               |                     |                      |                    |
|  | <small>Street Address</small> | <small>City</small> | <small>State</small> | <small>Zip</small> |
| Contact Phone #s:  |                               | Fax:                |                      |                    |
| Email Address:   |                               |                     |                      |                    |

| 4. Designated Location for Records Access and Review by TCEQ or its Representative |                               |                     |                      |                    |
|--|-------------------------------|---------------------|----------------------|--------------------|
| Physical Address:  | 1940 Grandstand               | San Antonio         | TX                   | 78238              |
|  | <small>Street Address</small> | <small>City</small> | <small>State</small> | <small>Zip</small> |

**EMISSIONS REDUCTION GRANT PROGRAM**

**FORM 5: CERTIFICATIONS**

**All individuals or business entities, including sole proprietors must complete this section, regardless if child support obligations apply to the applicant.**

**Certification Regarding Child Support Obligations**

Under Section 231.006, Texas Family Code, a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive a state-funded grant or loan. All applicants must include in the application the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of 25 percent of the business entity submitting the application.

*Please list the Name and Social Security Numbers of any individual who owns 25% of more of the business entity submitting this application, regardless if child support obligations apply to them.*

Name: \_\_\_\_\_ SSN: \_\_\_\_\_

Name: \_\_\_\_\_ SSN: \_\_\_\_\_

Name: \_\_\_\_\_ SSN: \_\_\_\_\_

Name: \_\_\_\_\_ SSN: \_\_\_\_\_

Check if there is not a single individual who owns 25% or more of the business.

Check if the applicant is not an individual or business entity.

I certify that to the best of my knowledge and belief that the individual or business entity submitting this application is eligible to receive a grant. I acknowledge that the grant contract may be terminated and any payments withheld if this certification is inaccurate.

Signature of Authorized Official: \_\_\_\_\_ Date: \_\_\_\_\_

## EMISSIONS REDUCTION INCENTIVE GRANT APPLICATION

### FORM 6: Program-Specific Certifications and Assurances

By signing this application, the applicant indicates their understanding of and agreement to adhere to the identified program-specific requirements.

The applicant hereby assures and certifies compliance with all state statutes, regulations, policies, guidelines, and requirements as they relate to the application, acceptance, and use of funds for this project. The applicant further understands, assures and/or certifies that:

- 1 To the best of its knowledge, the proposed activities are not required by any state or federal law, rule, or regulation, memorandum of agreement, or other legally binding document.
- 2 It understands that any marketable credits under state or federal emissions reduction credit averaging, banking, or trading programs, that may be generated by the proposed activities, are transferred to the state implementation plan or permanently retired, and may not be used by the applicant. If the project is funded, the applicant waives, for all time, its right to claim emissions reduction credits which may accrue during the activity life as a result of the use of the low-emission technology which is funded under this program, and agrees not to apply for any such credits based on reductions generated in the eligible counties. Credits that accrue after the end of the activity life are not transferred, but may not be used to calculate the cost-effectiveness of the project.
- 3 All public financial incentives that will be used by the applicant that directly offset the costs of the proposed activities, including tax credits or deductions, other grants, or any other public financial assistance have been properly listed where indicated on the application forms and the incentive amounts requested reflect a reduction in the eligible incremental costs based on the value of those incentives.
- 4 It understands that failure to achieve the NO<sub>x</sub> emissions reductions projected to be achieved for this project may result in the TCEQ requiring the return of a share of the grant funds. Achievement of the emission reductions will be based on the grant equipment being used for the annual amount of hours, miles, or fuel use that occurs in the eligible counties, as designated in the application for that activity.
- 5 It understands that failure to operate the grant equipment for at least 75 percent of the total annual usage in the eligible counties designated in the application may be considered non-compliance with the grant agreement and may result in the TCEQ requiring return of a share of the grant funds.
- 6 It will monitor the use of grant-funded vehicles, equipment, infrastructure, or qualifying fuel, and report semi-annually to the TCEQ over the designated activity life.
- 7 It will notify the TCEQ of any termination of use, change in use, sale, transfer, or destruction of grant-funded vehicles or equipment, or change in use of qualifying fuel, during the activity life. It further agrees that, during the activity life, the TCEQ may be entitled to the return of a pro rata share of the grant funds for any loss of emissions reductions compared with the emissions reductions projected in awarding the grant.
- 8 It will maintain, for the term of the activity, property loss insurance or self-insurance coverage on any vehicles, equipment, or infrastructure acquired, leased, repowered, retrofitted, or constructed using these funds, sufficient to cover the costs of reimbursing the state for its pro rata share of the activity costs.

# EMISSIONS REDUCTION INCENTIVE GRANT APPLICATION

## FORM 7: General Certifications and Assurances

This section serves to assure the TCEQ that you understand and agree to the statements. These provisions relate to the basic contract form which will be in force between the applicant and the TCEQ upon award of a grant. TCEQ urges applicants to download a copy of the example grant contract from [www.terpgrants.org](http://www.terpgrants.org) and review it so that any questions can be discussed early in the application review process. By signing this application, the applicant assures and certifies that:

- 1 **Legal Authority**. It possesses legal authority in the State of Texas to apply for the grant, and that the applicant's governing body has authorized the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the authorized official to act in connection with the application and to provide such additional information as may be required.
- 2 **Uniform Grant Management Standards**. It will comply the Uniform Grant Management Standards (UGMS), adopted by the Texas Office of the Governor, in accordance with Chapter 783, Texas Government Code.
- 3 **Procurement of Goods and Services**. In procuring goods and services, it will comply with Part II. Cost Principles for State and Local Governments and Other Affected Parties and Part III. State Uniform Administrative Requirements for Grants of the UGMS. All procurement transactions will be conducted in a manner providing full and open competition. Where multiple quotes or bids are not feasible, it will prepare and keep on file a written cost/price analysis to document how it determined that the costs or prices were reasonable.
- 4 **Historically Underutilized Businesses (HUBs)**. Qualified HUBs, as defined and designated under state law, shall have the maximum practicable opportunity to participate in the performance of the work arising out of this project.
- 5 **Conflict of Interest**. It will establish safeguards to prohibit employees from using their positions for the purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
- 6 **Nondiscrimination**. It will comply with all State and Federal statutes relating to nondiscrimination.
- 7 **Grant Administration**. It will maintain an appropriate grant administration system to ensure that all terms, conditions, and specifications of the grant, including these certifications and assurances, are met.
- 8 **Examination of Records**. It will maintain and preserve all financial, contractual, and applicable program records for a period of three years after the end of the life of all activities funded under the grant. It will give the TCEQ and/or the State Auditor, through any authorized representative, access to examine all records, books, papers, or documents related to the grant.
- 9 **Debt to the State**. It is not indebted to the state or have an outstanding tax delinquency. It further understands that the Texas Comptroller is precluded by law from paying a person who is indebted to the state or has a tax delinquency. The applicant must comply with all State and Federal tax laws and fee requirements and is solely responsible for filing all State and Federal tax and fee forms.
- 10 **Grant Contract**. It understands that a copy of the grant contract shell is available from the TCEQ, including a copy posted on the TCEQ's web site. It further understands that the TCEQ will not normally change the contract language to deal with individual requests from grant recipients.

## REFUELING INFRASTRUCTURE ACTIVITIES

TCEQ-10430f

### Supplemental Activity Application Form

*(attach to the ERIG Project Application Form 10430)*

|   |     |
|---|-----|
| <b>1. TYPE OF FUEL TO BE PROVIDED BY THE INFRASTRUCTURE</b> | CNG |
|---|-----|

#### 2. PROJECT LOCATION

**INFRASTRUCTURE LOCATION (select one):**

**Austin Area (AUS)**  
(Williamson, Travis, Bastrop, Caldwell, Hays)

**Beaumont-Port Arthur Area (BPA)**  
(Hardin, Orange, Jefferson)

**Dallas - Fort Worth Area (DFW)**  
(Denton, Collin, Tarrant, Dallas, Rockwall, Kaufman, Ellis, Johnson, Parker)

**Houston-Galveston-Brazoria Area (HGB)**  
(Brazoria, Fort Bend, Waller, Montgomery, Liberty, Chambers, Galveston, Harris)

**San Antonio Area (SAT)**  
(Bexar, Comal, Guadalupe, Wilson)

**Tyler-Longview Area (TYL)**  
(Smith, Upshur, Harrison, Gregg, Rusk)

#### 3. PROJECT AREA INFORMATION

List the counties where the vehicles/equipment using the qualifying fuel will operate:

\_\_\_\_\_ Bexar \_\_\_\_\_

Physical address of the project:

\_\_\_\_\_  
 10303 Tool Yard Road      San Antonio      Bexar      78283  
(street address)                      (city)                      (county)                      (zip)

Is the site/facility owned and/or operated by the applicant:

**Yes**

**No, list who owns and/or operates the site/facility?**

\_\_\_\_\_

#### 4. DESIGNATED ACTIVITY LIFE (The number of years you commit to using the vehicle/equipment with the infrastructure in the eligible counties, and to monitor and report to the TCEQ on the use. Minimum of 7 years.)

|                      | Applicant's Request | Approved by TCEQ |
|----------------------|---------------------|------------------|
| <b>Activity Life</b> | 10 Years            | 7                |

**REFUELING INFRASTRUCTURE ACTIVITIES  
TCEQ-10430f**

**5. ACTIVITY SUMMARY**

*Please provide a brief summary of the proposed activity, including information on the infrastructure to be installed and how use of the infrastructure will result in new NO<sub>x</sub> reductions. Attach additional pages if needed. (If using Excel, use "alt" & "enter" to move to the next line.)*

The City of San Antonio intends to build a CNG station and replace 30 of its diesel refuse trucks with new natural gas trucks using the new .2 NOX Cummins Engine. The life of the trucks typically is 7 years, although the station will easily last twice that long if properly maintained. The station will be located at refuse center on 10303 Tool Yard Road (east of Perrin Beitel) at Wurzbach Parkway in San Antonio, TX 78283. The CNG station itself will contain 2 identical and redundant compressors of approximately 250 scfm in size. The actual size and model to be provided will be selected from a competitive bid process to be conducted over the next two months from various turnkey suppliers. The station will offer a fast fill (public) capability for both the City as well as other fleets operating on natural gas in the City. In addition the City will primarily refuel its refuse trucks at night on a time fill basis and allow the full compression to be available during the day for other fleets using the public access. The average fuel usage for each of the 30 trucks is projected at 10,000 gallons per year. Since the natural gas engines are 6 times cleaner than the newer diesel

**6. WORK PLAN AND SCHEDULE**

*Provide a detailed list of the major work tasks to purchase and install the infrastructure. Include a schedule for completing the work tasks. Attach additional pages if needed.*

**TASK 1 – Assign Project Manager**

The most qualified full-time City of San Antonio staff member will be selected to manage this project from start to finish.

**TASK 2 –**

**Distribute RFP for Station Construction**

A detailed RFP will be circulated to all potential fuel provider contractors for station design, development, construction, installation and maintenance of the station

**TASK 3 – Select Turnkey**

**Station Supplier**

The firm selected for the CNG refueling station will serve as subcontractor under this project. The station supplier will provide all station equipment as well as construction materials and labor. The City of Hemet's bid and award procedures will be utilized for this selection

**TASK 4 – Approval of Station Design**

The responsibility of final approval of the station design will be left up to the City engineers and the fire marshal

**TASK 5 – Construct Station**

Physical station construction will begin approximately 4 to 6 weeks after contract award with planned completion within 12 weeks. Station will be operational and begin refueling City vehicles on a time-fill basis.

**REFUELING INFRASTRUCTURE ACTIVITIES**  
**TCEQ-10430f**

**7. DETAILED COST INFORMATION FOR ELIGIBLE COSTS**

List the total eligible costs for each of the categories and provide the total on the following page. *Please note, add all categories together except for line F. Subtract any other financial assistance the applicant is receiving.*

| <b>A. Equipment:</b> <i>defined as personal property having a unit acquisition cost of \$5,000 or more (including sales tax and delivery charges) with an estimated useful life of one year or more. Categories provided below may be included in the "equipment" total if the charges are included as part of the overall price of the equipment.</i> | <b>TOTAL ELIGIBLE COSTS</b> | <b>APPROVED BY TCEQ</b> |
|--|-----------------------------|-------------------------|
| 1. Infrastructure system, including sales tax and delivery charges <span style="float: right;">\$ 750,000.00</span>  | <b>\$ 1,000,000.00</b>      | <b>\$ Same</b>          |
| 2. Additional materials necessary for the installation (explain below): <span style="float: right;">\$ 100,000.00</span>   |                             |                         |
| 3. Installation costs, if included as part of the equipment purchase: <span style="float: right;">\$ 150,000.00</span>   |                             |                         |
| 4. Other necessary related items (\$5,000 or more per unit cost): <span style="float: right;">\$</span>  |                             |                         |
| <b>B. Supplies:</b> <i>include goods and materials having a unit acquisition cost (including sales tax and delivery charges) of less than \$5,000.</i>   | (+ ADD)                     | (+ ADD)                 |
| <i>Itemize Below:</i>  | \$                          | \$ 0                    |
| <b>C. Contractual:</b> <i>include re-engineering work, installation costs and other work a contractor is hired to do separate from the equipment and installation purchase agreement.</i>  | (+ ADD)                     | (+ ADD)                 |
| <i>Itemize Below:</i>  |                             |                         |
| Station Specification necessary to obtain bids   | \$ 10,000.00                | \$ Same                 |
| <b>D. Construction:</b> <i>include work directly related to the installation of the infrastructure, costs to prepare and improve the site, enhancement of current facilities or building new facilities. In-house labor and travel are not eligible for funding.</i>   | (+ ADD)                     | (+ ADD)                 |
| <i>Itemize Below:</i>  | \$                          | \$ 0                    |

**REFUELING INFRASTRUCTURE ACTIVITIES**  
**TCEQ-10430f**

(continued from Page 3)

|   |                 |              |
|---|-----------------|--------------|
| <b>E. Other:</b> Explain in detail other costs that do not fit within the previous categories. The costs must be directly related to the purchase and installation of the infrastructure. Long-term operational, maintenance, or repair costs are not eligible for funding. | (+ ADD)         | (+ ADD)      |
| Itemize Below:  | \$              | \$ 0         |
| <b>F. Financial Assistance:</b> List the value of and explain any other financial assistance to be used for the purchase or lease, such as tax credits or deductions, other grants, or any other public financial assistance.   | (- SUBTRACT)    | (- SUBTRACT) |
| Itemize Below:  | \$              | \$ 0         |
| None  | -               | 0            |
| <b>TOTAL ELIGIBLE COSTS ( A + B + C + D + E - F )</b>   | \$ 1,010,000.00 | \$ Same      |

|   |                     |                  |
|---|---------------------|------------------|
|   | Applicant's Request | Approved by TCEQ |
| <b>8. GRANT AMOUNT REQUESTED FOR THIS ACTIVITY</b><br><i>Amount may not exceed 50% of the total eligible costs.</i> | \$336,475           | \$ Same          |

|   |                 |
|---|-----------------|
| <b>9. TOTAL PROJECT COST: For information purposes only</b>   |                 |
| What is the total cost of this project, including eligible and non-eligible grant expense?<br>Explain any costs not included under section 7 above. | \$ 1,010,000.00 |

|  |
|--|
| <b>10. PROCUREMENT PROCESS</b> Explain the process used (or to be used) to select the installer, vendors and equipment. Three (3) bids or quotes are required to be attached to this grant application. If only one bid or quote was obtained, explain why the equipment or service is only available from one source. |
|  |



**REFUELING INFRASTRUCTURE ACTIVITIES  
TCEQ-10430f**

**14a. CLAIMING NO<sub>x</sub> EMISSIONS REDUCTIONS - OPTION 1**

*NO<sub>x</sub> emissions reductions may be claimed for the use of a fuel or additive that is verified by the EPA to achieve the reductions when used in lieu of the baseline fuel, usually gasoline or regular diesel, or an additive mixed with the baseline fuel. To claim NO<sub>x</sub> emissions reductions under this option, provide the following information. Unless otherwise approved by the TCEQ in advance of the application, the qualifying fuel may only be used in vehicles and equipment owned and/or operated by the applicant.*

- A. Fuel or Additive Name or Type: \_\_\_\_\_
- B. Manufacturer (if applicable): \_\_\_\_\_
- C. Is the fuel or additive registered by the EPA for on-road use (yes/no): \_\_\_\_\_
- D. Is the fuel or additive verified by the EPA to achieve a reduction in NO<sub>x</sub> emissions when used in lieu of or added to gasoline or diesel (yes/no): \_\_\_\_\_
- E. Indicate whether the verification applies to on-road use, non-road use, or both: \_\_\_\_\_
- F. List the verified NO<sub>x</sub> emissions reduction percentage(s): \_\_\_\_\_
- G. Complete Sections 17 and 18, and provide the information requests in Section 19 for each vehicle that will use the qualifying fuel. Include the number of gallons of qualifying fuel that you commit to use in each vehicle.

**14b. CLAIMING NO<sub>x</sub> EMISSIONS REDUCTIONS - OPTION 2**

*In some cases, the TCEQ may accept a claim of NO<sub>x</sub> emissions reductions based on the purchase and use of alternative-fueled vehicles or equipment that are certified to a NO<sub>x</sub> emissions rate that is less than the federal standard for that engine. In this case, the purchases may not have occurred earlier than 12 months prior to the deadline for submission of an application. If you are claiming the NO<sub>x</sub> emissions reductions based on this option, complete Sections 14b thru 17 and provide the information requested.*

- A. In general, the vehicles and equipment using the qualifying fuel should be owned and/or operated by the applicant. However, the TCEQ will consider situations where the fuel will be provided to upgraded fleets owned and/or operated by another entity. In that case, you will need to provide a letter of agreement by the third party indicating a willingness to use the qualifying fuel and report on the use.
- B. The vehicle or fleet upgrades must result in a reduction of NO<sub>x</sub> emissions compared to an equivalent baseline engine. In general, the baseline for comparison for natural gas vehicles certified under the diesel cycle will be the diesel engine standard applicable to that type of engine. Similarly, for propane, natural gas, and other fueled vehicles and equipment certified under the otto-cycle standard, the baseline for comparison will be the federal otto-cycle standard applicable to that type of engine. What this means is that the upgraded vehicle or equipment engines must be certified to a NO<sub>x</sub> emissions rate that is less than the standard for that type of engine under the test cycle used. The NO<sub>x</sub> emissions reductions are based on the difference in the emissions rates.
- C. Complete Section 15 and 16, and provide the information requested in Section 17 for each vehicle and piece of equipment that will use the qualifying fuel. You must also provide information on when the vehicle or equipment was purchased and placed into service to confirm that it was not purchased prior to 12 months before the application submission deadline.

**REFUELING INFRASTRUCTURE ACTIVITIES**  
**TCEQ-10430f**

**15. VEHICLE AND EQUIPMENT INFORMATION**

A. Are the purchase of the vehicles and/or equipment to be fueled by the infrastructure included as a separate Activity under this Project Application?

**Yes.** You do not need to provide additional vehicle or equipment information.

**No.** Provide the information requested below for each vehicle/equipment.

**Partial.** Provide the information requested below for each vehicle/equipment not included.

B. Total number of vehicles and/or equipment to be fueled by the infrastructure: 30

C. If the purchase of the vehicles and/or equipment will not be funded by a TERP grant, how were or how will the purchases be funded (explain below):

City of San Antonio Solid Waste Operating Funds

D. Have the emission reductions that can be attributed to the use of the vehicles and/or equipment already been assigned to another program? If so, the activity is not eligible for funding.

**Yes**

**No**

**18. OWNERSHIP INFORMATION**

A. Does the applicant own the vehicles and equipment to be fueled? Y/N : Y

B. If the applicant will not own the vehicles and equipment , identify the owner(s):

(Company)

(Contact Person)

(Phone #.)

(Address)

(City)

(State)

(Zip)

C. If the applicant does not own the vehicles and equipment, explain how the applicant will ensure that the vehicle or equipment will continue to use the grant-funded infrastructure for the activity life.

D. Has the purchase been completed?

*The purchase (or conversion, if applicable) of the vehicles or equipment may not have been completed prior to 12 months of the application deadline.*

**Yes**      Date of purchase: \_\_\_\_\_

**No**      Expected # of months to complete the purchase: 2

## REFUELING INFRASTRUCTURE ACTIVITIES

TCEQ-10430f

Complete this form for EACH vehicle/equipment not included as a separate Activity in this application.

The following information is needed for every vehicle/equipment the proposed infrastructure will service with fuel in order to calculate the emissions reductions.

The vehicles/equipment must have been purchased and/or converted to use of the qualifying fuel no earlier than 12 months prior to the application deadline. They must also meet all other program requirements. The applicant also commits to using the vehicles/equipment for the activity life in order to achieve the NO<sub>x</sub> reductions.

### 17. VEHICLE / EQUIPMENT INFORMATION

|   |                        |
|---|------------------------|
| <b>a. Description</b><br><small>(i.e., haul truck, locomotive, excavator, tug boat)</small> | Refuse Truck           |
| <b>b. Make</b>  | Not Known At This Time |
| <b>c. Model / Model #</b>   | Not Known At This Time |
| <b>d. Model Year</b>  | 2007                   |
| <b>e. Identification Number</b>   | Not Known At This Time |
| <b>f. Gross Vehicle Weight Rating (GVWR)</b><br><small>on-road only</small>                 | 33,000                 |
| <b>g. Engine Make</b>   | Cummins                |
| <b>h. Engine Model / Model Number</b>   | 8.9L                   |
| <b>i. Engine Model Year</b>   | 2008                   |
| <b>j. Engine Identification Number</b>  | Not Known At This Time |
| <b>k. Engine Horsepower</b>   | 325HP                  |
| <b>l. Fuel Type</b><br><small>If dual fuel, list each type</small>                          | CNG                    |
| <b>m. Engine Family Code</b><br><small>12-digit emissions code</small>                      | 8CEXH0540LBC           |
| <b>n. Certified NO<sub>x</sub> Emissions (g/bhp-hr)</b>                                     | 0.16 g/bhp-hr          |

### PROJECTED ANNUAL USAGE WITHIN THE ELIGIBLE COUNTIES

**A. Provide the projected annual usage amount for each vehicle and piece of equipment that will use the qualifying fuel.**

Annual Mileage (on-road vehicles): 2000  
OR  
 Annual Hours (non-road equipment): \_\_\_\_\_

**B. Provide the projected annual gallons (or other units) of the qualifying fuel to be used.**

Annual Fuel Consumption: 10,000

**REFUELING INFRASTRUCTURE ACTIVITIES**  
**TCEQ-10430f**

Complete this form for EACH vehicle/equipment not included as a separate Activity in this application.

The following information is needed for every vehicle/equipment the proposed infrastructure will service with fuel in order to calculate the emissions reductions.

The vehicles/equipment must have been purchased and/or converted to use of the qualifying fuel no earlier than 12 months prior to the application deadline. They must also meet all other program requirements. The applicant also commits to using the vehicles/equipment for the activity life in order to achieve the NO<sub>x</sub> reductions.

**17. VEHICLE / EQUIPMENT INFORMATION**

|  |                        |
|--|------------------------|
| a. Description<br><i>(i.e., haul truck, locomotive, excavator, tug boat)</i> | Refuse Truck           |
| b. Make  | Not Known At This Time |
| c. Model / Model #   | Not Known At This Time |
| d. Model Year  | 2007                   |
| e. Identification Number   | Not Known At This Time |
| f. Gross Vehicle Weight Rating (GVWR)<br><i>on-road only</i>                 | 33,000GVW              |
| g. Engine Make   | Cummins                |
| h. Engine Model / Model Number   | 8.9L                   |
| i. Engine Model Year   | 2007                   |
| j. Engine Identification Number  | Not Known At This Time |
| k. Engine Horsepower   | 325HP                  |
| l. Fuel Type<br><i>If dual fuel, list each type</i>                          | CNG                    |
| m. Engine Family Code<br><i>12-digit emissions code</i>                      | Not Known At This Time |
| n. Certified NO <sub>x</sub> Emissions (g/bhp-hr)                            | 0.2 g/bhp-hr           |

**PROJECTED ANNUAL USAGE WITHIN THE ELIGIBLE COUNTIES**

A. Provide the projected annual usage amount for each vehicle and piece of equipment that will use the qualifying fuel.

Annual Mileage (on-road vehicles): 2000  
OR  
Annual Hours (non-road equipment): \_\_\_\_\_

B. Provide the projected annual gallons (or other units) of the qualifying fuel to be used.

Annual Fuel Consumption: 10,000

**REFUELING INFRASTRUCTURE ACTIVITIES  
TCEQ-10430f**

**18. ADDITIONAL EMISSIONS REDUCTIONS**

In addition to the emissions reductions that can be attributed to the use of the fuel by the vehicles and equipment already identified, the TCEQ may consider the probability that the availability of the infrastructure will encourage additional purchases or conversion of vehicles and equipment that will use the qualifying fuel. The applicant is encouraged to provide a written explanation and provide any available information on the probability that the additional purchases and/or conversions will result from the availability of the infrastructure.

**19. EMISSIONS REDUCTIONS AND COST PER TON *(completion is optional)***

You are not required to calculate the emissions reductions and cost per ton of this project in order to apply for the grant. However, you may provide the following information for the activity included in the application.

|   | <b>Applicant's Estimate</b>   |
|---|-------------------------------|
| <b>Total Emissions Reductions for this Activity (tons of NO<sub>x</sub>)</b>  | 61.18 tons of NO <sub>x</sub> |
| <b>Annual Emissions Reductions for this Activity (tons of NO<sub>x</sub>)</b> | 6.118 tons of NO <sub>x</sub> |
| <b>Cost Per Ton for this Activity (\$/ton)</b>                                | \$5,500/ton                   |

**REQUIRED DOCUMENTS ATTACHED: (These materials must be included)**

- \_\_\_\_\_ Provide the written quotes and other information used to determine the costs.
- \_\_\_\_\_ Attach any available information about the infrastructure to be installed.
- \_\_\_\_\_ Provide a letter or other documentation that the owner(s) of the vehicles and equipment support the project, have or intend to purchase the vehicles and equipment identified in this application, and intend to use the infrastructure for the Activity Life proposed by the applicant.
- \_\_\_\_\_ Attach all available agreements, market studies, research reports, and other information that indicates that the availability of the infrastructure will result in additional purchases and/or conversions of vehicles and equipment that will use the qualifying fuel.
- \_\_\_\_\_ The TCEQ may request additional materials to support the application.

CITY OF SAN ANTONIO

Proposal to

**TEXAS COMMISSION ON ENVIRONMENTAL  
QUALITY**

For

**ALTERNATIVE FUELS  
INFRASTRUCTURE PROGRAM**

In response to

**REQUEST FOR PROPOSALS**

April 21, 2007

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## EXECUTIVE SUMMARY

City of San Antonio proposes to construct a CNG refueling center within one of its maintenance yards in San Antonio. Specifically, this proposal requests funding of \$ 336,475 for the construction of a CNG station to be built at our Tool Yard location for both our use as well as others in the northeastern area of the city. We will time fill 30 of our CNG refuse trucks (sideloaders) overnight. Our matching cost share will come from the City's capital budget as well as the in-kind contribution for the value of the land.

The project partners include City of San Antonio, CPS as the gas provider, and a turnkey fuel provider, yet to be determined.

Critical components of the Project include:

The City of San Antonio plans to construct a CNG refueling facility with both a fast fill (public) access and a slow fill or time fill capability to allow refueling of up to 30 trucks overnight and a small number of light duty support vehicles at the fast fill access island.

Sign contract with a turnkey station supplier for the installation of the CNG station.

Purchase of our first 30 natural gas trucks before the end of this fiscal year and three additional stations over the next year.

## SECTION A – STATEMENT OF WORK

### Project Approach

City of San Antonio is requesting \$ 336,475 in funding from the TERP'S Alternative Fuels Infrastructure Program to help cover a portion of the anticipated cost of over \$1,000,000 for the CNG station. The remaining portion or our cost share will be supplied from the City's own capital funds, as well as the value of the land estimated at \$5,000, as in-kind services.

Implementation of this program with the requested funding support by TERP will enable City of San Antonio to replace our diesel refuse trucks with natural gas and begin building our own CNG station at the corporation yard. Successful program implementation will result in a move toward an all CNG fleet by City and three more natural gas stations.

The primary objective of the proposed project is to develop a CNG fueling station at the City of San Antonio Tool Yard maintenance facility. With the successful implementation we hope to encourage others with light, medium and heavy duty fleet vehicles to emulate us and move to cleaner NGV vehicles within the immediate area and in fact utilize the public access dispenser that we will also install as part of the investment cost.

Integration of natural gas fueled heavy-duty vehicles into normal fleet operations without the need to develop extensive technical expertise and support is now available. This was a critical step in an effort to switch to alternative fueled technology. The completion of this project with a reliable CNG station strategically located at our maintenance yard will allow the City to have ready access to a CNG station and make it easy for us to start replacing our fleet vehicles.

It should also be noted that this program will continue until it has been brought to completion. Based on the typical eight to ten month period required for the delivery of this type of equipment, the planned project completion date (March, 2008) is easily attainable. The City of San Antonio is committed to the completion of this project and has set in motion a complete timeline to insure that it is completed on time.

The proposed CNG refuse trucks will operate from the City of San Antonio Tool Yard maintenance facility as the diesel vehicles do today. A refueling facility comprised of both a fast-fill and slow fill capability will be developed within City of San Antonio's corporation yard.

### Schedule of Milestones/Key Activity Sequence

The following are the activities or tasks envisioned and planned as part of the implementation of this proposed program. This program will be entirely based in City of San Antonio's Tool Yard maintenance yard. For a detailed description of the scope and tasks to be performed for this program see below:

#### **TASK 1. INFRASTRUCTURE DEVELOPMENT – DUE DATE 3/30/08**

A turnkey station provider (TBD) shall develop at the City of San Antonio's Tool Yard maintenance facility both a slow-fill and a public access fast-fill capability. The fast fill system will consist of a 2 hose dispenser operating at 3,600 psi. The slow-fill system will consist of 15 dual hose posts dedicated to the refueling of City of San Antonio's first 30 natural gas trucks on a time fill basis and stubbed out for future

growth. At the heart of the station will be 2 electric driven compressors, that will easily refuel 30 trucks overnight 40 to 50 gallons each per day. Other vehicles from school districts or other private fleets in the area, including our support vehicles, will be refueled via the fast fill dispenser which will include an auxiliary storage facility integral with the dispenser. It is this compressor system along with the dispensers; hoses and nozzles for both slow fill system (posts) as well as other equipment like the fast fill dispensers and the storage system that TERP's \$ 336,475 funds will be allocated towards. The actual installation (miscellaneous material and planned labor costs for trenching and running the electrical) will be part of the cost share to be paid by City of San Antonio directly. The compressors will be mounted on a 10' by 20' concrete pad located about 400 feet from the fast fill fueling island on a concrete pad. What vehicles cannot be filled overnight will be able to top off at the fast fill dispenser, which will be arranged in a matter to accommodate the turn radius of large fuel vehicles like refuse trucks and school buses. The delivery and placement of the compressors and related equipment can be made within 8 to 10 months after contract award or in this case will be supplied no later than the end of March 2008.

#### **TASK 2. NEW VEHICLE PROCUREMENT – DUE DATE 3/30/08**

City of San Antonio shall write the specifications, order, receive and accept into their fleet, 30 OEM CNG dedicated natural gas trucks. They will utilize the Cummins engine CARB certified at .2 g/bhp. The refuse fleet size for City of San Antonio is over 200 vehicles, which is made up of mostly side loader type refuse trucks. Initially we will be taking MY2000 refuse trucks off the road with diesel engines that generate more than 5.0 grams/bhp of NOx and replacing them with much cleaner burning natural gas Cummins engines that only generate .2 grams/bhp of NOx emissions.

#### **TASK 3. CNG VEHICLE AND INFRASTRUCTURE MAINTENANCE TRAINING**

The City will augment their fleet maintenance personnel training through instruction at a local college for the different type natural gas vehicles they purchase or through on-site training by the CNG engine supplier, like Cummins.

#### **TASK 4. FIELD TEST, DATA COLLECTION AND ANALYSIS**

City of San Antonio will operate their CNG vehicles at this new station since it will be the first to open in the City. We will develop a test plan to collect and analyze data on CNG vehicle fuel consumption, operation hours, maintenance and operational costs and personnel response to the new fuel and report the results by VIN number if required by TERP with any reporting requirements that may be required with this grant. This will also include infrastructure utilization, performance and maintenance and operational costs. This information will be evaluated as part of our move to alternative fuels anyway and will be available should TERP need this type of information. The operational benefits associated with using CNG will then be added when final comparisons are made, like lower cost fuel, lower personnel costs associated with refueling on a time fill basis, lower maintenance costs with fewer oil intervals, etc.

#### **TASK 5. PROGRAM MANAGEMENT**

City of San Antonio along with Turnkey supplier, shall be responsible for the complete program management to ensure schedule and cost adherence, submission of any progress reports required by the TERP, and development and submission of a final report.

## Program Milestones

Implementation of this project could span a 12 month period ending April 2008 depending upon when the contract is signed and when we receive the delivery of our first refuse trucks as far as City of San Antonio is concerned. City of San Antonio is aware that until a contract is executed with TERP, the latter has no contractual obligation to provide any funding to the City even if this proposal has been recommended for approval to the Governing Board.

The City plans to purchase 30 CNG refuse trucks over the next year as we start to replace our diesel fleet. The objective is to have a station to fill these vehicles by March 2008, although additional compressors will be needed at other locations to handle our total fleet as we replace our fleet on a continuous basis. Typical delivery for a CNG station of this type varies from eight to ten months after it is ordered. This will enable City of San Antonio and its turnkey station supplier to develop sufficient infrastructure to handle our initial load factors and fuel primarily heavy duty vehicles.

## SECTION B - PROGRAM ORGANIZATION & PERSONNEL RESOURCES

### Organization Resources

A turnkey station supplier will be selected as the prime contractor for the proposed CNG station. A team committed to the reduction of mobile source emissions will be headed up by City of San Antonio. The key participants in this team are as follows:

- City of San Antonio through the office of Rose Ryan will manage the proposed program. She is the Assistant Director of Environmental Services for the City and she will head up the program.
- A turnkey station provider yet to be determined, will construct the CNG station for the City. They will be responsible for building the station to code on time and on budget.
- The City Gas Utility, CPS, will be the gas provider and be represented through its regional natural gas vehicle (NGV) account manager.

CPS through its NGV regional account manager as well as station turnkey provider will provide engineering assistance in locating the infrastructure at the City of San Antonio corporation yard to maximize its usefulness. Other private firms may also participate in the infrastructure development as necessary as subcontractors.

City of San Antonio certifies that it is a legal entity capable of entering into contracts within the State of Texas.

### Qualifications

City of San Antonio has adopted a Green Program, which includes the implementation of low polluting alternative fuels in transportation. The plan with the success of this proposal, which will have a much greater chance for success with the approval of the requested funding, is that by March 2008, the

number of natural gas vehicles will begin to increase at the City because of an on-site CNG station and help stave off EPA status of non attainment. This will allow the community to improve the air quality and while at the same time allow us take advantage of the lower cost fuel being made available with the new CNG station.

## Personnel Resources

Rose Ryan will manage the proposed program. She is the Assistant Director of Environmental Services for the City of San Antonio and has formerly directed the City of Long Beach's efforts to move to natural gas vehicles. She will act as Program Manager for the entire project as well as construction of the CNG refueling station. She will be supported by the various subcontractor/partners identify above.

## Subcontractors Resources

A number of subcontractors will be employed in the implementation of this program. These entities will provide certified CNG ready products and equipment. All the subcontractors for vehicle procurement and infrastructure development will be supplied in accordance with City of San Antonio's standard practices and specifications.

## Conflict of Interest

There is no conflict of interest with any of the participating entities in this program for the work to be performed by City of San Antonio on behalf of the TERP.

## SECTION C – COST SHARE DETAILS

The total cost for City of San Antonio's CNG station is estimated at \$1,000,000 per the attached excel forms. This proposal requests \$ 336,475 to co-fund the construction of both a slow-fill and fast-fill CNG infrastructures primarily for our CNG refuse trucks. The requested TERP program funding of \$ 336,475 will be applied to offset the cost to City of San Antonio for the components of a CNG station. The matching funds of \$663,525 will come from our capital budget, plus our own in-kind services for the value of the land as well as our cost to purchase the vehicles that utilize the station.

All CNG vehicles that will utilize the new station will be purchased from normal revenue sources or from outside funding sources on a cost sharing basis as well. This investment for each vehicle can be considered a further enhancement of our cost share. The added cost of purchasing the thirty refuse trucks as highlighted earlier could cost the City in excess of \$6,000,000.

## SECTION D – OTHER INFORMATION

### Program Benefits

City of San Antonio, City Gas Utility, CPS, and our station installer, a turnkey station supplier (TBD), will issue a press release to promote the start up of this program once the station is complete. This press release will be part of a public awareness campaign to enable the public and fleets in the northeast area of the City to know about the benefits of using clean fuels like CNG for transportation and the availability of

the CNG station to the public. The message specifically will be aimed at the fleets in and around the northeastern portion of San Antonio, Texas. City of San Antonio will encourage others to make a similar move toward cleaning up the environment. It will talk about the benefits of using CNG benefits like the quietness of the engine and how it helps keep the community cleaner because of the nature of the clean fuel, the reduced emissions from the CNG heavy-duty vehicles and the importance of TERP's contribution to the successful implementation of this alternative-fuel program.

## Vehicle Procurement

Although not part of this proposal, the City plans to replace most of its heavy duty type vehicles with CNG equivalents over the next ten years. The City will replace 90 additional diesel refuse trucks in the next year or so, with funding permitted. All these vehicles will operate along their established routes like any other vehicles they are replacing. We will maintain records of vehicle operation, fueling, maintenance, and repairs for comparison against gasoline/diesel vehicles.

Vehicle performance will be assessed in several ways, including initial acceptance testing, subjective driver evaluation, on-board data logging and fuel economy tests. The following data will be compared with similar data from the respective conventional fuel vehicle data and reported annually to TERP if requested by the air district as part of this grant program:

- Fuel economy and costs
- Range achievable between refueling
- Maintenance requirements and costs
- Engine reliability and CNG related operating characteristics
- Vehicle duty cycle
- Refueling Performance

## SUMMARY

The goal is to build our first of four possible CNG stations and purchase the first 30 of 120 CNG refuse trucks and provide a comprehensive evaluation of the initial CNG trucks. Another major objective of collecting and analyzing this data by the fleet manager will be to analyze the performance and reliability of the station itself.

This proposed project is not a demonstration, but the commercialization of proven products. With this funding the City of San Antonio will take the next steps required to successfully convert all our refuse vehicles to CNG. As we start replacing our refuse vehicles many of our support vehicles will also be changed out to natural gas as well, particularly light duty maintenance trucks and incorporate them into their daily normal operations. As we replace a number of existing refuse trucks we will get higher utilization and lower fuel costs associated with this new CNG station. Since each truck uses about 13.70 billion BTUs per year (40 diesel gallons per day X 1.37 = 54.80 therms per day X 250 days per year = 13,700 therms per year per truck

X 100,000 BTU per therm = 13,700,000 billion BTUs per year per truck). The 30 heavy duty vehicles we plan to replace this year can easily be expected to be at the rate of 411 billion BTUs a year.

The 120 heavy duty refuse trucks we plan to replace over the next 2 years can easily be expected to be at the rate of 1600 billion BTUs of energy a year starting at the beginning of the third year and reduce emissions by more than 24 million tons per year. We are asking for funding totaling \$ 336.475 from the Texas Commission on Environmental Quality's TERP Program for the construction of this first CNG station with a cost share of more than double that from the City.

ATTACHMENT A.  
PINNACLE CNG SYSTEMS AGREEMENT WITH  
THE CITY OF AUSTIN

(tasks and project cost was based upon the attached agreement)

AGREEMENT BETWEEN THE CITY OF AUSTIN, TEXAS  
AND  
PINNACLE CNG SYSTEMS, LLC  
FOR  
DESIGN, CONSTRUCTION, INSTALLATION, AND SALE OF A COMPRESSED  
NATURAL GAS FUELING FACILITY

This Agreement (Agreement) is made on the 13<sup>th</sup> day of October 2006 (Effective Date), by and between the City of Austin (City), a home-rule municipality incorporated by the State of Texas, and Pinnacle CNG Systems, LLC (Contractor), having offices at 300 N. Marienfeld, Suite 360, Midland, Texas 79701-2499.

**WHEREAS**, the City has a requirement for a qualified Contractor to design, construct, install and sell to the City a Compressed Natural Gas (CNG) fueling facility; and

**WHEREAS**, the Contractor has experience and qualifications designing, constructing, installing, and selling this type of facility and all equipment composing such facility; and

**WHEREAS**, the City desires to engage the services of the Contractor to design, construct and install such a facility and to acquire the facility from Contractor;

**NOW, THEREFORE**, for and in consideration of the services to be performed hereunder, and the monetary consideration to be paid therefor as provided herein, and other good and valuable considerations, the parties hereto agree as follows:

**SECTION I. GRANT OF AUTHORITY, SERVICES AND DUTIES**

- 1.1 Engagement of the Contractor. Subject to the terms and conditions of this Agreement, the Contractor is engaged to design, construct, assemble, install, sell, assign, transfer and deliver to City, and City hereby agrees to purchase, acquire and accept from Contractor, on the terms herein set forth and for the consideration stated in Section V hereof, the compressed natural gas fueling equipment (the "Equipment") described on Exhibit A attached hereto. The Equipment will be delivered to and installed at the City's facility (the "City's Facility") shown on the site proposal drawing attached hereto as Exhibit C, which location must be suitable for such delivery and installation in Contractor's opinion and to which Contractor must have unimpeded access without interference from City or its employees, agents or representatives.
- 1.2 Responsibilities of the Contractor. Except as otherwise specified in this Agreement, the Contractor shall provide all personnel, management, materials, and administrative support necessary to complete the design, construction, installation and sale of the Equipment. The Contractor will promptly inform the

Contract Manager to be designated by the City pursuant to Section 1.2 below of any problems encountered that might threaten the timely completion or the adequacy of results obtained in executing the tasks in the Scope of Work, as defined in Section II hereof. Any adjustments in the timetable for the overall project or for completion of specific tasks, excluding adjustments resulting from or caused by a force majeure event as described in Section 7.7 hereof, shall be made only after timely consultation between the Contractor and the City's Contract Manager pursuant to Section 1.2 below. The Contractor will secure all necessary permits and licenses required to install and operate the Equipment at the City's Facility, at the Contractor's expense. The City will, at its sole expense, make available to Contractor in quantities required by Contractor and at specific meter locations specified by Contractor all utility services required to operate the Equipment at the City's Facility, including all gas, electrical, water, sewer and storm drain lines. Contractor will be responsible for the payment of all third party charges incurred to connect such utilities from the downstream side of the meter locations for such utilities to the Equipment.

- 1.2 Responsibilities of the City. The City shall designate a Contract Manager, who will be responsible for exercising general oversight and direction of Contractor efforts in completing the tasks in the Scope of Work. The Contract Manager shall meet with the Contractor as may be reasonably required to discuss any operational issues or the status of the overall project, and to provide timely responses to issues related to performing tasks in the Scope of Work, as raised by the Contractor. The Contract Manager shall promptly review all written and verbal reports submitted by the Contractor, and shall give the Contractor timely feedback on the acceptability of progress reported. The Contract Manager shall approve and release payments in a timely manner. Throughout the term of this Agreement, the Contract Manager shall monitor project activities and insure that all resources to be furnished by the City are available as required to support timely completion of the work to be performed hereunder.
  
- 1.3 Designation of Key Personnel. The Contractor's Project Manager for this Agreement is Drew Diggins, Pinnacle's Operations Manager. The Project Manager shall be responsible for maintaining the schedule and for communicating with the City with respect to the Scope of Work and details related thereto. The Contractor's on-site Project Manager for installation of the Equipment will be Wesley Wilson. The City of Austin's Contract Managers are Mark Childers (primary) and Paul Gross (alternate), of the City's Fleet Services Division, whose office is located at 1190 Hargrave Street, Austin, Texas 78702. The Contract Manager will exercise oversight of week-to-week progress in this engagement, as monitored through face-to-face and written communications, and on-site inspections. The Contract Manager will represent the interests of the City in resolving any and all issues that may arise incidental to and during the execution of this Agreement. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace the key personnel

listed above, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein.

## **SECTION II. SCOPE OF WORK AND DELIVERY.**

The term "Scope of Work" as used in this Agreement shall collectively mean Phase 1 and the tasks and subtasks to be performed under Phase 1, all as more particularly described below. The overall goal of this engagement is to design, install, and construct the Equipment in accordance with the Scope of Work as set forth in this Section II so that the Equipment may be used by the City as a compressed CNG fueling facility. Subject to the Contractor timely securing of all necessary permits, approvals and licenses to install the Equipment, Contractor will install the Equipment at the City's Facility at a specific location designated by the City (which location must be suitable for such installation in Contractor's opinion and to which Contractor will have unimpeded access without interference from the City or its employees, agents or representatives) in sufficient time to enable fueling operations with the Equipment to commence on or before October 1, 2007, assuming Contractor's receipt of written approval from the City of the construction drawings for the Equipment on or before February 1, 2007.

### **2.1 Phase 1. System Planning Acquisition, Installation, Setup, and Acceptance.**

The Phase 1 objective and associated implementation tasks are designed to establish a CNG fueling facility at the site specified for this purpose by the City. At the minimum, Phase 1 shall consist of the following tasks and sub-tasks.

**2.1.1 Task 1. Project Initiation.** Except as otherwise provided in this Agreement, the Contractor shall take all actions necessary to initiate the project, including but not limited to the following:

- Order fueling system components and ancillary equipment
- Order Phase II Environmental Site Assessment (ESA) of the Waste Services Facility property(s)
- Observe present vehicle fueling operations at the Waste Services Facility
- Validate existing geo-technical site conditions and Waste Services Facility drawings
- Determine connection point and routing for station dedicated telephone line
- Confirm final fueling system design and complete station design document package

**2.1.2 Task 2. Final Drawings.** The Contractor shall develop and submit to the City for approval all drawings, diagrams, and other graphic planning materials for the Equipment.

- Submit station design documents for City's review and comment
- Submit the ESA for City's review and change order cost assessment
- Pursue design documents comments from the City
- Pursue contract change order from City for remediation of any unsatisfactory site conditions identified in the ESA
- Complete station equipment, pad, enclosure, piping and electrical drawings
- Request approval of designs and notice to proceed from the City
- Submit building plans for approval by Austin Building Regulation Division
- Submit building plans for approval by Austin Fire Department
- Request building permit approval from Austin Building Regulation Division
- Request permit approval from Austin Fire Department

2.1.3 **Task 3. Site Preparation.** Upon receipt of all necessary permits, approvals and licenses, the Contractor shall complete the following in connection with preparing the site for the installation of the Equipment.

- Issue Notice to Proceed to construction contractor
- Install construction security fencing at compressor equipment compound
- Complete construction contractor mobilization to site
- Demo and remove existing paving for equipment pads and trenches
- Complete remediation of unsatisfactory site conditions identified in Phase II ESA
- Place 24' of trench plates for trenches crossing vehicle movement areas
- Install concrete pads for equipment in compressor equipment compound, (and pad for power generator skid if selected)

2.1.4 **Task 4. Acquisition of Equipment, Construction, Installation, and Components Testing.** The Contractor shall complete the acquisition of the Equipment and its related components, and construct, install and conduct

testing of all installed sub-systems and assemblies for the CNG fueling facility.

- Obtain, set, and anchor CNG compression skid, gas dryer, storage vessels, (and emergency power generator skid if selected)
- Obtain, set, and anchor fast-fill CNG dispenser with fuel control terminal (FCT) at light-duty vehicle fueling island
- Obtain, set, and install time-fill fueling posts and CNG supply line
- Obtain, set, and anchor vehicle defueling panel at fueling station
- Obtain, set, and anchor electrical switch gear, distribution panel, and power metering housing
- Install conductor connections to electric utility service point, station switchgear, distribution panel, and power metering housing
- Test inlet gas line from meter set assembly (MSA) shutoff valve to gas dryer & compressor skid
- Install high pressure CNG lines and signal circuits from compressor equipment compound to vehicle fueling island
- Install and test high pressure CNG lines from compressor skid to buffer vessels and valve panel
- Install & test high pressure CNG lines from valve panel to CNG dispenser at vehicle fueling island and at time-fill fueling area
- Install & test 480V service from City's primary service panel to motor control center (MCC) and electric motor driver
- Obtain, install & test MCC and electrical sub-meter at compressor equipment compound
- Install & test electrical service from secondary panels to fueling system equipment
- Install & test fire detection & suppression system for compressor equipment compound and vehicle fueling island

- Install & test methane detection equipment at the compressor equipment compound and vehicle fueling island
- Install and test signal circuits from compressor equipment compound to the Waste Services Facility supervisor's office
- Install dedicated phone line to compressor equipment compound
- Install & test compressor equipment compound signal light annunciation system
- Install & test fueling station ESD system

2.1.5 **Task 5. System Testing and Installation of Ancillary Equipment.** The Contractor shall complete testing of sub-system components and install and set up all signage, safety and security equipment, and area lighting.

- Complete operational testing for all fueling station safety systems
- Complete fueling system sub-system testing

Complete installation of safety and instructional signage, fire extinguishers, area lighting, security fencing, and protective bollards

2.1.6 **Task 6. Operator Training.** The Contractor shall conduct all training required for use of and emergency response procedures for the CNG fueling facility and associated equipment.

- Complete emergency response training for Waste Services Facility operations personnel
- Complete emergency response training for Austin Fire Department
- Establish on-site storage for spare parts and consumable supplies
- Complete operational training for Waste Services Facility vehicle fueling personnel

2.1.7 **Task 7. Operational Testing and Acceptance.** The Contractor shall assist the City as necessary to complete all operational testing and inspection procedures required for the City's acceptance of the Equipment.

- Complete fueling system field inspection, test, and acceptance for throughput performance testing

- Complete throughput performance testing for test fleet of CNG vehicles
- Complete commissioning of CNG fueling station for operational fueling

Notwithstanding anything in the Scope of Work to the contrary, acceptance of the Equipment by the City will be deemed to occur when (i) the Equipment has been delivered to the City's Facility and is capable of compressing 637 standard cubic feet of gas per minute, and (ii) operation of the Equipment as a CNG fueling facility is permitted under Section 13.25 of Subchapter B (General Rules for Compressed Natural Gas (CNG) Equipment Qualifications) of the Texas Administrative Code.

## 2.2 Phase 2.

Phase 2 shall be the Contractor's management and maintenance of the CNG fueling facility as set forth and governed by a separate Natural Gas Refueling Management and Maintenance Services Agreement to be entered into by Contractor and the City contemporaneously with such parties' execution of this Agreement.

## SECTION III. [INTENTIONALLY OMITTED]

## SECTION IV. DELIVERABLES AND REPORTS

- 4.1 **Progress Reports.** No less than once every two weeks, beginning with the Project Initiation and continuing through the Operational Testing specified in Section 2.1.7, the Contractor or his representative shall meet in person or telephonically with the Contract Manager to report on progress
- 4.2 **Task Reports.** The Contractor shall submit a report upon completion of each task, showing what was accomplished in completing the task. The Contractor shall also discuss any problems encountered that might threaten the timely completion or the adequacy of results expected in completing subsequent tasks. The requirement for any task report will be satisfied by a progress report that covers the same time period and addresses the same issues that would normally be addressed in the task report.
- 4.3 **Onsite Inspections.** Prior to completing the installation of the Equipment, the Contractor shall schedule and attend a preliminary walk-around inspection of the site with City personnel. At this meeting, all items which have been installed up to that point will be discussed and will be preliminarily evaluated against the specifications for the Equipment. A final walk-around inspection will be scheduled to review any items which were either not installed prior to the preliminary walk-around inspection or were modified or replaced since being inspected. The Contractor shall provide the City with an updated work schedule at these site visits. The City's personnel shall be permitted to photograph and/or videotape any and all portions of the equipment and installation site during the walk-around inspections.

- 4.4 **System Documentation and Training Materials.** All documentation, including drawings and graphic planning documentation, equipment specifications, licenses, permits, and operating and maintenance procedures shall be deliverable to the City during and upon system acceptance, as appropriate.

## SECTION V. COMPENSATION PLAN

- 5.1 **Purchase Price.** In consideration for the equipment and associated services to be provided pursuant to Tasks 1 through 7 in Section II of this Agreement, the Contractor shall be paid One Million One Hundred Sixty-Four Thousand Six Hundred Twenty-One and No/100 Dollars (\$1,164,621.00) (the Price).
- 5.1.1 The City shall pay the Contractor an amount equal to fifty percent (50%) of the Price (\$582,310.50) within thirty (30) days following the Effective Date of this Agreement for the Equipment and the various components thereof and associated startup costs.
- 5.1.2 Payments equaling, in the aggregate, forty percent (40%) of the Price (\$465,848.40) shall be paid to the Contractor as work progresses and as additional expenses are accrued. These payments shall be made upon receipt of appropriate Contractor invoices submitted by the Contractor, which invoices may be submitted by Contractor to the City as the Equipment is designed and constructed at Contractor's facility in Midland, Texas, or site work is completed at the City's Facility.
- 5.1.3 Ten percent (10%) of the Price (\$116,462.10), shall be held in retainage by the City pending satisfactory completion of tasks 1 through 7 of the Scope of Work. The retainage, less any amounts assessed as penalties, shall be paid to the Contractor upon acceptance of the Equipment by the City as provided in Section 2.1.7 hereof. Contractor will execute and deliver a Bill of Sale in the form of that attached hereto as Exhibit B conveying the Equipment to the City no later than ten (10) business days following Contractor's receipt of the Price in full.
- 5.2 **Invoices.** The Contractor will submit Contractor invoices to the City on a monthly basis as the work progresses at the Contractor's facilities in Midland, Texas, or at the City's Facility.
- 5.2.1 Invoices shall be mailed to the City of Austin, Fleet Services, ATTN: Mark Childers at P.O. Box 1088, Austin, Texas 78767. Unless otherwise instructed in writing, City may rely on the remittance address specified on the Contractor's invoice.

- 5.2.2 Contractor's invoices shall be accompanied by a list of the Equipment and supplies covered thereby and a brief description of the work performed by Contractor (e.g., site work performed at the City's Facility) during the billing period.
- 5.2.3 Federal taxes, state taxes, and local taxes must not be included in the invoiced amounts; provided, however, to the extent any such taxes or duties of any kind which may be applicable to the sale or use of the Equipment (excluding income taxes of Contractor) are paid by the Contractor, such taxes or duties shall be reimbursed by the City to the Contractor upon demand.
- 5.4 **Payment.** All proper invoices received by the City will be paid within 30 days of the City's receipt of the invoice. If payment is not timely made, interest shall accrue on the unpaid balance at the lesser of one percent per month or the maximum lawful rate; except, if payment is not timely made for a reason for which City may withhold payment hereunder, interest shall not accrue until ten days after the grounds for withholding payment have been resolved.
  - 5.4.1 The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
    - 5.4.1.1 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed and such claims are not cured by Contractor within thirty (30) days of Contractor's receipt of written notice of such claims;
    - 5.4.1.2 failure of Contractor to cause a subcontractor to release any mechanic's or materialmen's lien filed by a subcontractor;
    - 5.4.1.3 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor and not caused by the any act or omission of the City or any of its agents, representatives, employees or other contractors or any other third party; or
    - 5.4.1.4 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation expressly required under this Agreement.
  - 5.4.2 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §5-1-2 of the

Austin City Code of 1992, as amended, concerning the right of the City to offset indebtedness owed the City.

- 5.4.3 The City represents and warrants to Contractor that funds sufficient to pay the entire amount of the Price have been appropriated by the City and are immediately available and will remain immediately available for the purpose of purchasing the Equipment.
- 5.5 **Equipment Remains Personal Property.** Until payment in full of the Price, the Equipment will be and remain strictly personal property and retain its character as such, no matter whether on permanent foundation or in what manner affixed or attached to any building or structure, or what may be the consequences of it being disturbed on such foundation, building or structure, or for what purpose the Equipment may be used. If the City fails to pay when due the Price or any part thereof or fails to perform any of the covenants set forth in this Section 5.5, Contractor may elect to declare the entire unpaid portion of the Price immediately due and payable. The City hereby expressly waives notice (including, but not limited to, notice of intent to accelerate and notice of acceleration), demand, presentment for payment, protest, and diligence in collecting or bringing suit and the filing of suit for the purpose of fixing liability. If the City fails to pay the Price when due or declared due, Contractor will have all the rights and remedies of a secured party under the Uniform Commercial Code as adopted in the State of Texas (Code), and Contractor will be entitled to avail itself with all such other rights and remedies as may now or hereafter exist at law or in equity for the collection of the Price and the enforcement of the covenants herein, and the resort to any remedy provided under the Code, or by any other law of the State of Texas, will not prevent the concurrent or subsequent employment of any other appropriate remedy or remedies.

## **SECTION VI. CITY-INITIATED DELAYS, DEFAULT, TERMINATION FOR CAUSE, ETC.**

- 6.1 **City-Initiated Delays.** The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. Any delay that is initiated by the City shall be accompanied by an automatic extension of the period of time Contractor and City have under this Agreement to perform their respective obligations (other than obligations to pay) by a period of time equivalent to the delay. If such delay causes an increase in the cost of the work under the Agreement, the Price shall be increased to reflect such increase in the cost of the work and the City and the Contractor shall execute an amendment to this Agreement reflecting such increase. The Contractor must assert its right to an adjustment within thirty (30) days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

- 6.2 **Right to Assurance.** Whenever one party to this Agreement is not performing as required herein, demand may be made by the other party for written assurance from the non-performing party of such party's intent to perform. In the event that no assurance is given within the time period specified after demand is made, which time period shall not be less than 30 days from the date a demand for written assurance is received by the non-performing party, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.
- 6.3 **Default.** The Contractor shall be in default under the Agreement if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement and such failure continues for a period of thirty (30) days after Contractor's receipt from the City of written notice thereof, (b) fails to provide assurance of performance under Section 6.2, or (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States.
- 6.4 **Termination for Cause.** Upon the occurrence of an event of a default described in Section 6.3 above, the City shall have the right to terminate the Agreement for cause, by written notice effective ten (10) days, unless otherwise specified, after the date of Contractor's receipt of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover, subject to Section 7.9 hereof, all actual damages, costs, and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for up to three (3) years and any offer submitted by the Contractor may be disqualified for up to three (3) years. Upon the termination of this Agreement under this Section 6.4, the City shall pay Contractor for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
- 6.5 **Termination Without Cause.** The City shall have the right to terminate the Agreement, in whole or in part, without cause any time upon thirty (30) days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay Contractor for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
- 6.6 **Fraud.** Fraudulent statements by the Contractor on any offer shall be grounds for the termination of this Agreement for cause by the City under Section 6.4 above and may result in legal action.

## SECTION VII. MISCELLANEOUS

### 7.1 Workforce.

- 7.1.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Agreement.
- 7.1.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not use or possess any firearms, alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the job or on the City's property, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- 7.1.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Agreement services, and may not employ such worker again on Agreement services without the City's prior written consent.

**7.2 Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern.

**7.3 Section 1342 of the Energy Policy Act of 2005 (H.R.6).** If the Contractor elects, at its sole discretion, to pursue the tax credit for installation of an alternative fueling system provided for under Section 1342 of the Energy Policy Act of 2005 (H.R.6), the City shall, at the Contractor's expense, cooperate with Contractor in its efforts to pursue such tax credit. If Contractor receives a tax credit under Section 1342, Contractor will retain and will be the sole beneficiary of one hundred percent (100%) of such tax credit.

### 7.4 Indemnity

#### 7.4.1 Definitions:

- 7.4.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability, of every character, type or description, including all costs and expenses of litigation,

mediation or other alternate dispute resolution mechanism, including reasonable attorneys' and other professional fees for:

- (i) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
- (ii) death or bodily injury of persons (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties).

7.4.1.2 "Fault" shall include the gross negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.4.2 The Contractor shall indemnify and hold the City, its successors, assigns, officers, employees and elected officials harmless from and against all Indemnified Claims arising out of, concerning or resulting from the Fault of the Contractor or the Contractor's agents or employees, in the performance of the Contractor's obligations under this Agreement, provided that the City shall give Contractor prompt, written notice thereof and shall permit Contractor to control the defense and/or settlement of the Indemnified Claim, at the Contractor's sole expense. Nothing herein shall be deemed to limit the rights of the City or the Contractor (including, but not limited to, the right to seek contribution) against any third party who may be liable for an indemnified claim.

7.5 **Insurance.** Insurance shall be provided as follows:

7.5.1 General Requirements.

7.5.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Agreement.

7.5.1.2 The Contractor shall forward Certificates of Insurance with the endorsements required below to the City as verification of coverage within 14 calendar days after the parties' execution of this Agreement, unless otherwise specified.

7.5.1.3 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall

not be construed to be a limitation of liability on the part of the Contractor.

- 7.5.1.4 The Contractor must submit certificates of insurance for all subcontractors to the City prior to them commencing work on the project.
- 7.5.1.5 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- 7.5.1.6 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the Agreement number and the following information:

City of Austin, Purchasing Office  
ATTN: Sydney Ceder  
P. O. Box 1088  
Austin, Texas 78767
- 7.5.1.7 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Agreement, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- 7.5.1.8 If insurance policies are not written for amounts specified below, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- 7.5.1.9 The City shall be entitled, upon request and without expense, to receive copies of endorsements to insurance policies maintained by Contractor.
- 7.5.1.10 The City reserves the right to review the insurance requirements set forth during the effective period of this Agreement and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in

statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

7.5.1.11 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement.

7.5.1.12 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

7.5.1.13 The Contractor shall provide the City thirty (30) days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.

7.5.1.14 The insurance coverages specified below are required minimums and are not intended to limit the responsibility or liability of the Contractor.

## 7.5.2 Specific Requirements.

7.5.2.1 Worker's Compensation and Employers' Liability Insurance. Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Art. 8308-1.01 et seq Tex. Rev. Civ. Stat.). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.

7.5.2.1.1 The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:

- (i) Waiver of Subrogation, Form WC 420304
- (ii) Thirty (30) days Notice of Cancellation, Form WC 420601

7.5.2.2 Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A and B.

7.5.2.2.1 The policy shall contain the following provisions:

- (i) Blanket contractual liability coverage for liability assumed under this Agreement and all Contracts related to the project.
- (ii) Independent Contractor's Coverage.
- (iii) Products/Completed Operations Liability for the duration of the warranty period.

7.5.2.2.2 The policy shall also include these endorsements in favor of the City of Austin:

- (i) Waiver of Subrogation, Endorsement CG 2404
- (ii) Thirty (30) days Notice of Cancellation, Endorsement CG 0205
- (iii) The City of Austin listed as an additional insured, Endorsement CG 2010

7.5.2.3 Business Automobile Liability Insurance. The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall include these endorsements in favor of the City of Austin:

7.5.2.3.2 Waiver of Subrogation, Endorsement TE 2046A

7.5.2.3.3 Thirty (30) days Notice of Cancellation, Endorsement TE 0202A

7.5.2.3.4 The City of Austin listed as an additional insured, Endorsement TE 9901B

## 7.6 Payment and Performance Bonds.

7.6.1 Payment Bond. Upon execution hereof, the Contractor shall provide a Payment Bond in an amount equal to 100% of the Price to guarantee Contractor's work hereunder, within the time prescribed and in a manner complying with the terms of this Agreement. The Payment Bond shall be

issued by a solvent company authorized to do business in the State of Texas, and shall meet any other requirements established by law. The Payment Bond shall be maintained by Contractor in full force and effect until all claims for materials and labor are paid. Notwithstanding the foregoing, the face amount of the Payment Bond may be reduced to an amount equal to the unpaid portion of the Price at such time as the Equipment is delivered to the City's Facility.

7.6.2 Performance Bond. Upon execution hereof, the Contractor shall provide a Performance Bond in an amount equal to 100% of the Price to guarantee Contractor's work hereunder, within the time prescribed and in a manner complying with the terms of this Agreement. The Performance Bond shall be issued by a solvent company authorized to do business in the State of Texas, and shall meet any other requirements established by law. The Performance Bond shall be maintained by Contractor in full force and effect until all claims for materials and labor are paid. Notwithstanding the foregoing, the face amount of the Performance Bond may be reduced to an amount equal to the unpaid portion of the Price at such time as the Equipment is delivered to the City's Facility.

**7.7 Liquidated Damages.** Failure to complete the work within the time and in the manner provided for in this Agreement shall subject the Contractor to liquidated damages. The parties understand and agree that the actual occurrence of damages and the amount thereof which the City would suffer if the work is not completed on time is impossible or is extremely difficult to determine. Accordingly, the parties agree that the sum of One Hundred and No/100 Dollars (\$100.00) per day for each and every calendar day of delay beyond the time herein prescribed for finishing the work shall be presumed to be the amount of damages sustained by the City for the Contractor's failure to complete the work on time. The project is to be completed prior to October 1, 2007, subject to Section II entitled "Scope of Work and Delivery" above. The Contractor shall not be assessed liquidated damages where delay is caused by the failure of the City (or the owner of any utilities), to provide for the installation, removal or relocation of utility facilities or where delay is covered by events of force majeure.

**7.8 Force Majeure.**

7.8.1 The term "force majeure" as used herein means laws, regulations or acts of duly constituted governmental authority, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, events similar to those of September 11, 2001, war, blockades, insurrections, stormy, freezing or inclement weather, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, exhaustion or depletion of supplies of gas, freezing of wells, equipment or lines of pipe, electrical power outages, fuel shortages or partial or complete curtailment or interruption of deliveries by Contractor's suppliers or transporters, and any other causes, whether of the kind herein enumerated or

otherwise, not reasonably within the control of the party claiming force majeure and which by the exercise of due diligence such party is unable to prevent or overcome.

7.8.2 If either party hereto is rendered unable, either wholly or partially, by force majeure from carrying out its obligations under this Agreement, it is agreed that the obligations of Contractor and City (other than obligations to pay), insofar as they are affected by such force majeure, will be suspended during the continuance of the inability so caused, but for no longer period. If an event of force majeure occurs, the party experiencing same will promptly notify the other party in writing of the circumstances and the expected duration of the force majeure event.

7.9 **Warranty.** Contractor warrants that the Equipment and all installation services, including plumbing and electrical work, performed, installed or assembled by Contractor with respect to the Equipment, will be free from defects in material and workmanship for a period of 12 months after acceptance of the Equipment by City. If any failure to conform to the preceding warranty is reported in writing to Contractor within said period and City has operated and maintained (or caused to be operated and maintained) the Equipment in accordance with good industry practice and the operating and maintenance instructions furnished by Contractor to City, Contractor will, at its option, correct such nonconformity either by making suitable repair of the Equipment at Contractor's facility in Midland, Texas, or by furnishing a replacement part for the Equipment or, in the case of defective services, by suitable replacement services. If the Equipment to be repaired or replaced is covered by this warranty, Contractor will bear the shipping cost. If the Equipment to be repaired or replaced is not covered by this warranty, Contractor will not bear the shipping cost. The effects of corrosion, impurities in gas and ordinary wear and tear are specifically excluded from the warranty above. Contractor will not be responsible for any repairs or replacements performed by City or others without Contractor's prior written approval. With respect to all components of the Equipment furnished by Contractor but manufactured by third parties unrelated to Contractor, Contractor will pass all warranties of the manufacturers of such components to City to the full extent such warranties may be passed to City. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, CONTRACTOR MAKES NO WARRANTIES OR GUARANTIES OF WHATSOEVER NATURE, EXPRESS OR IMPLIED, CONCERNING THE EQUIPMENT, IT BEING THE INTENTION OF CONTRACTOR AND CITY TO NEGATE EXPRESSLY AND TO EXCLUDE ALL OTHER WARRANTIES AND GUARANTIES, INCLUDING, WITHOUT LIMITATION; ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WARRANTIES CREATED BY ANY AFFIRMATION OF FACT OR PROMISE OR BY ANY DESCRIPTION OF THE EQUIPMENT, AND ANY OTHER WARRANTIES WHATSOEVER CONTAINED IN OR CREATED BY THE UNIFORM COMMERCIAL CODE AS ADOPTED IN THE STATE OF TEXAS.

7.9 **Limitation of Liability.** Notwithstanding anything in this Agreement to the contrary, the remedies of City set forth herein are exclusive, and the total liability of Contractor with respect to this Agreement or the Equipment and services furnished hereunder, in connection with the performance or breach thereof, or from the

manufacture, sale, delivery, repair, replacement or services covered by or furnished under the Agreement, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise, will not exceed the Price. CONTRACTOR AND ITS SUPPLIERS WILL IN NO EVENT BE LIABLE TO CITY, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT OR ANY BREACH THEREOF, OR ANY DEFECT IN OR FAILURE OR MALFUNCTION OF THE EQUIPMENT, WHETHER BASED UPON LOSS OF USE, LOST PROFITS OR REVENUE, INTEREST, LOST GOODWILL, WORK STOPPAGE, IMPAIRMENT OF OTHER GOODS, LOSS BY REASON OF SHUTDOWN OR NON-OPERATION, INCREASED EXPENSES OF OPERATION, COST OF PURCHASE OF REPLACEMENT FUEL OR CLAIMS OF CITY OR CUSTOMERS OF CITY FOR SERVICE INTERRUPTION WHETHER OR NOT SUCH LOSS OR DAMAGE IS BASED ON CONTRACT, WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHERWISE.

**7.10 Preferential Right to Purchase.** If City desires to sell all or any part of the Equipment, City will promptly give notice to Contractor, with full information concerning the proposed disposition, which will include the name and address of the prospective transferee (who must be ready, willing and able to purchase), the purchase price, a description of the Equipment to be sold and all other terms of the offer. Contractor will then have an optional prior right, for a period of 30 days after the notice is given, to purchase for the stated consideration and on the same terms and conditions as the City proposes to sell the same. If Contractor does not exercise its option to purchase the Equipment being offered for sale, City will have thirty (30) days in which to complete the sale to the prospective transferee under no less favorable terms than those offered to Contractor. If such sale does not occur within such thirty (30) day period, any attempted transfer will be deemed pursuant to a new offer and this Section 7.10 will apply again.

**7.11 Right to Audit.** The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Agreement. The Contractor shall retain all such records for a period of three (3) years after final payment on this Agreement. The Contractor agrees to refund to the City any overpayments disclosed by any such audit and the City agrees to pay to the Contractor any underpayments disclosed by any such audit.

**7.12 Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Agreement, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to

the Austin City Attorney. Personal delivery to the City Attorney shall be to Norwood Tower, 114 West 7th Street, 5th floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.13 **Notices.** Any notice, request, or other communication required or appropriate to be given under this Agreement shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by any other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, facsimile, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

to the City:

City of Austin, Purchasing Office  
ATTN: Jack McCracken  
PO Box 1088  
Austin, Texas 78767-8828

Fax: (512) 499-2388

with a copy to:

City of Austin, City Attorney  
PO Box 1088  
Austin, Texas 78767-8828

to the Contractor:

Pinnacle CNG Systems, LLC  
ATTN: Drew Diggins  
Post Office Box 2499  
Midland, Texas 79702

Fax: (432) 686-6408

with a copy to:

Pinnacle CNG Systems, LLC  
Suite 1100, The Summit  
300 N. Marienfeld  
Midland, Texas 79701  
Attention: Gary D. Douglas

Fax: (432) 686-6469

7.14 **Title.** Final title to the Equipment passes to the City upon the Contractor's execution and deliver of the Bill of Sale described in Section 5.1.3 of this Agreement.

7.15 **Rights to Contractual Material.** Contractor hereby grants to the City a non-exclusive, non-transferable, royalty free license to utilize Contractor's confidential or proprietary data, documentation and software for operation of the Equipment at City's Facility. Any portions of such material claimed by the Contractor to be confidential or proprietary must be clearly marked as such.

7.16 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into this Agreement, except to the extent required by law.

7.17 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Agreement upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting

bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Agreement without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

**7.18 Gratuities.** The City may, by written notice to the Contractor, cancel the Agreement without liability if it is determined by a court of law that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Agreement or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

**7.19 Prohibition Against Personal Interest in Contracts.** No officer, employee, independent contractor, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in this Agreement resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision with respect to which the Contractor has actual, advance knowledge of shall render this Agreement voidable by the City.

**7.20 Independent Contractor.** The Agreement shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City.

**7.21 Assignment-Delegation.** The Agreement shall be binding upon and inure to the benefit of the City and the Contractor and their respective successors and assigns, provided, however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by either party without the consent of the other party hereto, which consent will not be unreasonably withheld, conditioned or delayed. Any attempted assignment or delegation without the aforementioned consent shall be void unless made in conformity with this Section 7.21. The Agreement is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Agreement.

**7.22 Waiver.** No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the

aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

**7.23 Modifications.** The Agreement can be modified or amended only by a writing signed by both parties hereto. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Agreement.

**7.24 Interpretation.** The Agreement is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREIN AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as adopted by the State of Texas, is used in the Agreement, the UCC definition shall control, unless otherwise defined in the Agreement.

**7.25 Dispute Resolution.**

7.25.1 If a dispute arises out of or relates to the Agreement, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below.

7.25.2 Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in

mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Agreement prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the costs of mediation equally.

**7.26 Jurisdiction and Venue.** The Agreement is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Agreement shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

**7.27 Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.

**7.28 Incorporation of Contract Documents/Order of Precedence.** The documents listed below, taken together, contain the terms and conditions of the Agreement between the parties. These documents are incorporated by reference and are an integral part of this Agreement. In the event of a conflict between any of the provisions governing this business relationship, any inconsistency shall be resolved by giving precedence in the following order: (1) This Agreement (2) The Request for Proposals, SC06300022, as amended, and (3) Contractor's Proposal dated March 23, 2006.

**7.29 Counterparts.** This Agreement may be executed simultaneously in one or more counterparts, each of which will be deemed to be an original and all of which when taken together will constitute one instrument.

7.30 **Acceptance.** This Agreement will be effective only if executed by both parties on or before October 15, 2006.

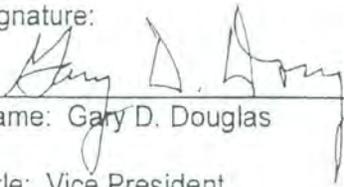
[Remainder of Page Intentionally Left Blank]

This Agreement is executed in duplicate originals to be effective as of October 13, 2006

**PINNACLE CNG SYSTEMS, LLC:**

**CITY OF AUSTIN:**

Signature:



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Name: Gary D. Douglas

Title: Vice President

Date: October 13, 2006

Signature:



---

Name: Rick Fudge

Title: Deputy Purchasing Officer

Date: October 13, 2006

Approved as to Form:

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Assistant City Attorney

Exhibit A

Equipment

(1) – 637 SCFM Compressors

Based On 25 PSIG (Average) Gas Service

**Pinnacle Compressor Skid (Components comprising each skid)**

- 1 each Natural Gas Compressor Package 325 HP, 637 SCFM @ 25 PSI suction, Pinnacle CNG Systems, LLC (Proprietary)
- 1 each Pinnacle CNG Systems, LLC HDL5.00 75 HP Compressor - Oil Free, 5000 psi Compressor (Proprietary)
- 1 each Ariel JGJ/2 637 SCFM frame, 250 HP, cylinders, pulsation dampeners, inter-stage scrubber
- 1 each 88 GPM Parker-Hannefin Hydraulic Pump, Model PV180R1F3T1NSLC
- 1 each 5-Stage, 1,000 SCFM Gas to Air Heat Exchanger (GEA, Model C54-0748) using 12 to 15 degrees F above ambient approach.
- 1 each 300 GPM Hydraulic Spool Valve (Nachi America, DSS-Series, Model SSG01C6RC2)
- 1 each 75 HP Motor (Baldor Model CM7064T), C-Face, 3-Phase, 480 VLT, 60 Htz, 1760 RPM, TEFC
- 1 each 75 HP Motor starter
- 4 each High Pressure Solenoid Valves, rated to 5000 PSI, (Pinnacle GT-2)
- 4 each 5000 PSI Check Valve (HOKE Model 306-86A)
- 4 each Pressure Transducers - 1/4 of 1 % accurate (Murphy and Wika models)
- 4 each Pressure Relief valves - Various Settings (Mercer)
- 1 each Natural Gas ASME Standard Inlet Scrubber (use several suppliers – Allied Equipment)
- 1 each Flame Detector or Gas Monitor in Compressor Housing (Spectrex, Inc. Model 20/20U, 20/20UB Sharp-Eye U.V. Flame Detector)
- 1 each Compressor Housing (by Metal Specialties, Inc.), Sound Attenuation – UL-rated, foam with Nylon Face 75 dba at 3', 22' x 8' 6".
- 1 each Computer Control Package, UL Sealed, with remote diagnostic capabilities Fleet Management System Pinnacle CNG Systems, LLC (Proprietary)
- 1 each 150-gallon, steel, Hydraulic Tank rated to 50 psi, 300 deg. Fahr., Pinnacle CNG Systems, LLC (Proprietary)
- 1 each Hydraulic Relief Valves (3,700 psi) (Damon Products, Vickers)
- 1 each Oil Heater (Watlow Model BGS79J6EW2), Immersion type, 1.5 KW, 220V, 1-1/4" NPT, Explosion-proof
- 1 each Oil to Air Heat Exchanger (American Industrial Models AOM-10, AOM-45NP)
- 1 each 2 HP Motor for Hydraulic Circulation Pump (Baldor Model VM7037), 1725 RPM, C-Face, Explosion-proof
- 1 each Inlet Solenoid 2-1/2", 300 PSI (Magnatrol Model 42AV57G120 or Wika)
- 4 each Pressure Transducers - Various Settings (Murphy, Wika) 1% accurate

Exhibit B

Bill of Sale

THIS BILL OF SALE (this "Agreement") is entered into effective as of \_\_\_\_\_, \_\_\_\_\_ by and between Pinnacle CNG Company, a Texas corporation ("Assignor") and \_\_\_\_\_ ("Assignee").

RECITATIONS:

Assignor and Assignee have entered into that certain Design, Construction, Installation and Sale of a Compressed Natural Gas Fueling Facility Agreement, dated \_\_\_\_\_, \_\_\_\_\_ (the "Equipment Agreement"), pursuant to which Assignor has agreed to design, construct, assemble, install, sell, assign, transfer and deliver and Assignee has agreed to purchase the equipment described in Exhibit A attached hereto (the "Equipment");

NOW, THEREFORE, for and in consideration of the foregoing premises and the promises and the mutual covenants contained in the Equipment Agreement, and for other valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Bill of Sale.

(a) KNOW ALL MEN BY THESE PRESENTS, that Assignor, for and in consideration of the payment of the purchase price called for in the Equipment Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted, and pursuant to the Equipment Agreement, does hereby grant, bargain, sell, assign, convey, transfer and deliver to Assignee, its successors and assigns, the Equipment.

TO HAVE AND TO HOLD, all and singular, the Equipment hereby sold, assigned, transferred and conveyed to Assignee, its successors and assigns forever. Assignor hereby binds itself and its successors and assigns, to warrant and defend the title to all of the Equipment unto Assignee, its successors and assigns, forever against every person whomsoever lawfully claiming or to claim the same or any part thereof.

(b) Assignor warrants that it is the lawful owner of the Equipment and that all of the Equipment is being transferred and conveyed free and clear of any and all liens, security agreements, encumbrances, taxes, claims, demands and charges of every kind and character whatsoever.

(c) Except for the foregoing and except as expressly provided in the Equipment Agreement, Assignor MAKES NO OTHER WARRANTIES OF

- 1 each 250 Hp high-efficiency Electric Motor (Baldor Model M74124T-4) with 1.0 service factor, 1760 rpm, TEFC
- 1 each 250 Hp starter
- 1 each Parker 6000psi, final stage coalescer filter, Model SY2C600NHCVRR
- 1 each Parker 6000psi, 2<sup>nd</sup> stage discharge coalescer filter, Model SY2N144N1CVTR
- 1 each Parker 1<sup>nd</sup> stage coalescer filter, H Series, HN4S-6CN
- 1 each Remote video, audio, digital telemetry communication software package, high-resolution color camera (Ultrak Model KC4300 or 4400MN/BMN)
- 2 each 3000 psi Check Valves (Kepner Products Company, Kep-O-Seal Model)

### *Pinnacle Dispenser*

- 1 each Pinnacle dual meter Dispenser Enclosure, with card reader and LED display; 3,600 PSI and 3,000 PSI dispensing hoses
- 1 each Endress+Hauser Promass 63 flowmeters ½" meter tube (medium duty) Weights And Measures approved or
- 2 each Krone flowmeters 1" meter tube (transit)
- 3 each Magtek, Model 21065095, P-Series, Port Powered, Insertion Card-Readers
- 13 each Pinnacle two (2) hose time fill dispenser post with 3600 PSI NGV-1 Staubli connectors, hose reels and high pressure stainless steel tubing, valves and fittings.

### *Pinnacle Storage/Buffer*

- 1 each ASME, DOT, ABS rated, 24" O.D. x 20', 46 Cubic Ft. water volume, 3600 PSI, CP Industries., High-Pressure Vessel with racks, valves, pressure relief devices.

WHATSOEVER NATURE, EXPRESS OR IMPLIED, CONCERNING THE EQUIPMENT, IT BEING THE INTENTION OF ASSIGNOR AND ASSIGNEE TO NEGATE EXPRESSLY AND TO EXCLUDE ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WARRANTIES CREATED BY ANY AFFIRMATION OR FACT OR PROMISE OR BY ANY DESCRIPTION OF THE EQUIPMENT, AND ANY OTHER WARRANTIES WHATSOEVER CONTAINED IN OR CREATED BY THE UNIFORM COMMERCIAL CODE.

(d) Assignor further covenants and agrees that it will do or cause to be done all such further acts, and will execute, acknowledge and deliver, or will cause to be executed, acknowledged and delivered, any and all such other deeds, assignments, transfers and conveyances, powers of attorney and assurances as Assignee, its successors and assigns, may reasonably require for the better assuring, assigning, transferring and conveying unto Assignee, its successors and assigns, all and singular, the Equipment and as may be appropriate to carry out the transactions contemplated by the Equipment Agreement.

2. Successors and Assigns.

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, Assignor and Assignee have caused this Agreement to be executed effective as of the day and year first above written.

**ASSIGNOR:**

**ASSIGNEE:**

**PINNACLE CNG COMPANY**

By: \_\_\_\_\_  
Gary D. Douglas, Vice President

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date of Execution:  
\_\_\_\_\_

Date of Execution:  
\_\_\_\_\_

EXHIBIT A  
(to Bill of Sale)

Exhibit C

See Attached Site Proposal Drawing



CITY OF AUSTIN

# AGENDA



Thursday, August 10, 2006

+ Back Print

**Purchasing Office  
RECOMMENDATION FOR COUNCIL ACTION**

**ITEM No. 45**

**Subject:** Authorize award, negotiation, and execution of a 11-year contract with PINNACLE CNG SYSTEMS, LLC, Midland, TX, for the design, installation, operation, and maintenance of a compressed natural gas (CNG) fueling facility in an estimated amount not to exceed \$2,691,952, with one 5-year extension option in an estimated amount not to exceed \$1,217,158, for a total estimated contract amount not to exceed \$3,909,110.

**Amount and Source of Funding:** Funding in the amount of \$1,164,621 is available from certificates of obligation and a grant from the State Energy Conservation Office (SECO) in the Fiscal Year 2005-2006 Amended Capital Budget of the Financial and Administrative Services Department, Fleet Services Division. Funding in the amount of \$1,527,331 for the ongoing annual maintenance and operation of the compressed natural gas site is contingent upon available funding in future budgets.

**Fiscal Note:** There is no unanticipated fiscal impact. A fiscal note is not required.

**For More Information:** Sydney Ceder, Buyer II/974-2035

**Purchasing Language:** Best evaluated proposal of two proposals received.

**MBE/WBE:** This contract will be awarded in compliance with Chapter 2-9C of the City Code (Minority-Owned and Women-Owned Business Enterprise Procurement Program). No subcontracting opportunities were identified; therefore, no goals were established for this solicitation. (Related to item #8 and item #9)

**Additional Backup Material**

(click to open)

**IT PINNACLE CONTRACT  
FISCAL NOTE**

This contract will provide the Fleet Services Department of the City of Austin with an unattended compressed natural gas (CNG) fueling facility, and will include a 10-year operations and maintenance agreement, with a 5-year extension option. The estimated time for installation is 12 months. The City is purchasing 6 CNG-Fueled Refuse Trucks with proceeds from a TNRCC grant that pays for the incremental cost increase of CNG fueled vehicles. Additionally, in future years the City intends to purchase more CNG fueled heavy-duty trucks and will continue to apply for state grant money for this purpose. The CNG facility will be equipped to fill 15 vehicles the first year, with planned increases to add six CNG-fueled vehicles each year through year 10. The facility is expandable to accommodate up to 35 vehicles.

CNG is compressed natural gas that is a clean burning fuel that originates within the United States and will reduce our reliance on foreign oil. The station will be located at 4308 Todd Lane and will be equipped with 15 dual hose pumps that will be capable of over night slow filling of Solid Waste Services and Austin Water Utility heavy-duty trucks. Additionally, the station will be equipped with one dual fast-filling hose pump to be used for public access between the hours of 6:00 a.m. and 6:00 p.m. daily. The fueling facility will be fully operational 24 hours a day, seven days a week. In addition to designing, installing, operating and maintaining the fueling facility, the contractor will be responsible for a public marketing campaign for the public access pumps.

The purchase price of the equipment and installation is \$1,164,621, and the 10-year maintenance and operation cost is \$1,527,281. The City of Austin has been advised that it is eligible for a grant from the State Energy Conservation Office (SECO) in the amount of \$150,000 to be applied to the purchase of this fueling facility.

An RFP was issued on February 19, 2006 for an experienced firm to provide services for the design, installation, operations and maintenance services for a compressed natural gas (CNG) fueling facility. Two proposals were received. A panel consisting of six professional and fuel usage experts from the Fleet Services Division, the Austin

Water Utility, Solid Waste Service and Financial and Administrative Services Department evaluated the proposals. The panel members recommended Pinnacle CNG Systems, LLC as the best Proposer based upon the categories of 1) Experience of the firm and individuals(s) – Installation, 2) Experience of the firm and individual(s) – Operations & Maintenance, 3) Scope & Quality of the Design, 4) Project Schedule, and 5) Total Evaluated Cost.

Pinnacle CNG Systems, LLC has been providing turnkey CNG fueling services for over 12 years working with heavy truck municipal and commercial fleets. Examples of some past projects include the City of San Jose International Airport, City of Visalia Sanitation Department in Visalia, CA and Yolo Transportation District in Woodland, CA.

MBE/WBE Solicited: 0/2 MBE/WBE Bid: 0/0

PROPOSAL ANALYSIS a. Adequate competition. b. Three notices were sent, including two WBEs. There are no known MBEs for this commodity code. Eight solicitations were issued. Two proposals were received, with no response from the WBEs. One "No Bid" was received.

APPROVAL JUSTIFICATION a. Best evaluated proposal. b. The Purchasing Office concurs with Fleet Services' recommended award. c. Advertised in the Austin American-Statesman and on the Internet.

ATTACHMENT B.  
INFRASTRUCTURE SPECIFICATIONS

# CNG REFUELING STATION PROPOSAL SPECIFICATIONS

City of San Antonio

RFP # TBD

## PROPOSAL COVER SHEET

NAME OF BIDDER \_\_\_\_\_

A. PRICE FOR TURNKEY SYSTEM TO DESIGN AND INSTALL A COMPLETE CNG SYSTEM INCLUDING 1 WEIGHTS AND MEASURES APPROVED DISPENSER, IF REQUIRED BY THE STATE WITH 2 HOSES/NOZZLES ON 1 FUELING ISLAND, CARD READER, PHONE LINE THAT PROPERLY TIES INTO THE CNG STORAGE SYSTEM AND COMPRESSORS, AND A COMPLETE SLOW FILL SYSTEM WITH 15 DUAL FUELING POSTS

\_\_\_\_\_

MAINTENANCE/OPERATION CONTRACT FOR 2<sup>ND</sup> THRU 5<sup>TH</sup> YEAR FOR (A) ABOVE

\_\_\_\_\_

MAINTENANCE/OPERATION CONTRACT FOR 6<sup>TH</sup> THRU 10<sup>TH</sup> YEAR FOR (A) ABOVE

\_\_\_\_\_

Proposer's Authorized Signature \_\_\_\_\_

**BID BOND**

Bond No. \_\_\_\_\_

Premium \_\_\_\_\_

(10% of aggregate amount of bid)  
(Not required if cash, cashier's or certified check  
in the required amount accompanies bid.)

**KNOW ALL PERSONS BY THESE PRESENTS:** That we, \_\_\_\_\_,  
as Principal and \_\_\_\_\_, as Surety, are held and firmly  
bound unto the City of San Antonio, the sum of ten percent of the aggregate  
amount of the bid, the payment of which we hereby bind ourselves, our  
successors, heirs, executors, and administrators, jointly and severally, firmly by  
these presents.

That the Surety's office is located at \_\_\_\_\_, Telephone  
No. (\_\_\_\_) \_\_\_\_\_ and the Surety is licensed to do business in the State of  
\_\_\_\_\_, and the resident agent for Surety is located at  
\_\_\_\_\_, license No. \_\_\_\_\_

The condition of the foregoing obligation is such that, whereas the above  
principal is about to submit to the City Council of the City of San Antonio a bid or  
proposal for the performance of the work therein mentioned, in compliance with  
the plans and specifications there, pursuant to published notice inviting bids:

Now, if the bid or proposal of the principal is accepted and the work awarded to  
the principal by the City of San Antonio, and if the principal shall fail or neglect to  
enter into a contract in accordance with the provisions of said bid or proposal and  
the accompanying Instructions and Information for Bidders, and to execute  
adequate faithful performance and labor and material surety bonds to the  
satisfaction of the City, then the sum guaranteed by this bond is forfeited to the  
City.

**Witness our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_**

\_\_\_\_\_ **Principal**

By: \_\_\_\_\_

\_\_\_\_\_ **Surety**

# CNG REFUELING STATION BID SPECIFICATIONS

City of San Antonio  
10303 Tool Yard Road, San Antonio, CA 78283

RFP #

May 16, 2007

## Scope of Work

### 1. Special Instructions to Bidders

This project is solely for the benefit of the City of San Antonio. The successful bidder must be able to complete the project by March 31 2008.

The bids for the station must include 3 copies of the technical proposal along with the Proposal Cover Sheet in a separate envelope to the address above.

Both bid packages are due 5/31/07 at 1:00 p.m. at City of San Antonio, to the attention of Rose Ryan at the Solid Waste Division, 1940 Grandstand, San Antonio, TX 78283

A mandatory job walk will be held on May 21, 2007 at 10 AM to discuss this project at the existing city Sanitation Department for the City of San Antonio, which is located at the Northeast Service Center, at 10303 Tool Yard Road (east of Perrin Beitel) at Wurzbach Parkway near I-35 North in San Antonio, TX 78283.

All the bids must be received in sealed envelopes, bearing the title of the procurement, bid number, due date, along with the name of the bidder.

The successful bidder shall provide a complete turnkey operation, one that will include all drawings, plans and specifications relating to the construction and operation of a Compressed Natural Gas (CNG) refueling station. This facility and equipment must meet all federal/State requirements as required by TECQ and SECO. The successful bidder will be responsible for the integration of both the fast-fill system and time-fill system into one fully operational system. At a minimum this includes the designing, permitting, construction and operation required to meet the City of San Antonio's attached bid requirements. The successful bidder must demonstrate

experience and reliability in operating CNG stations continuously for at least the past three years. A list should be provided of those stations where the bidder has successfully installed and maintained other CNG stations without any lost days of operation.

Each proposal should include the following:

- a. A cover letter briefly describing the system and the equipment being proposed under each proposal.
- b. A detail description of the system to be supplied including both fast-fill systems as well as the time-fill system and the functional capabilities of the equipment as it relates to the bid specifications.
- c. A list of the individual equipment components, their sizes and performance ratings.
- d. Preliminary drawings or plans of the CNG station along with brochures or cut sheets of the equipment they intend to supply as part of the station.
- e. A definition of the system components including life expectancy and how they affect system reliability (i.e. compressors rated for 3000 hours between overhauls).
- f. A description of the bidders' experience in maintaining CNG stations on a daily basis for the last three years.
- g. A detailed description on how the project will be program managed.
- h. All bidders must provide proof of a site safety plan acceptable to the City and any other required regulatory agency.
- i. A detailed task related scope of work with their bid.
- j. A construction/installation schedule will also be required.

## **2. Summary**

Turnkey station contractor shall provide the equipment listed below, which shall be new and will be installed on an existing plot of land near the maintenance facility to be shown at the job walk.

- Compressors
- Storage system
- Dryers
- Filters
- Time fill dispensers (15 dual fill posts with pulleys, hoses, and nozzles, 5 posts per row for three rows) along with lighting for each row of posts
- Fast-fill dispenser ( primarily for public access)

- All the supporting structural equipment such as the fueling islands, piping, card reader, phone line and lighting at public access dispenser.

All of the equipment is to be installed after permits are issued by the City of San Antonio. The contractor will also be responsible for bringing in all the electrical to a central point at the compressor location as well as integrating the electrical into a junction box near the maintenance facility (approximately 100 feet away), digging the trenches and running the electrical conduit to the station and setting the Emergency Shutdown Devices (ESDs) at all required locations. They are also responsible for all the gas piping from the CPS's Meter Set Assembly (MSA) to the compressors and then onto both the time-fill and fast-fill dispensers. The MSA will be set inside the property line and be the responsibility of the City Public Service.

The main compressor system includes the compressors, dryer, filters, storage system (for the fast-fill system and associated piping) as well as the slow fill dispensers. The fast-fill public dispenser and card reader should be shown as a separate price to the total system. The fast-fill dispenser and fueling island will be located about 500 feet away in what is referred to as the public site. It includes one card reader and one dispenser with two hoses on a separate fueling island with proper lighting within the city's fenced maintenance yard. All piping for the fast fill dispenser should be run on the east side of the dispenser island in order to avoid the plumbing for the diesel tanks which will be on the west side. The time fill dispensers (15) will be located in the parking stalls where the trucks park overnight which will be approximately 900 feet at the longest point from the compressor skid. The actual location will be discussed at the job walk.

Criterion or weighted factors to be used in evaluating proposals will be as follows:

1. How each bidder addressed system design and the integration of equipment proposed in their bids along with planned maintenance required of the equipment (20%).
2. Their experience as a turnkey contractor both favorable and unfavorable along with problems encountered and corrective action taken. Also list of all jobs completed in last 3 years (10%).
3. The number of existing stations they each currently maintain along with financial strength of the Company (7.5%).
4. Scope of work with job tasks and related timeline identified (7.5%).
5. Site safety and quality control plan (5%).
6. The cost factor as it is totaled from each element of the proposers' Proposal Cover sheet (50%)

It is the contractor's responsibility to verify all Gas and Electrical requirements and supply needs. For purposes of your bid, you may assume that a gas supply line with a minimum inlet pressure (approximately 5 psi) will be available and brought to the property line. Also for purposes of this specification, the contractor will be responsible for providing adequate electrical voltage to operate the equipment safely within code.

**All bidders must possess a general class A contractors license and be registered with the Texas Railroad Commission to install CNG stations in the state of Texas.**

The contractor will be responsible for proving to the satisfaction of the City that the minimum specifications for the CNG facility have been met. The City will require the approval of the Fire Marshall in addition to any other inspections and/or tests that may be required, prior to acceptance of the CNG facility. Such inspections and tests shall be based upon recommendations by the contractor, the Fire Marshall, as well as the main manufacturers/vendors and accepted industry standards. Neither inspections, witnessing of tests, nor waiving of any such procedures by any party shall release the contractor, component/systems contractor, main vendor or subcontractors from full responsibility for compliance with equipment, materials and functional performance requirements included in these specifications. All detailed layout drawings and plans must be approved by the City's planning department prior to construction.

The winning contractor/installer shall warrant the equipment to be free from defects in design, installation, workmanship and construction for a period of one year after startup. The contractor shall also warrant that all components, subsystems and materials supplied for the construction of the completely integrated facility to be free from defects in design and manufacture for a period of one year commencing with the acceptance of the CNG facility by the City as being complete. All warranties extended beyond the initial year should be rolled into the maintenance and operation pricing as quoted on the cover page of this pricing proposal.

### **3. Scope of Supply**

This project shall consist of installing a natural gas refueling system on existing City of San Antonio property adjacent to the City Maintenance Yard. The project will consist of the following three parts:

1. Public access area where the single fast fill dispenser with 2 hoses will be located.

2. Two compressors, dryers, filters, storage vessels with a capacity of 30,000 scf or equivalence for fast filling and all their related piping and controls.
3. 15 dual time-filled fueling posts to accommodate 30 CNG trucks.

The time-fill fueling lines should be stubbed out for future expansion at their termination points of which will be discussed at the job walk. Proper attention must be made to allow adequate spacing for protective bollards and the parking of the refuse trucks overnight, approximately 15 feet each.

The fast-fill capability will actually consist of one weights and measures approved dispenser, if required by the state of Texas, which will be set up to serve the public in the public access location where the existing diesel island also exist today. The fast fill dispenser will tie into the same compressors used for the time-fill system and supplemented by the storage system.

All bidders must submit written proof to the City with their bid, that they hold a current authorization from the equipment manufacturer to sell, install and service the specified brand and model of natural gas compression equipment included in the contractors bid. The City will not accept separate bids from unrelated vendor/contractors for equipment and equipment installation services from unauthorized dealers.

All work must be operational and completed no later than March 31, 2008.

#### **4. System Design - Equipment Specifications**

Estimated annual load will start at 250,000 therms in the first year and grow to 500,000 therms per year by the end of the third year. The system should be designed around the load factors of the third year with the maximum load of 2,000 therms per day to be dispensed on all time fill hoses over an 8 hour window or less in the evening. Total anticipated daily load at the end of the third year is expected to be 2500 therms per day (2000 therms on the time-fill system and 500 therms on the fast-fill system during the day).

The system must consist of all new equipment throughout and provide 2 compressors working in parallel in a dual or redundant capacity capable of filling a maximum of 30 refuse trucks from both compressors over an eight hour window less and then refuel various vehicles during the day including school buses all at 3600 psi. Each compressor should be capable of operating completely independent from the other compressor in case of a problem or routine maintenance of one compressor, but also in combination with each other when demand increases to peak loads.

Discharge pressure should be up to 3,600 pounds per square inch (PSI) since all new vehicles will be able to accept 3600 psi.

Storage pressure: up to 4,500 psi maximum.

Bidders must be capable of supplying and installing fifteen (15) dual hose time-fill posts each with retractable pulleys. Provide thirty [30] twenty-one [21] foot fill hoses or the maximum that meets code, to insure reaching and mating with various fill locations when trucks are in their parking stalls. All thirty [30] hoses should be fitted with NGV-1 approved nozzles and thirty [30] hose vent valves as required by code. Fill hoses shall have been designed specifically for the breakaway fittings incorporated into the referenced fueling posts. The posts shall be mounted in cement or similar material; affixed to cement filled protective bollards. Unistrut or other suitable method shall protect all exposed high-pressure tubing. The use of k-rail is unacceptable.

The public fast-fill system (its weights and measures approved dispenser (if required by the State of Texas), island, lighting, phone line, storage vessels and card reader) should be quoted as a separate module because of funding limitations.

The fast-fill dispenser for the public site should be located northwest of the compressors that will be separated by a fence on an apron big enough to accommodate large fuel vehicle's turning radius such as school buses, refuse trucks, transit buses and 18 wheel tractor/trailers.

**The contractor will be responsible for erecting a temporary construction fence covering the entire construction area and plates to cover any open trenches during construction.**

The public access portion of the project (1, weights and measured (if required by the State of Texas) fast-fill dispenser on one fueling island, with 2 hoses capable of refueling to 3,600 psi along with the storage vessels providing 30,000 scf of above ground storage for fast filling vehicles, a card reader and all the proper safety requirements including signage, bollards, lighting, fire extinguisher and ESD) needs to be quoted as a separate cost item for funding purposes. There is no canopy planned at this time for the public site.

The public island will be located on a large enough area close to the existing diesel and gasoline dispensers to allow fast fueling of large fuel vehicles like refuse trucks, transit buses and school buses as described above and planned for discussion at the job walk. Contractor will be responsible for putting in any modifications necessary for the curbs and/or

cut outs for the entrance to the dispensing area and the exit driveway. They will also be responsible for any modifications to the paving and or curbing for the time-fill areas involved with the project. Since this station will be open to the public and other fleets, it must be segregated from the city's maintenance yard by a fence and/or gate system stretching to the back of the facility in accordance with the Sanitation Department as discussed at the job walk.

Access to the public dispenser will be provided via a card reader/phone line that will be located adjacent to the fueling island and integral with dispenser. The card reader must accept all currently accepted fueling cards and most major credit cards including, but not limited to, Discover, American Express card, as well as all major credit cards like Visa and MasterCard and any other that maybe required for TXDOT to utilize. It must include a fuel monitoring system (Multiforce or equivalent fuel management system with training film). At a minimum the fuel management system should be adequate to accept all current City and school fleet vehicles. This management system should track mileage, pin or vehicle number and/or hose number for each user. The fast-fill dispenser is to be supplied from a combination of the storage vessels such as a buffer or cascade storage system and the dual compressors working in tandem together.

All hoses/nozzles need to utilize approved NGV-1 type nozzles that possess the lowest CV rating possible to minimize the effects caused by heat of compression associated with fast-filling of vehicles on natural gas.

Supply and install desiccant gas dryer towers, Zebec or equivalent brand, with regeneration on the suction side gas line before the compressors. The media used to absorb moisture shall not remove the gas line odorant. Dryer shall be of the type and size to adequately handle both the gas supply as well as remove sufficient moisture content to comply with the mobile fuel specifications for vehicles. It is the responsibility of the winning bidder to run from the meter to the compressors which might be as much as 100 feet. It is also the responsibility of the winning bidder to coordinate all utility side installations, connections and inspections with the appropriate Utilities, City and Fire Marshal Inspectors.

Install proper filtration including both a 3 angstrom mole sieve and coalescing filter on the inlet side of the compressors as well as particulate 0.9 micron absolute filter on the outlet side of the compressors to eliminate or reduce any oil carryover and other particulate matter from the compressors.

Supply both low pressure and high pressure piping in accordance with all applicable local and State of Texas Codes. Install all necessary compressor low-pressure gas supply lines, of proper size and pressure

ratings, down stream of the gas meter. This should include any pressure regulators, and attachments per manufactures instructions and any secondary pressure regulators required to regulate any and all equipment which is supplied by the low pressure gas line/meter source.

Contractor shall also supply and install one [1] Rootes type digital gas meter between the Utility meter/regulator set and the gas compression equipment. Underground suction side gas supply lines shall be of a material that is not subject to rusting from the moisture content of the supply gas and should use butt welded fittings. The suction piping should be sized so that it minimizes the pressure drop from the gas supply line to the compressor. All exposed gas pipe shall be painted safety yellow and protected by unistrut or other acceptable method. Plumbing installation shall meet 2001 Uniform Plumbing Code.

All underground piping and electrical conduit shall be placed in trenches at a minimum cover of 48" unless codes allow an exception. The contractor shall exercise caution in trenching to ensure that the disruption it causes is kept at a minimum. Trench plates or other acceptable temporary trench covering devices may be required at contractor's expense.

**4. All applicable local and State of Texas Codes apply:**

Fuel quality: Shall meet or exceed SAE J1616 in water vapor and oil vapor content at the fuel dispenser nozzles for mobile vehicles and guaranteed by utility, CPS.

Site code requirements: Title 8, NFPA 52, Texas Fire Code Article 52, Piping ANSI B 31.3, Uniform Plumbing Codes and all electrical equipment must comply with NFPA 70 National Electric Code and shall be NEC 1996 or newer rated Class 1, Group D, Division. All applicable local and State of Texas Codes apply.

All safety equipment includes, but is not limited to what is required by the Uniform Fire Code. Copies are available from the Bexar County Fire Department or San Antonio City Fire Marshall. This should include portable fire extinguishers at dispensing areas, an alarm system including red lights for a proper warning system, appropriate signage and emergency manual shutdown devices at all dispensing locations.

Install sufficient pressure safety relief devices in accordance with NFPA 52 to allow each relief device to be individually isolated for testing or maintenance while maintaining the required pressure relieving capacity.

A layer of clean sand at least 6" thick will be placed in the bottom of the trench and tamped. A second layer of 6" sand shall be placed over the

gas pipe and or conduit prior to backfilling. Original native soil, free of rocks may be replaced in the trench and compacted to a compaction level of 90% prior to any final grading and paving. Cement slurry should be used to cap open trenches in preparation for paving. Underground PE gas pipes shall have a 14ga. wire taped to it for future identification and a yellow gas line caution tape rolled out the length of the trench, 12" below grade.

Supply and install all necessary high-pressure plumbing lines from the compressor to fueling dispensers. These lines shall be of stainless steel tubing rated for system operating pressure and shall incorporate one [1] high pressure line isolation valve after each dispenser. In addition, each line supplying each dispenser shall have one [1] isolation valve and one [1] bleed valve. **All high-pressure plumbing shall be protected from impact by use of unistrut channel or other acceptable means.** High-pressure tubing and fittings can be Hoke or equivalent brand.

Supply and install all necessary compressed natural gas refueling safety signage per NFPA 52 1998 edition. Contractor shall furnish the following signage: No Smoking, Ignition Off, Emergency Shut Off, and Gas Isolation Valve. Plus any other safety signage the City or the Texas Railroad Commission may require

Supply and install gas isolation valve at connection to main gas line, and before inline gas dryer towers. Gas dryer towers shall also have an isolation Bypass valve, which will allow Compressors to continue operation while gas dryer towers may be off line for servicing. Contractor shall determine the size regulator necessary for each compressor.

## 5. Maintenance & Repairs

Each bidder shall submit an annual amount to provide maintenance and repairs to the installed system for up to 10 years per the price sheets. The maintenance for the fast-fill system should also include keeping the weights and measures calibration, if required by the State of Texas, current and each meter properly calibrated.

## 6. Load Factors

By the end of the third year the City of San Antonio will have approximately 30 refuse trucks operating on CNG along with a number of light duty vehicles. The load from the city vehicles alone could approach 2000 therms per day during the workweek. Each bidder will determine the type and or size of the storage vessels (buffer or cascade) to give the most optimum performance. The physical location of the storage vessels

will be next to the compressors by the maintenance facility, which will be discussed at the job walk.

## **7. Penalty Section**

During the warranty period the successful bidder must accept a penalty cause that allows the City of San Antonio (the principle user of the station) to charge the successful bidder for out of pocket expenses not to exceed \$50 per vehicle per day to go off site and refuel or bringing in a portable compressor should the station be down for more than 24 hours at one time. This type of reimbursement would be allowed only for equipment failure supplied by the successful contractor and does not cover conditions beyond their control such as a power outage or an interruption in the gas supply as supplied by the Gas Company or energy service provider.

## **8. Additional Information needed for the bid**

We have located the existing Underground Fuel Tanks in the drawing package. As-built information may still be available in the submittal file from the consultant - and we will investigate and advise if such is located. Attached is plan indicating tank capacity and approximate configuration - addl drawings can be reviewed (and arrangements can be made for reproduction) through Plans and Records Section, Diana Vasquez, 207 8035.

The site utility plan given to the contractors at the walk-through should be sufficient for their schematic purposes.

In addition to complete applicable code conformance, incorporation of the Fast Fill and the Slow Fill facilities at the Tool Yard location will need to include the following as appropriate:

- Bollards and guardrails for vehicle and equipment protection
- Compatible architectural treatment as appropriate
- Applicable pavement and other markings
- Curbing / Island Form / Wheel Stops, etc - new work, modifications, etc

- Data / Elec as needed
- Cameras as needed
- Illumination
- Bird Protections as needed
- Trenching is highly undesirable at this 4 year old service center - should trenching be proposed, suitable closures will be required and repave extent will be similar to street requirements - Note: Existing paving at entire roads and truck parking areas is "heavy asphalt" quality and will need to be restored to that standard.
- Conduct of the work will need to be conforming to permit measures such as Best Mgmt Practices, etc
- Beneficial Use of the entire facility needs to be accommodated during the work

The drawings indicate 2" gas service to three meters at the site, Admin Bldg, Vehicle Wash and Maintenance. These conditions need to be verified - and utility (and others) need to determine if existing service is suitable for stub and extension(s). If greater service is to be brought in, utility company will need coordination, timeline, etc

The consultant indicated that 480, 3phase electric was needed - this is likely available, but verification is needed.

ATTACHMENT C.  
LETTERS OF SUPPORT



# CITY OF SAN ANTONIO

1940 Grandstand  
San Antonio, Texas 78238

May 31, 2007

Texas Commission on Environmental Quality  
Environmental Planning and Implementation Division, MC-206  
Implementation Grants Section (TERP Grants)  
P.O. Box 13087  
San Antonio, TX 78711-3087

Re: Letter of Support for TCEQ TERP Grant Application

Dear Grants Selection Committee:

The City of San Antonio extends our support to TCEQ's efforts in emission reductions, and would like to participate in the grant application process. Our vision, with your grant funding assistance, for achieving the emission reductions are based on the construction of a Compressed Natural Gas (CNG) refueling facility and purchasing 15 CNG engines to replace the diesel engines in our refuse truck fleet.

We will be partnering with our gas utility, CPS Energy. They currently offer "extension credits" to aid in bringing any needed gas line to a city facility (or equal) to promote the use of CNG in the greater San Antonio area. We will also seek other partnerships, through the Clean Cities Coalition, such as Bexar County and other interested parties in the use of the proposed CNG fueling station. We plan on working closely with the Alamo Area Council of Governments on this proposed project.

This proposed program represents the City of San Antonio's long-term commitment to the improve air quality in the region. We are confident that your selection to fund this project will further our region's goals of reducing air pollution.

Sincerely,

A handwritten signature in cursive script that reads 'Rose Ryan'.

Rose Ryan  
Interim Environmental Services Director



May 29, 2007

Texas Commission on Environmental Quality  
Environmental Planning and Implementation Division, MC-206  
Implementation Grants Section (TERP Grants)  
P.O. Box 13087  
San Antonio, TX 78711-3087

Re: Letter of Support for City of San Antonio TERP Grant Applications

Dear Grants Selection Committee:

I would like to extend my support to the City of San Antonio's Compressed Natural Gas (CNG) infrastructure grant application. The City will be taking an important step forward toward cleaning our region's air if this grant application is successful.

The Air Improvement Resources (AIR) Executive Committee of the Alamo Area Council of Governments (AACOG) comprises local elected officials from Bexar, Comal, Guadalupe and Wilson Counties working to clean our air. The City of San Antonio has long held a chair on the AIR Executive Committee and was one of the original signatories to our region's Early Action Compact agreement finalized through the AIR Committee. This grant application represents just the latest important step the city has taken to further clean air progress in our region.

CNG engines are far superior to diesel engines in terms of air quality impacts. The San Antonio region is currently working to avoid a designation of nonattainment under the eight-hour average national ambient air quality standards. Because the City's proactive stance at this time is so important, I support and applaud the City of San Antonio for their initiative. I know that citizens across the entire AACOG region will benefit from this effort.

We ask that the TCEQ support the City of San Antonio's grant application, and so assist our efforts to clean our region's air.

Sincerely,

  
Gloria C. Arriaga  
Executive Director  
Alamo Area Council of Governments



**TOMMY ADKISSON**  
COMMISSIONER, PRECINCT 4  
BEXAR COUNTY COURTHOUSE  
SAN ANTONIO, TEXAS 78205-3036  
(210) 335-2614 - FAX: (210) 335-2644  
www.bexar.org  
Email: tadjkisson@bexar.org

May 24, 2007

Texas Commission on Environmental Quality  
Air Quality Division  
MC-204  
Implementation Grants Section (TERP Grants)  
P.O. Box 13087  
Austin, TX 78711-3087

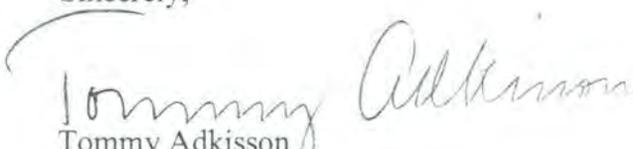
Dear Grants Selection Committee,

I would like to extend my support to the City of San Antonio's grant applications for both the Compressed Natural Gas (CNG) Infrastructure Improvements. As you may know, the San Antonio area does not currently have any CNG refueling infrastructure. Therefore, replacing diesel engines with CNG engines is a challenging endeavor.

However, the City of San Antonio has made the commitment to purchase 15 CNG refuse trucks and construct a CNG refueling facility. We are very excited about this wonderful project and we anticipate partnering with the City on its use.

This program represents a huge step in the City of San Antonio's long-term commitment to improve air quality in the region. We ask that you support the City of San Antonio's grant applications for the CNG infrastructure.

Sincerely,

  
Tommy Adkisson  
Commissioner Pct. 4



# CITY OF SAN ANTONIO

ENVIRONMENTAL SERVICES DEPARTMENT  
1940 GRANDSTAND  
SAN ANTONIO, TEXAS 78238

May 31, 2007

Texas Commission on Environmental Quality  
Environmental Planning and Implementation Division, MC-206  
Implementation Grants Section (TERP Grants)  
P.O. Box 13087  
Austin, TX 78711-3087

Re: RFP TCEQ – 10430f; City of San Antonio Infrastructure Proposal

Dear Grants Selection Committee:

By way of this letter the City of San Antonio, with multiple fleet operations in San Antonio, is submitting the attached proposal asking for funding totaling \$336,475 from the Texas Commission on Environmental Quality's TERP Program for the construction of a new CNG station. This station is planned to accommodate the start up of our CNG refuse fleet.

All the work for the CNG station will be performed in one of the City's current maintenance yards. The station is planned to have two compressors for redundancy, as well as time fill posts to allow refueling overnight while the vehicles are parked. This station will allow the City ample capacity necessary to transition the City's refuse trucks to natural gas, for reduced pollutant emissions.

Over the next 2 years the City plans to replace diesel refuse vehicles with new natural gas vehicles. To accommodate the expected demand for the first thirty refuse trucks being switched to CNG, the City will require a reliable station. Additionally, the proposed CNG station allows the flexibility of refueling both with an overnight fill, and during the day with a fast fill system. This dual fueling ability allows the City to handle its needs, and to expand to other fleets in the area such as school districts. With two compressors the City will have the assurances of a constant fuel supply should a compressor be inoperable for a planned overhaul or other reason. This way, the City would be able to refuel all its vehicles albeit at half the speed.

The City plans to install two compressors approximately 250 scfm in size, each capable of producing over 2000 dge per night. A single compressor will produce about two diesel gallon equivalent (dge) per minute or 111 dge per hour provide assurance to refuel all the vehicles on one compressor. During the next two years the City anticipates replacing a large portion of the refuse truck fleet to natural gas.

Page 2

The City of San Antonio has three other equipment facilities that can be modified to accommodate natural gas stations in the future. It is the City's intent to replace the entire refuse fleet with natural gas trucks which will require the installation of these additional stations. Consequently over the next two years the City anticipates adding 3 more stations operating on natural gas, refueling upwards of 90 more refuse trucks.

Each truck uses 13.70 billion BTUs per year (40 diesel gallons per day X 1.37 = 54.80 therms per day X 250 days per year = 13,700 therms per year per truck X 100,000 BTU per therm = 13,700,000 billion BTUs per year per truck). The 30 heavy duty vehicles planned for replacement this year can be expected to be at the rate of 411 billion BTUs a year and reduce NOx emissions by over 6 million BTU's per year for 10 years.

In order to facilitate the construction of the first CNG station, the City of San Antonio is requesting your funding assistance in a cost sharing amount as outlined in the attached proposal. Should you have any questions regarding this program, please feel free to contact me at 210-207-6412.

Sincerely,

A handwritten signature in cursive script that reads "Rose Ryan".

Rose Ryan, Interim Director  
Environmental Services Department



April, 2007

## Texas Emissions Reduction Plan: Emission Reduction Incentive Grants Reimbursement & Disposition Forms

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printed on  
recycled paper

Implementation Grants Section  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**TCEQ - EMISSIONS REDUCTION INCENTIVE GRANTS (ERIG)**  
**INSTRUCTIONS FOR REQUESTING REIMBURSEMENT ON YOUR GRANT**

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Use the attached forms to request reimbursement for eligible expenses. Before filing a Request for Reimbursement, you must have completed at least one grant Activity in the Contract. You must have paid the project expenses unless you are asking the TCEQ to make the payment directly to the company that supplied the equipment/services or to the financing company that paid for them. You must submit documentation of the expenses with your request. The documentation requirements are located in your Contract in the General Conditions Request for Reimbursement section. The same person who signed the contract must sign the Request for Reimbursement Form, or a person so authorized on page 4 of the original application. The forms submitted must contain original signatures.

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**HOW TO SUBMIT A REQUEST FOR REIMBURSEMENT**

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**1) Fill out Form 1 - Request for Reimbursement**

- A. PAYMENTS TO YOU:** If you paid for the project costs from your own business, then payment may go directly to you. On Form 1 you will complete ONLY Boxes 1, 2, 3, and 5. In Box 2 - put the requested payment amount in the first box and the total amount of your Contract for all Activities in the next box. You must sign the Certification Statement on the form. If this is a final request, then sign the Release of Claims section.
- B. PAYMENTS TO VENDOR OR FINANCE COMPANY (Assignments):** If you want the payment to go directly to the vendor or financing company, then you must complete all the information requested on Form 1. In Box 2 - put the requested payment amount in the first box and the total amount of your Contract for all Activities in the next box. Complete Boxes 3, 5 and 7. A representative of the company you want the payment to go to must complete Boxes 4 and 6. Both of you complete and sign the Notice of Assignment section. You must sign the Certification Statement on the form. If this is a final request, sign the Release of Claims section too. You must complete the Form AP-152 too. (**Note:** You may use payment assignments with short-term or long-term regular financing arrangements. You may not use payment assignments to pre-pay leasing arrangements.)

**2) Fill out a Detail Expense Summary Form for each Activity that you are requesting a payment for. Use this form to calculate the payment you are eligible to receive for the activity.**

There is a Detail Expense Summary Form for each type of Activity (i.e., Form 2a Replacement, Form 2b Repower, etc.). Each form requires an Activity number. The Activity numbers are in your Contract on the Approved Application Summary page.

Fill out the Detail Expense Summary for each activity using the instructions on the form. Sample forms are included for reference. Attach the required documentation behind each form. REMEMBER - WE CANNOT PROCESS A PAYMENT UNTIL YOU HAVE SUBMITTED ALL THE REQUIRED DOCUMENTATION.

**3) Mail the completed forms and the required documentation to the address below. Forms must have original signatures where required.**

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**MAILING INSTRUCTIONS**

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It is VERY IMPORTANT that all of the information listed below be included on your mailing label to ensure the Request goes to the correct office.

Mail or deliver the request to:

**Standard Mail**

Texas Commission on Environmental Quality  
Air Quality Division  
Implementation Grants Section, MC-204  
P.O. Box 13087  
Austin, TX 78711-3087

**Express Delivery**

Texas Commission on Environmental Quality  
Air Quality Division  
Implementation Grants Section, MC-204  
12100 Park 35 Circle  
Austin, TX 78753

**TCEQ- EMISSIONS REDUCTION INCENTIVE GRANT**

**FORM 1: Request for Reimbursement**

|   |  |  |                          |
|---|--|--|--------------------------|
| <b>TCEQ Contract Number:</b>  | <b>1. Final Request</b>                                  | <b>2. Amount This Request:</b>   | <b>Total Grant Award</b> |
|   | Yes <input type="checkbox"/> No <input type="checkbox"/> | \$ -   | \$ -                     |
| <b>3. GRANTEE - Grant Recipient</b><br><small>(Name and address including zip code for payment)</small>   |  | <b>4. ASSIGNEE - Business Receiving Payment (If applicable)</b><br><small>(Name &amp; address, including zip code for payment)</small> |                          |
|   |  |  |                          |
|   |  |  |                          |
|   |  |  |                          |
| <b>5. Grant Recipient Identification Number (SSN or FEI #)</b>  |  | <b>6. Assignee Federal Employer Identification Number (FEI #)</b>  |                          |
|   |  |  |                          |
| <b>7. Are the requested payments assigned to a third party (assignee)?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO   |  |  |                          |
| <i>To assign payment, complete the Notice of Assignment section below. The Notice of Assignment <b>must be signed</b> by both the Grant Recipient and Assignee (Business Receiving Payment)</i> |  |  |                          |

**NOTICE OF ASSIGNMENT**

I, \_\_\_\_\_, by this document hereby provide notice to the Texas Commission on  
Grantee (Name on Grant Contract), Title  
 Environmental Quality (TCEQ) of the assignment to the \_\_\_\_\_ (Assignee) of the  
Legal Name of Business Receiving Payment  
 payments not to exceed \$ \_\_\_\_\_ ( \_\_\_\_\_ thousand \_\_\_\_\_ hundred  
 dollars and \_\_\_\_\_ cents) for reimbursement of the eligible costs of purchases from the Assignee under the  
 contract executed between \_\_\_\_\_ and the TCEQ for award of  
Grantee (Name on Grant Contract)  
 an Emissions Reduction Incentive Grant. Upon our submission of the required reimbursement forms and other  
 reporting forms, please forward the payments to the Assignee.

GRANT RECIPIENT

ASSIGNEE (Business Receiving Payment)

Signature \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name & Title \_\_\_\_\_

Printed Name & Title \_\_\_\_\_

**CERTIFICATION STATEMENT**

I certify to the best of my knowledge and belief that the data on this request, including the data provided in the attached Detail Expense Summaries, are correct and complete, and that all outlays and unliquidated obligations are for the purposes set forth in the award document.

Grant Recipient Signature: \_\_\_\_\_

Date:      /      /

Printed Name & Title \_\_\_\_\_

Telephone Number: (      )

**RELEASE OF CLAIMS**

(If this is the FINAL request for reimbursement, sign the release of claims below.)

Subject to receiving all reimbursement due and payable to date, the recipient hereby releases all claims against the TCEQ, its officers, agents, and employees from any and all claims arising under or by virtue of TCEQ's contract with the recipient.  
**(SIGN THIS SECTION IF THIS IS THE FINAL PAYMENT REQUEST AND BOX 1 IS CHECKED "YES")**

Grant Recipient Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**TCEQ- EMISSIONS REDUCTION INCENTIVE GRANT  
SAMPLE FORM 1 - Request for Reimbursement**

|  |  |   |   |
|--|--|---|---|
| <b>TCEQ Contract Number:</b>   | <b>1. Final Request</b><br>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | <b>2. Amount This Request:</b><br>\$ 100,000.00   | <b>Total Grant Award</b><br>\$ 100,000.00 |
| <b>3. GRANTEE - Grant Recipient</b><br>(Name and address including zip code for payment)   |  | <b>4. ASSIGNEE - Business Receiving Payment</b> (If applicable)<br>(Name & address, including zip code for payment) |   |
| Grantee Recipient Name on the Contract   |  | Legal Name of Business Receiving Payment  |   |
| Attn: Project / Grant Manager  |  | Attn: Business Person Authorized to Receive Funds   |   |
| Grantee's Address (Same As in Application)   |  | Address Where Payment Is To Be Mailed   |   |
| City, State Zip  |  | City, State Zip   |   |
| <b>5. Grant Recipient Identification Number (SSN or FEI #)</b>   |  | <b>6. Assignee Federal Employer Identification Number (FEI #)</b>   |   |
|  |  |   |   |
| <b>7. Are the requested payments assigned to a third party (assignee)?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO  |  |   |   |
| To assign payment, complete the Notice of Assignment section below. The Notice of Assignment <b>must be signed</b> by both the Grant Recipient and Assignee (Business Receiving Payment) |  |   |   |

**NOTICE OF ASSIGNMENT**

I,                      **Grantee Name & Title**, by this document hereby provide notice to the Texas Commission on Environmental Quality (TCEQ) of the assignment to the                      **Legal Name of Business Receiving Payment** (Assignee) of the payments not to exceed \$ 100,000.00 ( one hundred thousand zero hundred zero dollars and zero cents) for reimbursement of the eligible costs of purchases from the Assignee under the contract executed between                      **Grantee Name as on Contract Document** and the TCEQ for award of an Emissions Reduction Incentive Grant. Upon our submission of the required reimbursement forms and other reporting forms, please forward the payments to the Assignee.

                      
**GRANT RECIPIENT**

                      
**ASSIGNEE (Business Receiving Payment)**

|   |   |
|---|---|
| Signature   | Signature   |
| Date  | Date  |
| Grantee Name, Owner (or other person authorized in Grant) | Authorized Representative of the Business Receiving the Payment |
| Printed Name & Title                                      | Printed Name & Title  |

**CERTIFICATION STATEMENT**

I certify to the best of my knowledge and belief that the data on this request, including the data provided in the attached Detail Expense Summaries, are correct and complete, and that all outlays and unliquidated obligations are for the purposes set forth in the award document.

|   |                                 |
|---|---------------------------------|
| <b>Grant Recipient Signature:</b>                   | Date:     /     /               |
| <b>Must be a person authorized in the contract.</b> | Telephone Number: (     )     - |
| Printed Name & Title                                |                                 |

**RELEASE OF CLAIMS**

(If this is the FINAL request for reimbursement, sign the release of claims below.)

Subject to receiving all reimbursement due and payable to date, the recipient hereby releases all claims against the TCEQ, its officers, agents, and employees from any and all claims arising under or by virtue of TCEQ's contract with the recipient. **(SIGN THIS SECTION IF THIS IS THE FINAL PAYMENT REQUEST AND BOX 1 IS CHECKED "YES")**

|  |       |
|--|-------|
| Grant Recipient Signature: <b>Must be signed if this is a final Request.</b> | Date: |
|--|-------|

**TEXAS APPLICATION FOR PAYEE IDENTIFICATION NUMBER**

• Shaded areas for state agency use only • See instructions on back

For Comptroller's use only

1. Is this a new account?  YES Mail Code 000  NO Enter Mail Code \_\_\_\_\_ Agency number \_\_\_\_\_  
 Complete Sections I - V Complete Sections I, II & V

**SECTION I**

2. PAYEE IDENTIFICATION NUMBER (PIN) - Indicate the type of number you are providing to be used for your PIN.  
 1 - Federal Employer's Identification (FEI) Number  
 2 - Social Security Number (SSN)  
 3 - Comptroller's assigned number  
 Enter the number indicated \_\_\_\_\_

3. Are you currently reporting any Texas tax to the Comptroller's Office other than unemployment (e.g., sales tax, franchise tax)?  
 YES  NO If "YES," enter Texas Taxpayer Number \_\_\_\_\_

**SECTION II**

**PAYEE INFORMATION (Please print or type)**

4. Name of payee (individual or business to be paid) \_\_\_\_\_

5. Mailing address where you want to receive payments \_\_\_\_\_

6. (Optional) \_\_\_\_\_

7. (Optional) \_\_\_\_\_

8. (Optional) \_\_\_\_\_

9. City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_ Zone Code \_\_\_\_\_

10. SIC Code \_\_\_\_\_ Security Type Code \_\_\_\_\_ (0, 1, 2) Payee telephone number (Area code and number) \_\_\_\_\_

**SECTION III**

11. OWNERSHIP CODES - Check only one code by the appropriate ownership type that applies to you or your business.

I - Individual Recipient (not owning a business)  
 E - State Employee If checked, enter employing agency number \_\_\_\_\_  
 S - Sole Ownership (Individual owning a business) If checked, enter the owner's name and Social Security Number (SSN)  
 Owner's name \_\_\_\_\_  
 SSN  2 \_\_\_\_\_

P - Partnership If checked, enter two partner's names and Social Security Numbers (SSN). If a partner is a corporation, use the corporation's Federal Employer's Identification (FEI) Number.  
 SSN/FEI \_\_\_\_\_  
 Name \_\_\_\_\_  
 SSN/FEI \_\_\_\_\_  
 Name \_\_\_\_\_  
 Type of service provided \_\_\_\_\_

J - Joint Venture  
 L - Limited Partnership If checked, enter the Texas File Number \_\_\_\_\_  
 T - Texas Corporation If checked, enter the Texas Charter Number \_\_\_\_\_  
 A - Professional Association If checked, enter the Texas Charter Number \_\_\_\_\_  
 C - Professional Corporation If checked, enter the Texas Charter Number \_\_\_\_\_  
 O - Out-of-State Corporation  
 G - Governmental Entity  
 U - State agency / University  
 F - Financial Institution  
 R - Foreign (out of U.S.A.)

N - Other If checked, explain \_\_\_\_\_

**SECTION IV**

12. Payment Assignment?  YES  NO *Note: A copy of the assignment agreement between payees must be attached.*  
 Assignee name \_\_\_\_\_  
 Assignee PIN \_\_\_\_\_ Assignment date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

**SECTION V**

13. Comments \_\_\_\_\_

14. **sign here** \_\_\_\_\_ Authorized signature (Applicant or authorized agent) \_\_\_\_\_ Date \_\_\_\_\_

Agency name \_\_\_\_\_ Prepared by \_\_\_\_\_ Phone (Area code and number) \_\_\_\_\_

15. \_\_\_\_\_

USE THIS FORM IF YOU WANT TCEQ TO PAY YOUR VENDOR OR FINANCING COMPANY

TEXAS APPLICATION FOR PAYEE IDENTIFICATION NUMBER

• Shaded areas for state agency use only • See instructions on back

|             |   |  |  |               |  |
|-------------|---|--|--|---------------|--|
|             | 1. Is this a new account? <input type="checkbox"/> YES <input type="checkbox"/> NO  | Mail Code: 600                               | Enter Mail Code  | Agency number |  |
|             | Complete Sections I - V   |  | Complete Sections I, II & V  |               |  |
| SECTION I   | 2. PAYEE IDENTIFICATION NUMBER (PIN) - Indicate the type of number you are providing to be used for your PIN.   |  |  |               |  |
|             | <input type="checkbox"/> 1 - Federal Employer's Identification (FEI) Number<br><input type="checkbox"/> 2 - Social Security Number (SSN)<br><input type="checkbox"/> 3 - Comptroller's assigned number  |  | Enter the number indicated   |               |  |
|             | Grantee's SSN/FEI (per Application)   |  |  |               |  |
|             | 3. Are you currently reporting any Texas tax to the Comptroller's Office other than unemployment (e.g., sales tax, franchise tax)?  |  |  |               |  |
|             | <input type="checkbox"/> YES <input type="checkbox"/> NO If "YES," enter Texas Taxpayer Number _____  |  |  |               |  |
| SECTION II  | PAYEE INFORMATION (Please print or type)  |  |  |               |  |
|             | 4. Name of payee (individual or business to be paid)  |  | LEGAL NAME of the BUSINESS RECEIVING PAYMENT   |               |  |
|             | 5. Mailing address where you want to receive payments   |  | Assignee for: (GRANTEE'S NAME ON CONTRACT)   |               |  |
|             | 6. (Optional)   |  | Address Where Payment is to be Mailed  |               |  |
|             | 7. (Optional)   |  |  |               |  |
|             | 8. (Optional)   |  |  |               |  |
|             | 9. City   | State  | ZIP Code   | Zone Code     |  |
|             | City  | TX   | ZIP  |               |  |
|             | 10. SIC Code  | Security Type Code (0, 1, 2)                 | Payee telephone number (Area code and number)  |               |  |
| SECTION III | 11. OWNERSHIP CODES - Check only one code by the appropriate ownership type that applies to you or your business.   |  |  |               |  |
|             | <input type="checkbox"/> I - Individual Recipient (not owning a business)<br><input type="checkbox"/> E - State Employee If checked, enter employing agency number _____<br><input type="checkbox"/> S - Sole Ownership (Individual owning a business) If checked, enter the owner's name and Social Security Number (SSN)<br>Owner's name _____<br>SSN   2   _____ |  | <input type="checkbox"/> J - Joint Venture<br><input type="checkbox"/> L - Limited Partnership If checked, enter the Texas File Number _____<br><input type="checkbox"/> T - Texas Corporation If checked, enter the Texas Charter Number _____<br><input type="checkbox"/> A - Professional Association If checked, enter the Texas Charter Number _____<br><input type="checkbox"/> C - Professional Corporation If checked, enter the Texas Charter Number _____<br><input type="checkbox"/> O - Out-of-State Corporation<br><input type="checkbox"/> G - Governmental Entity<br><input type="checkbox"/> U - State agency / University<br><input type="checkbox"/> F - Financial Institution<br><input type="checkbox"/> R - Foreign (out of U.S.A.) |               |  |
|             | <input type="checkbox"/> P - Partnership If checked, enter two partner's names and Social Security Numbers (SSN). If a partner is a corporation, use the corporation's Federal Employer's Identification (FEI) Number.<br>SSN/FEI         _____<br>Name _____<br>SSN/FEI         _____<br>Name _____<br>Type of service provided _____                              |  |  |               |  |
|             | <input type="checkbox"/> N - Other If checked, explain _____  |  |  |               |  |
| SECTION IV  | 12. Payment Assignment? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO Note: A copy of the assignment agreement between payees must be attached.   |  |  |               |  |
|             | Assignee name   |  | LEGAL NAME of the BUSINESS RECEIVING PAYMENT   |               |  |
|             | Assignee PIN  | Fed. Employer Ident. # of Bus. Rec'g Payment | Assignment date  | Date          |  |
| SECTION V   | 13. Comments  |  |  |               |  |
|             | sign here  Authorized signature (Applicant or authorized agent)   |  | Date   |               |  |
|             | Signed by Grantee (or Authorized Signer in Contract)  |  | Date Signed by Grantee   |               |  |
|             | Agency name   | Prepared by                                  | Phone (Area code and number)   |               |  |
|             | 15.   |  |  |               |  |

NOTE: ONLY THOSE BOXES WITH ENTRIES IN THEM NEED BE COMPLETED

TCEQ EMISSION REDUCTION INCENTIVE GRANT

FORM 2a: Replacement Activity

Detail Expense Summary

\*\*\*\* A FORM 2a WILL NEED TO BE COMPLETED FOR EACH ACTIVITY IF THERE ARE MULTIPLE ACTIVITIES \*\*\*\*

| CONTRACT NUMBER | GRANT RECIPIENT NAME | Final Request This Activity                              | ACTIVITY NUMBER |
|-----------------|----------------------|--|-----------------|
|                 |                      | Yes <input type="checkbox"/> No <input type="checkbox"/> |                 |

1. APPROVED GRANT AMOUNT FOR THIS ACTIVITY FROM APPLICATION \$ -

2. ACTUAL INCREMENTAL COST CALCULATION Formula A - B - C = D and D x .80 = E

A(i). Purchase price (including taxes, registration, and other normal costs, but NOT any Interest Expense, Loan Application Fees, Application Assistance costs, or Consulting Fees): \$ -  
(CHOOSE ONE)

OR  
 A(ii). Lease price: For leases where the vehicle/equipment will be returned at the end of the lease, enter only the lease cost (not the value of the vehicle). Lease costs include upfront payment, lease payments, taxes and applicable fees. Please attach a copy of the lease agreement. Interest costs are not reimbursable. The lease must extend for at least the Activity Life of the contract. \$ -  
(- SUBTRACT)

B. Scrappage value or the value received for the old vehicle/equipment being replaced: \$ -  
 The TCEQ will use a default scrap value of \$1,000 for On-Road and Off-Road equipment as stipulated in the contract. Enter \$1,000 in this box. (- SUBTRACT)

C. List the value of any other financial assistance to be used for the purchase or lease, and explain in detail: The incremental cost must be reduced by the value of any other financial incentive received including tax credits or deductions, other grants, or any other public financial assistance. \$ -

D. Incremental Cost (A - B - C = D) \$ -  
 multiply incremental costs by 80% (x.80)

E. ELIGIBLE REPLACEMENT PROJECT COSTS FOR THIS ACTIVITY \$ -

3. AMOUNT REQUESTED FOR THIS ACTIVITY (enter the lesser amount Line 1 or Line 2E) \$ -

4. DOCUMENTATION - Attach Bills of Sale, invoices, delivery receipts, proof of payment (canceled checks or wire transfers), executed (signed) lease or financing agreement copies, and UCC1 statements (reference Article 7.9 of the Contract General Conditions for details). A PAYMENT CANNOT BE PROCESSED UNTIL YOU HAVE SUBMITTED THE REQUIRED DOCUMENTATION

Please check the following documentation items that you are submitting with this request of reimbursement

| Purchase Documentation   |                               | Payment Documentation    |                           | Finance Documentation    |                     |
|--------------------------|-------------------------------|--------------------------|---------------------------|--------------------------|---------------------|
| <input type="checkbox"/> | Invoice(s)                    | <input type="checkbox"/> | Copies of Canceled Checks | <input type="checkbox"/> | Financial Agreement |
| <input type="checkbox"/> | Bill of Sale (Sales Contract) | <input type="checkbox"/> | Wire Transfer             | <input type="checkbox"/> | Lease Agreement     |

FINANCING OR LEASE TERMS FOR REPLACEMENT VEHICLE (Method of financing or lease terms for replacement vehicle, CHECK ONE)

Purchase:  Cash Purchase  
 Regular Financing  
 Lease Purchase Financing (lease-to-own; equipment will be purchased and retained at the end of the lease). The lease agreement must include a binding commitment for the applicant to pay any remaining costs and to take ownership of the equipment. Without this binding commitment, the agreement will be considered a lease rather than a purchase.

Lease:  Equipment will be returned at the end of the lease. The lease must extend for at least the Activity Life.

Explain the terms of the agreement, including amount financed, the length (months), and amount per payment below:

Note: The grant may only be used to reimburse principle amounts or lease payments already made (and not including interest or finance charges) and/or up-front down payments on the purchase or lease. Your grant reimbursements may not be used to pre-pay future lease payments.

Enter below the information about the NEW vehicle/equipment and engine purchased.

| Equipment manufacturer, model, model year, and VIN or Serial Number | Engine manufacturer, model, model year, and Serial Number | Engine Test Group (Family Code) Twelve Digit Alpha-Numeric found on Engine S/N Plate | Date NEW vehicle/equipment placed in service |
|---|---|--|--|
|   |   |  |  |

TCEQ EMISSION REDUCTION INCENTIVE GRANT

SAMPLE FORM 2a: Replacement Activity

Detail Expense Summary

\*\*\*\* A FORM 2a WILL NEED TO BE COMPLETED FOR EACH ACTIVITY IF THERE ARE MULTIPLE ACTIVITIES \*\*\*\*

| CONTRACT NUMBER  | GRANT RECIPIENT NAME                                      | Final Request This Activity  | ACTIVITY NUMBER                              |
|--|---|--|--|
| 582-x-xxxxx-xxxx   | GRANT RECIPIENT NAME ON THE CONTRACT                      | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>                  | xxx  |
| 1. APPROVED GRANT AMOUNT FOR THIS ACTIVITY FROM APPLICATION  |   | \$   | 100,000.00                                   |
| 2. ACTUAL INCREMENTAL COST CALCULATION Formula A - B - C = D and D x .80 = E   |   |  |  |
| A(i). Purchase price (including taxes, registration, and other normal costs, but NOT any Interest Expense, Loan Application Fees, Application Assistance costs, or Consulting Fees);   |   | \$   | 127,000.00                                   |
| OR   |   | (CHOOSE ONE)   |  |
| A(ii). Lease price: For leases where the vehicle/equipment will be returned at the end of the lease, enter only the lease cost (not the value of the vehicle). Lease costs include upfront payment, lease payments, taxes and applicable fees. Please attach a copy of the lease agreement. Interest costs are not reimbursable. The lease must extend for at least the Activity Life of the contract. |   | \$   | -  |
|  |   | (- SUBTRACT)   |  |
| B. Scrappage value or the value received for the old vehicle/equipment being replaced:   |   | \$   | 1,000.00                                     |
| The TCEQ will use a default scrap value of \$1,000 for On-Road and Off-Road equipment as stipulated in the contract. Enter \$1,000 in this box.  |   |  |  |
|  |   | (- SUBTRACT)   |  |
| C. List the value of any other financial assistance to be used for the purchase or lease, and explain in detail: The incremental cost must be reduced by the value of any other financial incentive received including tax credits or deductions, other grants, or any other public financial assistance.  |   | \$   | -  |
| D. Incremental Cost (A - B - C = D)<br>multiply incremental costs by 80%   |   | \$   | 126,000.00                                   |
|  |   | (x.80)   |  |
| E. ELIGIBLE REPLACEMENT PROJECT COSTS FOR THIS ACTIVITY  |   | \$   | 100,800.00                                   |
| 3. AMOUNT REQUESTED FOR THIS ACTIVITY (enter the lesser amount Line 1 or Line 2E)  |   | \$   | 100,000.00                                   |
| 4. DOCUMENTATION - Attach Bills of Sale, invoices, delivery receipts, proof of payment (canceled checks or wire transfers), executed (signed) lease or financing agreement copies, and UCC1 statements (reference Article 7.9 of the Contract General Conditions for details). <b>A PAYMENT CANNOT BE PROCESSED UNTIL YOU HAVE SUBMITTED THE REQUIRED DOCUMENTATION.</b>                               |   |  |  |
| Please check the following documentation items that you are submitting with this request of reimbursement  |   |  |  |
| Purchase Documentation   |   | Payment Documentation  |  |
| xx   | Invoice(s)  | xx   | Copies of Canceled Checks                    |
|  | Bill of Sale (Sales Contract)                             |  | Wire Transfer                                |
|  |   | xx   | Financial Agreement                          |
|  |   |  | Lease Agreement                              |
| FINANCING OR LEASE TERMS FOR REPLACEMENT VEHICLE (Method of financing or lease terms for replacement vehicle, CHECK ONE)   |   |  |  |
| Purchase: <input type="checkbox"/> Cash Purchase   |   |  |  |
| <input checked="" type="checkbox"/> Regular Financing  |   |  |  |
| <input type="checkbox"/> Lease Purchase Financing (lease-to-own; equipment will be purchased and retained at the end of the lease). The lease agreement must include a binding commitment for the applicant to pay any remaining costs and to take ownership of the equipment. Without this binding commitment, the agreement will be considered a lease rather than a purchase.                       |   |  |  |
| Lease: <input type="checkbox"/> Equipment will be returned at the end of the lease. The lease must extend for at least the Activity Life.  |   |  |  |
| Explain the terms of the agreement, including amount financed, the length (months), and amount per payment below:  |   |  |  |
| Financed \$27,000 for 60 Months with payments of \$x,xxx.xx per month. Copy signed loan attached. Grant payment is assigned to the Equipment Dealership.   |   |  |  |
| Note: The grant may only be used to reimburse principle amounts or lease payments already made (and not including interest or finance charges) and/or up-front down payments on the purchase or lease. Your grant reimbursements may not be used to pre-pay future lease payments.   |   |  |  |
| Enter below the information about the NEW vehicle/equipment and engine purchased.  |   |  |  |
| Equipment manufacturer, model, model year, and VIN or Serial Number  | Engine manufacturer, model, model year, and Serial Number | Engine Test Group (Family Code) Twelve Digit Alpha-Numeric found on Engine S/N Plate | Date NEW vehicle/equipment placed in service |
| Vehicle Make<br>Vehicle Model Number<br>Vehicle VIN or S/N   | Engine Make<br>Engine Model Number<br>Engine S/N          | Example Format<br>1(#), 4 (ALPHA), 4(#),3(ALPHA)                                     | MM/DD/YR (first day used for work)           |

TCEQ EMISSIONS REDUCTION INCENTIVE GRANT  
FORM 2b: Repower Activity  
Detail Expense Summary

| **** A FORM 2b WILL NEED TO BE COMPLETED FOR EACH ACTIVITY IF THERE ARE MULTIPLE ACTIVITIES ****  |  |  |                 |
|---|--|--|-----------------|
| CONTRACT NUMBER   | GRANT RECIPIENT NAME   | Final Request<br>This Activity                           | ACTIVITY NUMBER |
|   |  | Yes <input type="checkbox"/> No <input type="checkbox"/> |                 |
| 1. APPROVED GRANT AMOUNT FOR THIS ACTIVITY FROM APPLICATION   |  | \$   | -               |
| <b>2. ACTUAL INCREMENTAL COST CALCULATION</b>   |  |  |                 |
| The following list identifies the reimbursable and non-reimbursable costs to assist in completing the section below.  |  |  |                 |
| <ul style="list-style-type: none"> <li>• <u>Reimbursable Expenses:</u><br/>Costs that may be reimbursed, subject to approval by TCEQ include:<br/>           1. Invoice cost of the new engine, including sales tax and delivery charges.<br/>           2. Invoice cost of additional parts directly needed to install the new engine.<br/>           3. Installation costs, including cost to remove and dispose of the old engine.<br/>           4. Re-engineering costs, if the vehicle or equipment must be modified for the new engine.</li> <li>• <u>Non-Reimbursable Expenses:</u><br/>           1. Expenses for in-house labor and travel.<br/>           2. Expenses not directly related to the purchase and installation of the new engine.<br/>           3. Ancillary repair and rebuild costs.<br/>           4. Long-term operational, maintenance, or repair costs.<br/>           5. Interest or Loan fees, Application costs, and/or Consulting fees.</li> </ul> <p><i>The final invoices or sales receipts should total to the amounts entered on Lines A, B, and C below. The repower must be completed and the vehicle placed back in service <u>before</u> reimbursement can be requested.</i></p> |  |  |                 |
| A. Cost of the new engine:  |  | \$   | -               |
|   |  |  | (+ ADD)         |
| B. Additional parts:  |  | \$   | -               |
|   |  |  | (+ ADD)         |
| C. Installation, including cost to remove and dispose of old engine:  |  | \$   | -               |
| Installer: <i>NOTE: the repower must be completed to meet the original engine manufacturer's (OEM's) standards.</i>   |  |  | (- SUBTRACT)    |
| D. Scrappage value or value received for the old engine being replaced:   |  | \$   | -               |
| <i>The cost of the purchase or lease must be reduced by the actual monetary value of payments or financial considerations received or estimated to be received in the future for the scrappage, trade-in, or sale of the old engine and/or parts. That amount must be listed on this line.</i>  |  |  | (- SUBTRACT)    |
| E. List the value of any other financial assistance received to assist with this project.   |  | \$   | -               |
| <i>The incremental cost must be reduced by the value of any other financial incentives received including any tax credits, discounts, other grants, or any other public financial assistance. Please explain in detail the sources of any incentives on an attached sheet.</i>  |  |  |                 |
| F. ACTUAL INCREMENTAL COST FOR THIS ACTIVITY (A+B+C-D-E=F)  |  | \$   | -               |
| 3. REIMBURSEMENT AMOUNT REQUESTED (lesser of Line 1 or Line 2F)   |  | \$   | -               |
| 4. DOCUMENTATION - Attach Bills of Sale, invoices, delivery receipts, proof of payment (canceled checks or wire transfers), executed (signed) lease or financing agreement copies, and UCC1 statements (reference Article 7.9 of the Contract General Conditions for details). <b><u>A PAYMENT CANNOT BE PROCESSED UNTIL YOU HAVE SUBMITTED THE REQUIRED DOCUMENTATION.</u></b>   |  |  |                 |
| Please check the following documentation items that you are submitting with this request of reimbursement.  |  |  |                 |
| <u>Purchase Documentation</u>   |  | <u>Payment Documentation</u>                             |                 |
| <input type="checkbox"/> Invoice(s)   | <input type="checkbox"/> Copies of Canceled Checks                                   | <input type="checkbox"/> Finance Documentation           |                 |
| <input type="checkbox"/> Bill of Sale (Sales Contract)  | <input type="checkbox"/> Wire Transfer   | <input type="checkbox"/> Financial Agreement             |                 |
|   |  | <input type="checkbox"/> Lease Agreement                 |                 |
| 5. Enter below the information about the NEW engine purchased:  |  |  |                 |
| Engine manufacturer, model, model year, and Serial Number   | Engine Test Group (Family Code) Twelve Digit Alpha-Numeric found on Engine S/N Plate | Date <u>NEW</u> engine placed into service               |                 |
|   |  |  |                 |

**TCEQ EMISSIONS REDUCTION INCENTIVE GRANT  
SAMPLE FORM 2b: Re-Power Activity  
Detail Expense Summary**

\*\*\*\* A FORM 2b WILL NEED TO BE COMPLETED FOR EACH ACTIVITY IF THERE ARE MULTIPLE ACTIVITIES \*\*\*\*

| TCEQ CONTRACT NUMBER | GRANT RECIPIENT NAME             | Final Request<br>This Activity                                      | ACTIVITY NUMBER |
|----------------------|----------------------------------|---|-----------------|
| 582-x-xxxxx-xxxx     | GRANT RECIPIENT NAME ON CONTRACT | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | xxx             |

|   |    |            |
|---|----|------------|
| 1. APPROVED GRANT AMOUNT FOR THIS ACTIVITY FROM APPLICATION | \$ | 100,000.00 |
|---|----|------------|

**2. ACTUAL INCREMENTAL COST CALCULATION**

The following list identifies the reimbursable and non-reimbursable costs to assist in completing the section below.

- |   |  |
|---|--|
| <p>• <u>Reimbursable Expenses:</u><br/>Costs that may be reimbursed, subject to approval by TCEQ include:</p> <ol style="list-style-type: none"> <li>1. Invoice cost of the new engine, including sales tax and delivery charges.</li> <li>2. Invoice cost of additional parts directly needed to install the new engine.</li> <li>3. Installation costs, including cost to remove and dispose of the old engine.</li> <li>4. Re-engineering costs, if the vehicle or equipment must be modified for the new engine.</li> </ol> | <p>• <u>Non-Reimbursable Expenses:</u></p> <ol style="list-style-type: none"> <li>1. Expenses for in-house labor and travel.</li> <li>2. Expenses not directly related to the purchase and installation of the new engine.</li> <li>3. Ancillary repair and rebuild costs.</li> <li>4. Long-term operational, maintenance, or repair costs.</li> <li>5. Interest or Loan fees, Application costs, and/or Consulting fees.</li> </ol> |
|---|--|

The final invoices or sales receipts should total to the amounts entered on Lines A, B, and C below. The re-power must be completed and the vehicle placed back in service before reimbursement can be requested.

|   |    |              |
|---|----|--------------|
| A. Cost of the new engine:  | \$ | 75,000.00    |
|   |    | (+ ADD)      |
| B. Additional parts:  | \$ | 6,000.00     |
|   |    | (+ ADD)      |
| C. Installation, including cost to remove and dispose of old engine:  | \$ | 20,000.00    |
| Installer: NOTE: the re-power must be completed to meet the original engine manufacturer's (OEM's) standards.   |    | (- SUBTRACT) |
| D. Scrappage value or value received for the old engine being replaced:   | \$ | 500.00       |
| <i>The cost of the purchase or lease must be reduced by the actual monetary value of payments or financial considerations received or estimated to be received in the future for the scrappage, trade-in, or sale of the old engine and/or parts. That amount must be listed on this line.</i>  |    | (- SUBTRACT) |
| E. List the value of any other financial assistance received to assist with this project.<br><i>The incremental cost must be reduced by the value of any other financial incentives received including any tax credits, discounts, other grants, or any other public financial assistance. Please explain in detail the sources of any incentives on an attached sheet.</i> | \$ | -            |
| F. ACTUAL INCREMENTAL COST FOR THIS ACTIVITY (A+B+C-D-E=F)  | \$ | 100,500.00   |

|   |    |            |
|---|----|------------|
| 3. REIMBURSEMENT AMOUNT REQUESTED (lesser of Line 1 or Line 2F) | \$ | 100,000.00 |
|---|----|------------|

**4. DOCUMENTATION - Attach Bills of Sale, invoices, delivery receipts, proof of payment (canceled checks or wire transfers), executed (signed) lease or financing agreement copies, and UCC1 statements (reference Article 7.9 of the Contract General Conditions for details). A PAYMENT CANNOT BE PROCESSED UNTIL YOU HAVE SUBMITTED THE REQUIRED DOCUMENTATION.**

Please check the following documentation items that you are submitting with this request of reimbursement.

| <u>Purchase Documentation</u>                          | <u>Payment Documentation</u>                                  | <u>Finance Documentation</u>                 |
|--|---|--|
| <input checked="" type="checkbox"/> Invoice(s)         | <input checked="" type="checkbox"/> Copies of Canceled Checks | <input type="checkbox"/> Financial Agreement |
| <input type="checkbox"/> Bill of Sale (Sales Contract) | <input type="checkbox"/> Wire Transfer                        | <input type="checkbox"/> Lease Agreement     |

**5. Enter below the information about the NEW engine purchased:**

| Engine manufacturer, model, model year, and Serial Number                               | Engine Test Group (Family Code) Twelve Digit Alpha-Numeric found on Engine S/N Plate | Date <u>NEW</u> engine placed into service |
|---|--|--|
| Engine manufacturer<br>Engine Model Number<br>Engine Model year<br>Engine Serial Number | Example Format<br>1(#), 4 (ALPHA), 4(#),3(ALPHA)                                     | MM/DD/YY<br>(First day used for work)      |

**TCEQ EMISSIONS REDUCTION INCENTIVE GRANT  
FORM 2c: Retrofit Activity  
Detail Expense Summary**

\*\*\*\* A FORM 2c WILL NEED TO BE COMPLETED FOR EACH ACTIVITY IF THERE ARE MULTIPLE ACTIVITIES \*\*\*\*

| CONTRACT NUMBER | GRANT RECIPIENT NAME | Final Request<br>This Activity                           | ACTIVITY NUMBER |
|-----------------|----------------------|--|-----------------|
|                 |                      | Yes <input type="checkbox"/> No <input type="checkbox"/> |                 |

1. APPROVED GRANT AMOUNT FOR THIS ACTIVITY FROM APPLICATION \$ -

**2. ACTUAL INCREMENTAL COST CALCULATION**

The following list identifies the reimbursable and non-reimbursable costs to assist in completing the section below.

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>• <u>Reimbursable Expenses:</u><br/>Costs that may be reimbursed, subject to approval by TCEQ include:<br/>1. Invoice cost of the retrofit or add-on devices, including sales tax and delivery charges.</li> <li>2. Associated supplies directly related to the installation of the device.</li> <li>3. Install costs.</li> <li>4. Re-engineering costs, if the vehicle or equipment must be modified for the retrofit or add-on devices to be installed and used.</li> </ul> | <ul style="list-style-type: none"> <li>• <u>Non-Reimbursable Expenses:</u><br/>1. Expenses for in-house labor and travel.</li> <li>2. Expenses not directly related to the purchase and installation of the retrofit kit.</li> <li>3. Ancillary repair and rebuild costs (unless approved in application).</li> <li>4. Long-term operational, maintenance, or repair costs.</li> <li>5. Interest expense or Loan fees, Application assistance, and/or Consulting fees.</li> </ul> |
|--|---|

*The final invoices or sales receipts should total to the amounts entered on Lines A, B, and C below. The retrofit work must be completed and the vehicle placed back in service before reimbursement can be requested.*

|  |    |              |
|--|----|--------------|
| A. Retrofit system, including sales tax and delivery charges:  | \$ | -            |
|  |    | (+ ADD)      |
| B. Additional materials necessary for the installation of the system:  | \$ | -            |
|  |    | (+ ADD)      |
| C. Installation, costs, if included as part of the equipment purchase:   | \$ | -            |
|  |    | (- SUBTRACT) |
| D. List the value of any other financial assistance to be used for the purchase or lease, and explain in detail: | \$ | -            |

*The incremental cost must be reduced by the value of any other financial incentive received including tax credits or deductions, other grants, or any other public financial assistance.*

E. ACTUAL INCREMENTAL COST FOR THIS ACTIVITY (A+B+C-D-E=F) \$ -

3. REIMBURSEMENT AMOUNT REQUESTED (lesser of Line 1 or Line 2F) \$ -

**4. DOCUMENTATION - Attach Bills of Sale, invoices, delivery receipts, proof of payment (canceled checks or wire transfers), executed (signed) lease or financing agreement copies, and UCC1 statements (reference Article 7.9 of the Contract General Conditions for details). A PAYMENT CANNOT BE PROCESSED UNTIL YOU HAVE SUBMITTED THE REQUIRED DOCUMENTATION.**

Please check the following documentation items that you are submitting with this request of reimbursement

| <u>Purchase Documentation</u>                          | <u>Payment Documentation</u>                       | <u>Finance Documentation</u>                 |
|--|--|--|
| <input type="checkbox"/> Invoice(s)                    | <input type="checkbox"/> Copies of Canceled Checks | <input type="checkbox"/> Financial Agreement |
| <input type="checkbox"/> Bill of Sale (Sales Contract) | <input type="checkbox"/> Wire Transfer             | <input type="checkbox"/> Lease Agreement     |

5. Enter below the information about the NEW equipment purchased and the engine rebuild ( if applicable).

| Vehicle/Engine the Retrofit/Add-on Technology Is Installed On. | Description of the Retrofit/Add-on Technology, Manufacturer, Kit number or other identifying information | Date NEW equipment placed into service | Was the engine rebuilt in conjunction with the retrofit or add-on (Yes/No)     |
|--|--|--|--|
|  |  |  |  |
|  |  |  | Are the rebuilt cost included in the incremental cost reported above? (Yes/No) |
|  |  |  |  |

**TCEQ EMISSIONS REDUCTION INCENTIVE GRANT  
FORM 2c: Retrofit Activity  
Detail Expense Summary**

\*\*\*\* A FORM 2c WILL NEED TO BE COMPLETED FOR EACH ACTIVITY IF THERE ARE MULTIPLE ACTIVITIES \*\*\*\*

| CONTRACT NUMBER | GRANT RECIPIENT NAME             | Final Request This Activity   | ACTIVITY NUMBER |
|-----------------|----------------------------------|---|-----------------|
| 582-x-xxxx-xxxx | GRANT RECIPIENT NAME ON CONTRACT | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | xxx             |

|   |               |
|---|---------------|
| 1. APPROVED GRANT AMOUNT FOR THIS ACTIVITY FROM APPLICATION | \$ 100,000.00 |
|---|---------------|

**2. ACTUAL INCREMENTAL COST CALCULATION**

The following list identifies the reimbursable and non-reimbursable costs to assist in completing the section below.

- |   |  |
|---|--|
| <p>• <u>Reimbursable Expenses:</u><br/>Costs that may be reimbursed, subject to approval by TCEQ include:</p> <ol style="list-style-type: none"> <li>1. Invoice cost of the retrofit or add-on devices, including sales tax and delivery charges.</li> <li>2. Associated supplies directly related to the installation of the device.</li> <li>3. Install costs.</li> <li>4. Re-engineering costs, if the vehicle or equipment must be modified for the retrofit or add-on devices to be installed and used.</li> </ol> | <p>• <u>Non-Reimbursable Expenses:</u></p> <ol style="list-style-type: none"> <li>1. Expenses for in-house labor and travel.</li> <li>2. Expenses not directly related to the purchase and installation of the retrofit kit.</li> <li>3. Ancillary repair and rebuild costs (unless approved in application).</li> <li>4. Long-term operational, maintenance, or repair costs.</li> <li>5. Interest expense or Loan fees, Application assistance, and/or Consulting fees.</li> </ol> |
|---|--|

*The final invoices or sales receipts should total to the amounts entered on Lines A, B, and C below. The retrofit work must be completed and the vehicle placed back in service before reimbursement can be requested.*

|   |                              |
|---|------------------------------|
| A. Retrofit system, including sales tax and delivery charges:   | \$ 75,000.00<br>(+ ADD)      |
| B. Additional materials necessary for the installation of the system:   | \$ 5,000.00<br>(+ ADD)       |
| C. Installation, costs, if included as part of the equipment purchase:  | \$ 25,000.00<br>(- SUBTRACT) |
| D. List the value of any other financial assistance to be used for the purchase or lease, and explain in detail:<br><i>The incremental cost must be reduced by the value of any other financial incentive received including tax credits or deductions, other grants, or any other public financial assistance.</i> | \$ -                         |

|  |               |
|--|---------------|
| E. ACTUAL INCREMENTAL COST FOR THIS ACTIVITY (A+B+C-D-E=F) | \$ 105,000.00 |
|--|---------------|

|   |               |
|---|---------------|
| 3. REIMBURSEMENT AMOUNT REQUESTED (lesser of Line 1 or Line 2F) | \$ 100,000.00 |
|---|---------------|

**4. DOCUMENTATION - Attach Bills of Sale, invoices, delivery receipts, proof of payment (canceled checks or wire transfers), executed (signed) lease or financing agreement copies, and UCC1 statements (reference Article 7.9 of the Contract General Conditions for details). A PAYMENT CANNOT BE PROCESSED UNTIL YOU HAVE SUBMITTED THE REQUIRED DOCUMENTATION.**

Please check the following documentation items that you are submitting with this request of reimbursement

| Purchase Documentation                                 | Payment Documentation                                 | Finance Documentation                        |
|--|---|--|
| XX <input type="checkbox"/> Invoice(s)                 | XX <input type="checkbox"/> Copies of Canceled Checks | <input type="checkbox"/> Financial Agreement |
| <input type="checkbox"/> Bill of Sale (Sales Contract) | <input type="checkbox"/> Wire Transfer                | <input type="checkbox"/> Lease Agreement     |

5. Enter below the information about the NEW equipment purchased and the engine rebuild ( if applicable).

| Vehicle/Engine the Retrofit/Add-on Technology Is Installed On.                          | Description of the Retrofit/Add-on Technology, Manufacturer, Kit number or other identifying information | Date <u>NEW</u> equipment placed into service | Was the engine rebuilt in conjunction with the retrofit or add-on (Yes/No)   |
|---|--|---|--|
| Vehicle:<br>Make, Model, Model Year, & VIN<br>Engine:<br>Make, Model, Model Year, & S/N | Description of Kit and any # ID numbers / information used to identify retrofit technology               | MM/DD/YY<br>(First day used for work)         | Refer to the Original Application<br>Are the rebuilt cost included in the incremental cost reported above? (Yes/No)<br>Refer to the Original Application |

**TCEQ EMISSION REDUCTION INCENTIVE GRANT  
FORM 2d: New Purchase Activity  
Detail Expense Summary**

\*\*\*\* A FORM 2d WILL NEED TO BE COMPLETED FOR EACH ACTIVITY IF THERE ARE MULTIPLE ACTIVITIES \*\*\*\*

| CONTRACT NUMBER | GRANT RECIPIENT NAME | Final Request This Activity<br>Yes <input type="checkbox"/> No <input type="checkbox"/> | ACTIVITY NUMBER |
|-----------------|----------------------|---|-----------------|
|                 |                      |   |                 |

1. APPROVED GRANT AMOUNT FOR THIS ACTIVITY FROM APPLICATION \$ -

2. ACTUAL INCREMENTAL COST CALCULATION Formula A - B - C = D

The following list identifies the reimbursable and non-reimbursable costs to assist in completing the section below.

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>• <u>Reimbursable Expenses:</u></li> <li>Costs that may be reimbursed, subject to approval by TCEQ include:</li> <li>1. Invoice cost of the new equipment, including sales tax and delivery charges.</li> <li>2. Invoice cost of additional parts directly needed to place the new equipment in service.</li> <li>3. Installation costs, if needed to place the new equipment in service.</li> </ul> | <ul style="list-style-type: none"> <li>• <u>Non-Reimbursable Expenses:</u></li> <li>1. Interest expense or loan application fees</li> <li>2. Expenses not directly related to the purchase and installation of the new equipment.</li> <li>3. Ancillary repair and/or rebuild costs.</li> <li>4. Long-term operational, maintenance, or repair costs.</li> <li>5. Application assistance and/or consulting fees related to application or purchase.</li> </ul> |
|---|--|

The final invoices or sales receipts should total to the amounts entered on the line A below.

A(i). Purchase price (including taxes, registration, and other normal costs per industry standards). \$ -  
OR (CHOOSE ONE)

A(ii). Lease price: For leases where the vehicle/equipment will be returned at the end of the lease, enter only the lease cost (not the value of the vehicle). Lease costs include upfront payment, lease payments, taxes and applicable fees. Please attach \$ -  
(- SUBTRACT)

B. Price estimate for the baseline cost of equipment (including taxes and fees, but no loan costs) \$ -  
The value received and reported to the TCEQ must be the actual estimated cost of obtaining the baseline equipment, including any costs to place the equipment in service. Baseline and new equipment must be same Model Year. (- SUBTRACT)

C. List the value of any other financial assistance to be used for the purchase or lease, and explain in detail: The incremental cost must be reduced by the value of any other financial incentive received including tax credits or deductions, other grants, or any other public financial assistance. \$ -

D. Incremental Cost of New Purchase (A - B - C = D) \$ -

3. AMOUNT REQUESTED FOR THIS ACTIVITY (enter the lesser amount Line 1 or Line 2E) \$ -

4. DOCUMENTATION - Attach Bills of Sale, invoices, delivery receipts, proof of payment (canceled checks or wire transfers), executed (signed) lease or financing agreement copies, and UCC1 statements (reference Article 7.9 of the Terms and conditions for details). **A PAYMENT CANNOT BE PROCESSED UNTIL YOU HAVE SUBMITTED THE REQUIRED DOCUMENTATION.**

Please check the following documentation items that you are submitting with this request of reimbursement.

| Purchase Documentation                                 | Payment Documentation                              | Finance Documentation                        |
|--|--|--|
| <input type="checkbox"/> Invoice(s)                    | <input type="checkbox"/> Copies of Canceled Checks | <input type="checkbox"/> Financial Agreement |
| <input type="checkbox"/> Bill of Sale (Sales Contract) | <input type="checkbox"/> Wire Transfer             | <input type="checkbox"/> Lease Agreement     |

FINANCING OR LEASE TERMS FOR REPLACEMENT VEHICLE (Because this is a reimbursement program, any financing or leasing plan will need to have an up-front payment that is at least equal to the total grant amount requested.) CHECK ONE

- Purchase:  Cash Purchase  
 Regular Financing  
 Lease Purchase Financing (lease-to-own, equipment will be purchased and retained at the end of the lease). The lease agreement must include a binding commitment for the applicant to pay any remaining costs and to take ownership of the equipment. Without this binding commitment, the agreement will be considered a lease rather than a purchase.
- Lease:  Equipment will be returned at the end of the lease. The lease must extend for at least the Activity Life.

Explain the terms of the purchase or lease agreement, including amount financed, the length (months), and amount per payment below:

Note: The grant may only be used to reimburse principle or lease payments already made (and not including interest or finance charges) and/or up-front down payments on the purchase or lease. Your grant reimbursements may not be used to pre-pay future lease or finance payments.

Enter below the information about the NEW vehicle/equipment and engine purchased:

| Equipment manufacturer, model, model year, and VIN or Serial Number | Engine manufacturer, model, model year, and Serial Number | Engine Test Group (Family Code) Twelve Digit Alpha-Numeric found on Engine S/N Plate | Date NEW vehicle/equipment placed in service |
|---|---|--|--|
|   |   |  |  |

**TCEQ EMISSION REDUCTION INCENTIVE GRANT  
SAMPLE FORM 2d: New Purchase Activity  
Detail Expense Summary**

\*\*\*\* A FORM 2d WILL NEED TO BE COMPLETED FOR EACH ACTIVITY IF THERE ARE MULTIPLE ACTIVITIES \*\*\*\*

|                  |                                  |   |                 |
|------------------|----------------------------------|---|-----------------|
| CONTRACT NUMBER  | GRANT RECIPIENT NAME             | Final Request This Activity   | ACTIVITY NUMBER |
| 582-x-xxxxx-xxxx | GRANT RECIPIENT NAME ON CONTRACT | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | xxx             |

1. APPROVED GRANT AMOUNT FOR THIS ACTIVITY FROM APPLICATION \$ 110,000.00

2. ACTUAL INCREMENTAL COST CALCULATION Formula A - B - C = D

The following list identifies the reimbursable and non-reimbursable costs to assist in completing the section below.

- |  |  |
|--|--|
| <p><u>Reimbursable Expenses:</u></p> <p>Costs that may be reimbursed, subject to approval by TCEQ include:</p> <ol style="list-style-type: none"> <li>Invoice cost of the new equipment, including sales tax and delivery charges.</li> <li>Invoice cost of additional parts directly needed to place the new equipment in service.</li> <li>Installation costs, if needed to place the new equipment in service.</li> </ol> | <p><u>Non-Reimbursable Expenses:</u></p> <ol style="list-style-type: none"> <li>Interest expense or loan application fees.</li> <li>Expenses not directly related to the purchase and installation of the new equipment.</li> <li>Ancillary repair and/or rebuild costs.</li> <li>Long-term operational, maintenance, or repair costs.</li> <li>Application assistance and/or consulting fees related to application or purchase.</li> </ol> |
|--|--|

The final invoices or sales receipts should total to the amounts entered on the line A below.

A(i). Purchase price (including taxes, registration, and other normal costs per industry standards). \$ 200,000.00  
OR  
(CHOOSE ONE)

A(ii). Lease price: For leases where the vehicle/equipment will be returned at the end of the lease, enter only the lease cost (not the value of the vehicle). Lease costs include upfront payment, lease payments, taxes and applicable fees. Please attach \$ -  
(- SUBTRACT)

B. Price estimate for the baseline cost of equipment (including taxes and fees, but no loan costs) \$ 100,000.00  
The value received and reported to the TCEQ must be the actual estimated cost of obtaining the baseline equipment, including any costs to place the equipment in service. Baseline and new equipment must be same Model Year. (- SUBTRACT)

C. List the value of any other financial assistance to be used for the purchase or lease, and explain in detail: The incremental cost must be reduced by the value of any other financial incentive received including tax credits or deductions, other grants, or any other public financial assistance. \$ -

D. Incremental Cost of New Purchase (A - B - C = D) \$ 100,000.00

3. AMOUNT REQUESTED FOR THIS ACTIVITY (enter the lesser amount Line 1 or Line 2E) \$ 100,000.00

4. DOCUMENTATION - Attach Bills of Sale, invoices, delivery receipts, proof of payment (canceled checks or wire transfers), executed (signed) lease or financing agreement copies, and UCC1 statements (reference Article 7.9 of the Terms and conditions for details). **A PAYMENT CANNOT BE PROCESSED UNTIL YOU HAVE SUBMITTED THE REQUIRED DOCUMENTATION.**

Please check the following documentation items that you are submitting with this request of reimbursement.

| Purchase Documentation  | Payment Documentation   | Finance Documentation                                   |
|---|---|---|
| <input type="checkbox"/> Invoice(s)                               | <input checked="" type="checkbox"/> Copies of Canceled Checks | <input checked="" type="checkbox"/> Financial Agreement |
| <input checked="" type="checkbox"/> Bill of Sale (Sales Contract) | <input type="checkbox"/> Wire Transfer                        | <input type="checkbox"/> Lease Agreement                |

**FINANCING OR LEASE TERMS FOR REPLACEMENT VEHICLE** (Because this is a reimbursement program, any financing or leasing plan will need to have an up-front payment that is at least equal to the total grant amount requested.) CHECK ONE

Purchase:  Cash Purchase  
 Regular Financing  
 Lease Purchase Financing (lease-to-own, equipment will be purchased and retained at the end of the lease). The lease agreement must include a binding commitment for the applicant to pay any remaining costs and to take ownership of the equipment. Without this binding commitment, the agreement will be considered a lease rather than a purchase.

Lease:  Equipment will be returned at the end of the lease. The lease must extend for at least the Activity Life.

Explain the terms of the purchase or lease agreement, including amount financed, the length (months), and amount per payment below:

Paid 30,000 down and financed remaining balance of \$49,000 for 60 months with payments of \$1,041.00 per month. Interest rate = 10% See attached copy of financing agreement.

Note: The grant may only be used to reimburse principle or lease payments already made (and not including interest or finance charges) and/or up-front down payments on the purchase or lease. Your grant reimbursements may not be used to pre-pay future lease or finance payments.

Enter below the information about the NEW vehicle/equipment and engine purchased:

| Equipment manufacturer, model, model year, and VIN or Serial Number | Engine manufacturer, model, model year, and Serial Number | Engine Test Group (Family Code) Twelve Digit Alpha-Numeric found on Engine S/N Plate | Date NEW vehicle/equipment placed in service |
|---|---|--|--|
| Make<br>Model<br>Model Year<br>VIN or S/N                           | Make<br>Model<br>Model Year<br>VIN or S/N                 | Example Format<br>(1#)(4 Alpha)(3#.#)(3 Alpha)                                       | MM/DD/YY<br>(First day used for work)        |

**TCEQ EMISSIONS REDUCTION INCENTIVE GRANT**

FORM 2e: REFUELING INFRASTRUCTURE AND ON-SITE ELECTRIFICATION & IDLE REDUCTION INFRASTRUCTURE,  
Detail Expense Summary

\*\*\*\* A FORM 2e WILL NEED TO BE COMPLETED FOR EACH ACTIVITY IF THERE ARE MULTIPLE ACTIVITIES \*\*\*\*

|   |   |   |   |  |                     |
|---|---|---|---|--|---------------------|
| <b>TCEQ CONTRACT NUMBER</b>   | <b>GRANT RECIPIENT NAME</b>   | <b>ACTIVITY FINAL REQUEST</b>   | <b>ACTIVITY NUMBER</b>  |  |                     |
|   |   | Yes <input type="checkbox"/> No <input type="checkbox"/>                                  |   |  |                     |
| <b>1. APPROVED GRANT AMOUNT FOR THIS ACTIVITY FROM APPLICATION</b>  |   |   | \$ -  |  |                     |
| <b>2. FINANCIAL STATUS REPORT</b>   |   |   |   |  |                     |
| <b>Expense Category</b>   | <b>( A )<br/>Approved Category<br/>Amounts Per Application</b>            | <b>( B )<br/>Actual Costs<br/>Expended For This<br/>Activity</b>                          | <b>( C )<br/>Reimbursement Limit is<br/>50% of Actual Costs</b> | <b>% Over or -Under<br/>See Note 2.a below</b> |                     |
| a. Total Equipment Expenses   | \$ -  | \$ -  | \$ -  |  |                     |
| b. Total Supply Expenses  | \$ -  | \$ -  | \$ -  |  |                     |
| c. Total Contractual Expenses   | \$ -  | \$ -  | \$ -  |  |                     |
| d. Total Construction Expenses  | \$ -  | \$ -  | \$ -  |  |                     |
| e. Total Other Expenses   | \$ -  | \$ -  | \$ -  |  |                     |
| f. Total Grant<br>Amount Requested  | \$ -  | \$ -  | \$ -  |  |                     |
| <b>2.a IF ANY LINE'S % IS &gt; 10% STOP HERE AND CONTACT PROJECT MANAGER ABOUT AN AMENDMENT TO THE CONTRACT***</b>  |   |   |   |  |                     |
| <b>3. AMOUNT REQUESTED FOR THIS ACTIVITY (enter the lesser amount of Total Column ( A ) or ( C )</b>  |   |   | \$ -  |  |                     |
| *** TOTAL COST MUST BE ITEMIZED BY AN INVOICE AND PAYMENT DOCUMENTATION (i.e. copy of cancelled checks or wire transfers) ***   |   |   |   |  |                     |
| <b>4. COSTS TO BE COVERED BY OTHER FINANCIAL ASSISTANCE:</b><br>(List and explain any costs identified in the "Total Project Costs" for the infrastructure purchase and installation that will be covered by other financial incentives, including tax credits or deductions, other grants, or any other financial assistance.)                                   |   |   |   |  |                     |
| <b>5. COSTS TO BE COVERED BY APPLICANT:</b><br>(List and explain any costs in the "Total Project Costs" for the infrastructure purchase and installation that were covered directly by the grantee but not included in the Eligible Costs above)  |   |   |   |  |                     |
| <b>6. .DOCUMENTATION - Attach Bills of Sale, invoices, delivery receipts, proof of payment (canceled checks or wire transfers), executed (signed) financing agreement copies, and UCC1 statements (reference Article 7.9 of the Contract General Conditions for details). A PAYMENT MAY NOT BE PROCESSED UNTIL YOU HAVE SUBMITTED THE REQUIRED DOCUMENTATION.</b> |   |   |   |  |                     |
| Please check the following documentation items that you are submitting with this request of reimbursement   |   |   |   |  |                     |
| <u>Purchase Documentation</u>   |   | <u>Payment Documentation</u>  |   | <u>Finance Documentation</u>                   |                     |
| <input type="checkbox"/>  | Invoice(s)  | <input type="checkbox"/>  | Copies of Canceled Checks                                       | <input type="checkbox"/>                       | Financial Agreement |
| <input type="checkbox"/>  | Bill of Sale (Sales Contract)   | <input type="checkbox"/>  | Wire Transfer   | <input type="checkbox"/>                       | Lease Agreement     |
| <b>7. Enter the information below on the refueling infrastructure, on-site electrification &amp; idle reduction infrastructure.</b>   |   |   |   |  |                     |
| <b>General Description<br/>{Make, Model, Model Year (if applicable)}</b>  | <b>Manufacturer/Dealer<br/>(Address, Contact Name &amp; Phone Number)</b> | <b>Fuel Supplier Information<br/>(Name, Address, Contact<br/>Name &amp; Phone Number)</b> | <b>Date of Service</b>  |  |                     |
|   |   |   |   |  |                     |

**TCEQ EMISSIONS REDUCTION INCENTIVE GRANT**  
**FORM 2e: REFUELING INFRASTRUCTURE, ON-SITE ELECTRIFICATION & IDLE REDUCTION INFRASTRUCTURE**  
**Detail Expense Summary - Supplemental Forms**

(All invoices submitted should be itemized at least to the level of detail explained below.)

**a. EQUIPMENT AND OTHER CAPITAL EXPENDITURES:**

(1) Infrastructure system, including sales tax and delivery charges.  
(Attach invoices and cancelled checks)

(2) Additional materials necessary for the installation of the system, including sales tax and delivery charges (explain below):  
(attach invoices and cancelled checks)

(3) Installation costs if included as part of the equipment purchase:  
(attach invoices & cancelled checks)

(4) Other related items (over \$1,000 per unit cost), and materials that are a necessary part of the work (Itemize below):  
(attach invoices and cancelled checks)

**b. SUPPLIES:**

(1) Supplies and incidental items. Supplies include goods and materials having a unit acquisition cost (including sales tax and delivery charges of less than \$1,000 (Itemize below):  
(attach invoices and cancelled checks)

**c. CONTRACTUAL:**

(1) Include re-engineering work, installation costs, and other work, if contracts ed by for by the applicant separate from the equipment and installation purchase agreement (Itemize below):  
(attach invoices and cancelled checks)

**d. CONSTRUCTION:**

(1) Include work directly related to the installation of the infrastructure, including the costs to prepare and improve the site to accommodate the infrastructure. This may include the enhancement of current facilities or building new facilities. (Itemize below) In-house labor and travel are not eligible for funding.

(Attach invoices and cancelled checks)

**e. OTHER:**

(1) Explain in detail other costs that do not fit within the previous categories. The costs must be directly related to the purchase and installation of the infrastructure. Long-term operational, maintenance, or repair costs are not eligible for funding. (Itemize below).

(Attach invoices and cancelled checks)

**TCEQ EMISSIONS REDUCTION INCENTIVE GRANT**

SAMPLE FORM 2e: REFUELING INFRASTRUCTURE AND ON-SITE ELECTRIFICATION & IDLE REDUCTION INFRASTRUCTURE,  
Detail Expense Summary

| **** A FORM 2e WILL NEED TO BE COMPLETED FOR EACH ACTIVITY IF THERE ARE MULTIPLE ACTIVITIES ****   |   |   |  |  |
|--|---|---|--|--|
| TCEQ CONTRACT NUMBER   | GRANT RECIPIENT NAME  | ACTIVITY FINAL REQUEST  |  | ACTIVITY NUMBER                              |
| 582-X-XXXX-XXXX  | Grantee Name  | Yes <input checked="" type="checkbox"/>   | No <input type="checkbox"/>                            | XXX  |
| <b>1. APPROVED GRANT AMOUNT FOR THIS ACTIVITY FROM APPLICATION</b>   |   |   |  | \$ 100,000.00                                |
| <b>2. FINANCIAL STATUS REPORT</b>  |   |   |  |  |
| Expense Category   | ( A )<br>Approved Category<br>Amounts Per Application   | ( B )<br>Actual Costs<br>Expended For This<br>Activity                              | ( C )<br>Reimbursement Limit is<br>50% of Actual Costs | % Over or -Under<br>See Note 2.a below       |
| a. Total Equipment Expenses  | \$ 50,000.00  | \$ 110,000.00   | \$ 55,000.00   | 5.0%   |
| b. Total Supply Expenses   | \$ 10,000.00  | \$ 20,000.00  | \$ 10,000.00   | 0.0%   |
| c. Total Contractual Expenses  | \$ 25,000.00  | \$ 50,000.00  | \$ 25,000.00   | 0.0%   |
| d. Total Construction Expenses   | \$ 5,000.00   | \$ 11,000.00  | \$ 5,500.00  | 0.5%   |
| e. Total Other Expenses  | \$ 10,000.00  | \$ 25,000.00  | \$ 12,500.00   | 2.5%   |
| f. Total Grant<br>Amount Requested   | \$ 100,000.00   | \$ 216,000.00   | \$ 108,000.00  | 8.0%   |
| <b>2.a IF ANY LINE'S % IS &gt; 10% STOP HERE AND CONTACT PROJECT MANAGER ABOUT AN AMENDMENT TO THE CONTRACT***</b>   |   |   |  |  |
| <b>3. AMOUNT REQUESTED FOR THIS ACTIVITY</b> (enter the lesser amount of Total Column ( A ) or ( C )   |   |   |  | \$ 100,000.00                                |
| *** TOTAL COST MUST BE ITEMIZED BY AN INVOICE AND PAYMENT DOCUMENTATION (i.e. copy of cancelled checks or wire transfers) ***  |   |   |  |  |
| <b>4. COSTS TO BE COVERED BY OTHER FINANCIAL ASSISTANCE:</b><br>(List and explain any costs identified in the "Total Project Costs" for the infrastructure purchase and installation that will be covered by other financial incentives, including tax credits or deductions, other grants, or any other financial assistance.)                                  |   |   |  |  |
|  |   |   |  |  |
| <b>5. COSTS TO BE COVERED BY APPLICANT:</b><br>(List and explain any costs in the "Total Project Costs" for the infrastructure purchase and installation that were covered directly by the grantee but not included in the Eligible Costs above)   |   |   |  |  |
|  |   |   |  |  |
| <b>6. DOCUMENTATION - Attach Bills of Sale, invoices, delivery receipts, proof of payment (canceled checks or wire transfers), executed (signed) financing agreement copies, and UCC1 statements (reference Article 7.9 of the Contract General Conditions for details). A PAYMENT MAY NOT BE PROCESSED UNTIL YOU HAVE SUBMITTED THE REQUIRED DOCUMENTATION.</b> |   |   |  |  |
| Please check the following documentation items that you are submitting with this request of reimbursement  |   |   |  |  |
| <u>Purchase Documentation</u>  |   | <u>Payment Documentation</u>  |  | <u>Finance Documentation</u>                 |
| <input checked="" type="checkbox"/> Invoice(s)   | <input type="checkbox"/>  | <input type="checkbox"/> Copies of Canceled Checks                                  | <input type="checkbox"/>                               | <input type="checkbox"/> Financial Agreement |
| <input type="checkbox"/> Bill of Sale (Sales Contract)   | <input checked="" type="checkbox"/>   | <input type="checkbox"/> Wire Transfer  | <input type="checkbox"/>                               | <input type="checkbox"/> Lease Agreement     |
| <b>7. Enter the information below on the refueling infrastructure, on-site electrification &amp; idle reduction infrastructure.</b>  |   |   |  |  |
| General Description<br>(Make, Model, Model Year (if applicable))   | Manufacturer/Dealer<br>(Address, Contact Name & Phone Number)                                   | Fuel Supplier Information<br>(Name, Address, Contact<br>Name & Phone Number)        | Date of Service  |  |
| Make<br>Model<br>Model Year  | Manufacturer/Dealer Name<br>Manufacturer/Dealer Address<br>Contact Name<br>Contact Phone Number | Fuel Supplier Name<br>Fuel Supplier Address<br>Contact Name<br>Contact Phone Number | XX / XX /<br>XXXX                                      |  |

**TCEQ EMISSIONS REDUCTION INCENTIVE GRANT**  
**FORM 2f: ON-VEHICLE ELECTRIFICATION & IDLE REDUCTION INFRASTRUCTURE**  
 Detail Expense Summary

\*\*\*\* A FORM 2f WILL NEED TO BE COMPLETED FOR EACH ACTIVITY IF THERE ARE MULTIPLE ACTIVITIES \*\*\*\*

|  |                             |  |                        |
|--|-----------------------------|--|------------------------|
| <b>TCEQ CONTRACT NUMBER</b>  | <b>GRANT RECIPIENT NAME</b> | <b>ACTIVITY FINAL REQUEST</b>                            | <b>ACTIVITY NUMBER</b> |
|  |                             | Yes <input type="checkbox"/> No <input type="checkbox"/> |                        |
| <b>1. APPROVED GRANT AMOUNT FOR THIS ACTIVITY FROM APPLICATION</b> |                             |  | \$ -                   |

**2. FINANCIAL STATUS REPORT**

| Expense Category                | ( A )<br>Approved Category<br>Amounts Per Application | ( B )<br>Actual Costs Expended<br>For This Activity | % Over Or -Under<br>See Note 2.a below |
|---------------------------------|---|---|--|
| a. Total Equipment Expenses     | \$ -  | \$ -  |  |
| b. Total Supply Expenses        | \$ -  | \$ -  |  |
| c. Total Contractual Expenses   | \$ -  | \$ -  |  |
| d. Total Construction Expenses  | \$ -  | \$ -  |  |
| e. Total Other Expenses         | \$ -  | \$ -  |  |
| f. Total Grant Amount Requested | \$ -  | \$ -  |  |

**2.a IF ANY LINE'S % IS > 10% STOP HERE AND CONTACT PROJECT MANAGER ABOUT AN AMENDMENT TO THE CONTRACT\*\*\***

|  |      |
|--|------|
| <b>3. AMOUNT REQUESTED FOR THIS ACTIVITY</b><br>(enter the lesser amount of Total Column ( A ) or ( B )) | \$ - |
|--|------|

\*\*\* TOTAL COST MUST BE ITEMIZED BY AN INVOICE AND PAYMENT DOCUMENTATION (i.e. copy of cancelled checks or wire transfers) \*\*\*

**4. COSTS TO BE COVERED BY OTHER FINANCIAL ASSISTANCE:**  
 (List and explain any costs identified in the "Total Project Costs" for the infrastructure purchase and installation that will be covered by other financial incentives, including tax credits or deductions, other grants, or any other financial assistance.)

**5. COSTS TO BE COVERED BY APPLICANT:**  
 (List and explain any costs in the "Total Project Costs" for the infrastructure purchase and installation that were covered directly by the grantee but not included in the Eligible Costs above)

**6. DOCUMENTATION - Attach Bills of Sale, invoices, delivery receipts, proof of payment (canceled checks or wire transfers), executed (signed) financing agreement copies, and UCC1 statements (reference Article 7.9 of the Contract General Conditions for details). A PAYMENT CANNOT BE PROCESSED UNTIL YOU HAVE SUBMITTED THE REQUIRED DOCUMENTATION.**

Please check the following documentation items that you are submitting with this request of reimbursement

| Purchase Documentation                                 | Payment Documentation                              | Finance Documentation                        |
|--|--|--|
| <input type="checkbox"/> Invoice(s)                    | <input type="checkbox"/> Copies of Canceled Checks | <input type="checkbox"/> Financial Agreement |
| <input type="checkbox"/> Bill of Sale (Sales Contract) | <input type="checkbox"/> Wire Transfer             | <input type="checkbox"/> Lease Agreement     |

**7. Enter the information below on the on-vehicle electrification & idle reduction infrastructure.**

| Vehicle APU Installed IN<br>(Make, Model, Model Year, VIN #) | Engine APU Installed On<br>(Make, Model, Model Yr, Engine Test Group<br>(Family Code), Fuel Type) | Auxilliary Power Unit (APU)<br>(Make, Model, Model Yr, Engine Test Group<br>(Family Code), Fuel Type) | Date Placed In<br>Service |
|--|---|---|---------------------------|
|  |   |   |                           |

TCEQ EMISSIONS REDUCTION INCENTIVE GRANT  
FORM 2F: ON-VEHICLE ELECTRIFICATION & IDLE REDUCTION INFRASTRUCTURE  
Detail Expense Summary - Supplemental Forms

(All invoices submitted should be itemized at least to the level of detail explained below.)

a. EQUIPMENT AND OTHER CAPITAL EXPENDITURES:

(1) Infrastructure system, including sales tax and delivery charges.  
(Attach invoices and cancelled checks)

(2) Additional materials necessary for the installation of the system, including sales tax and delivery charges (explain below):  
(attach invoices and cancelled checks)

(3) Installation costs if included as part of the equipment purchase:  
(attach invoices & cancelled checks)

(4) Other related items (over \$1,000 per unit cost), and materials that are a necessary part of the work (Itemize below):  
(attach invoices and cancelled checks)

**b. SUPPLIES:**

(1) Supplies and incidental items. Supplies include goods and materials having a unit acquisition cost (including sales tax and delivery charges of less than \$1,000 (Itemize below):  
(attach invoices and cancelled checks)

**c. CONTRACTUAL:**

(1) Include re-engineering work, installation costs, and other work, if contracts ed by for by the applicant separate from the equipment and installation purchase agreement (Itemize below):  
(attach invoices and cancelled checks)

**d. CONSTRUCTION:**

(1) Include work directly related to the installation of the infrastructure, including the costs to prepare and improve the site to accommodate the infrastructure. This may include the enhancement of current facilities or building new facilities. (Itemize below) In-house labor and travel are not eligible for funding.

(Attach invoices and cancelled checks)

**e. OTHER:**

(1) Explain in detail other costs that do not fit within the previous categories. The costs must be directly related to the purchase and installation of the infrastructure. Long-term operational, maintenance, or repair costs are not eligible for funding. (Itemize below).

(Attach invoices and cancelled checks)

**TCEQ EMISSIONS REDUCTION INCENTIVE GRANT**  
**SAMPLE FORM 2f: ON-VEHICLE ELECTRIFICATION & IDLE REDUCTION INFRASTRUCTURE**  
**Detail Expense Summary**

\*\*\*\* A FORM 2f WILL NEED TO BE COMPLETED FOR EACH ACTIVITY IF THERE ARE MULTIPLE ACTIVITIES \*\*\*\*

| TCEQ CONTRACT NUMBER   | GRANT RECIPIENT NAME | ACTIVITY FINAL REQUEST  | ACTIVITY NUMBER      |
|--|----------------------|---|----------------------|
| 582-X-XXXXX-XXXX   | Grantee Name         | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> | XXX                  |
| <b>1. APPROVED GRANT AMOUNT FOR THIS ACTIVITY FROM APPLICATION</b> |                      |   | <b>\$ 100,000.00</b> |

**2. FINANCIAL STATUS REPORT**

| Expense Category                | ( A )<br>Approved Category<br>Amounts Per Application | ( B )<br>Actual Costs Expended<br>For This Activity | % Over Or -Under<br>See Note 2.a below |
|---------------------------------|---|---|--|
| a. Total Equipment Expenses     | \$ 45,000.00  | \$ 47,500.00  | -3%                                    |
| b. Total Supply Expenses        | \$ 10,000.00  | \$ 9,500.00   | 1%                                     |
| c. Total Contractual Expenses   | \$ 35,000.00  | \$ 35,000.00  | 0%                                     |
| d. Total Construction Expenses  | \$ -  | \$ -  | 0%                                     |
| e. Total Other Expenses         | \$ 10,000.00  | \$ 8,000.00   | 2%                                     |
| f. Total Grant Amount Requested | \$ 100,000.00   | \$ 100,000.00                                       | 0%                                     |

**2.a IF ANY LINE'S % IS > 10% STOP HERE AND CONTACT PROJECT MANAGER ABOUT AN AMENDMENT TO THE CONTRACT\*\*\***

|  |                      |
|--|----------------------|
| <b>3. AMOUNT REQUESTED FOR THIS ACTIVITY</b><br>(enter the lesser amount of Total Column ( A ) or ( B )) | <b>\$ 100,000.00</b> |
|--|----------------------|

\*\*\* TOTAL COST MUST BE ITEMIZED BY AN INVOICE AND PAYMENT DOCUMENTATION (i.e. copy of cancelled checks or wire transfers) \*\*\*

**4. COSTS TO BE COVERED BY OTHER FINANCIAL ASSISTANCE:**

(List and explain any costs identified in the "Total Project Costs" for the infrastructure purchase and installation that will be covered by other financial incentives, including tax credits or deductions, other grants, or any other financial assistance.)

**5. COSTS TO BE COVERED BY APPLICANT:**

(List and explain any costs in the "Total Project Costs" for the infrastructure purchase and installation that were covered directly by the grantee but not included in the Eligible Costs above)

**6. DOCUMENTATION - Attach Bills of Sale, invoices, delivery receipts, proof of payment (canceled checks or wire transfers), executed (signed) financing agreement copies, and UCC1 statements (reference Article 7.9 of the Contract General Conditions for details). A PAYMENT CANNOT BE PROCESSED UNTIL YOU HAVE SUBMITTED THE REQUIRED DOCUMENTATION.**

Please check the following documentation items that you are submitting with this request of reimbursement

| Purchase Documentation                                 | Payment Documentation                              | Finance Documentation                        |
|--|--|--|
| <input checked="" type="checkbox"/> Invoice(s)         | <input type="checkbox"/> Copies of Canceled Checks | <input type="checkbox"/> Financial Agreement |
| <input type="checkbox"/> Bill of Sale (Sales Contract) | <input checked="" type="checkbox"/> Wire Transfer  | <input type="checkbox"/> Lease Agreement     |

**7. Enter the information below on the on-vehicle electrification & idle reduction infrastructure.**

| Vehicle APU Installed IN<br>(Make, Model, Model Year, VIN #) | Engine APU Installed On<br>(Make, Model, Model Yr, Engine Test Group<br>(Family Code), Fuel Type)           | Auxilliary Power Unit (APU)<br>(Make, Model, Model Yr, Engine Test Group<br>(Family Code), Fuel Type)       | Date Placed In<br>Service |
|--|---|---|---------------------------|
| Make<br>Model<br>Model Year<br>Vehicle Identification Number | Make<br>Model & Model Year<br>Engine Test Group (Family Code)<br>(1#)(4 Alpha)(3#.#)(3 Alpha))<br>Fuel Type | Make<br>Model & Model Year<br>Engine Test Group (Family Code)<br>(1#)(4 Alpha)(3#.#)(3 Alpha))<br>Fuel Type | XX / XX /<br>XXXX         |

**TCEQ Emissions Reduction Incentive Grant  
Equipment and Engine Disposition Verification Forms**

**Form 3:**

**Instructions**

Under the TCEQ's Guidelines for Emissions Reduction Incentive Grants (or Rebate Grant Program (RG 388)), recipients of a grant for the **replacement** of a vehicle or equipment (including marine vessels and locomotives), or the **repower** of an old engine, **must adhere to the following standards:**

**Replacement Projects (Form 3a)**

The Applicant must agree to either destroy or render permanently inoperable the old vehicle or equipment (including the engine) within 90 days of the reimbursement payment for the replacement equipment. A certification of the disposition of the old equipment must be provided, using forms provided by TCEQ.

**Repower Projects (Form 3b)**

The Applicant must agree to either destroy or render permanently inoperable the old vehicle or equipment (including the engine) within 90 days of the reimbursement payment for the replacement equipment. A certification of the disposition of the old equipment must be provided, using forms provided by TCEQ.

In order to comply with the destruction requirements, a hole must be drilled in the engine block and, for replacement projects, the frame rails and/or major structural components of the vehicle or equipment being replaced must be cut, rendering it inoperable. Other components may be taken from the vehicle/equipment and/or engine for parts. Complete destruction of the vehicle, equipment, and/or engine by a metal recycler, scrap yard, or waste facility may also satisfy this requirement.

Grant recipients must submit these forms to the TCEQ with the Request for Reimbursement of expenses for the vehicle/equipment replacement or the engine repower, or within 30 days after completion of the disposition, whichever occurs later.

The completed and signed form should be submitted to:

**Standard Mail**

Lois M. Harris  
Texas Commission on Environmental Quality  
Air Quality Division  
Implementation Grants Section, MC-204  
P.O. Box 13087  
Austin, TX 78711-3087

**Express Delivery**

Lois M. Harris  
Texas Commission on Environmental Quality  
Air Quality Division  
Implementation Grants Section, MC-204  
12100 Park 35 Circle  
Austin, TX 78753

**TCEQ Emissions Reduction Incentive Grant  
Replacement Equipment and Engine Disposition Verification Form**

Form 3a:

REPLACEMENT: Disposition of Vehicle/Equipment (Complete only for Replacement Activity)      Activity # \_\_\_\_\_

|               |                 |                   |                             |
|---------------|-----------------|-------------------|-----------------------------|
| Recipient:    |                 | Grant Contract #: |                             |
| Name & Title: |                 | Phone #:          |                             |
| Address:      |                 |                   |                             |
|               | <i>(Street)</i> | <i>(City)</i>     | <i>(State)</i> <i>(Zip)</i> |

**OLD VEHICLE/EQUIPMENT INFORMATION**

*Provide the information on the vehicle/equipment being replaced. Refer to the vehicle's operations manual or contact the dealer for information.*

Vehicle Identification Number (VIN) / Equipment Serial #: \_\_\_\_\_

Vehicle/Equipment Make: \_\_\_\_\_ Model: \_\_\_\_\_ Year: \_\_\_\_\_

Vehicle Registration #: \_\_\_\_\_

*This information can be found on the engine's emissions label on the engine block and must be provided. If this information is unavailable, you must provide an explanation.*

Engine Serial #: \_\_\_\_\_

Engine Make: \_\_\_\_\_ Model: \_\_\_\_\_ Year: \_\_\_\_\_

**A. Vehicle/Equipment (including the engine) was scrapped (destroyed).**

Destruction includes drilling a hole in or otherwise destroying the engine block and cutting the frame rails or other structural components of the equipment. Provide information regarding the scrapping activities and identify (name, address, & phone #) the company that scrapped the equipment. Photographs must be submitted showing the engine/vehicle BEFORE and AFTER destroying/rendering it inoperable. Photographs must show the engine identification number and it must be clearly visible and readable. For on-highway vehicles, a photograph of the state inspection sticker must also be submitted. A copy of the written documentation provided by the salvage or recycling company must be provided to validate receipt of the old engine/vehicle.

**Certification**

I, the undersigned, certify that to the best of my knowledge all submitted information is true. I understand that the TCEQ may not award grant funding or may require reimbursement of funds if disposition requirements are not met. I also understand that failure to comply with these grant requirements may result in my classification as a high risk candidate and that high risk candidates may be ineligible for grant awards in future rounds of funding.

|                        |      |
|------------------------|------|
| Signature              | Date |
| Printed Name and Title |      |

**TCEQ Emissions Reduction Incentive Grant  
Repower Equipment and Engine Disposition Verification Form**

Form 3b:

|  |                   |
|--|-------------------|
| REPOWER: Disposition of Engine(Complete only for Replacement Activity) | Activity #: _____ |
|--|-------------------|

|                 |                   |                             |
|-----------------|-------------------|-----------------------------|
| Recipient:      | Grant Contract #: |                             |
| Name & Title:   | Phone #:          |                             |
| Address:        |                   |                             |
| <i>(Street)</i> | <i>(City)</i>     | <i>(State)</i> <i>(Zip)</i> |

**OLD VEHICLE/EQUIPMENT INFORMATION**

*Provide the information on the vehicle/equipment being replaced. Refer to the vehicle's operations manual or contact the dealer for information.*

Vehicle Identification Number (VIN) / Equipment Serial #: \_\_\_\_\_

Vehicle/Equipment Make: \_\_\_\_\_ Model: \_\_\_\_\_ Year: \_\_\_\_\_

Vehicle Registration #: \_\_\_\_\_

*This information can be found on the engine's emissions label on the engine block and must be provided. If this information is unavailable, you must provide an explanation.*

Engine Serial #: \_\_\_\_\_

Engine Make: \_\_\_\_\_ Model: \_\_\_\_\_ Year: \_\_\_\_\_

**CHOOSE ONE**

**A. Old engine was scrapped (destroyed).**  
 Destruction includes drilling a hole in or otherwise destroying the engine block. Provide information regarding the scrapping activities and, if known, identify (name, address, and phone #) the company that will scrap the equipment. Photographs must be submitted showing the engine BEFORE and AFTER destroying/rendering it inoperable. Photographs must show the engine identification number and it must be clearly visible and readable. A copy of the written documentation provided by the salvage or recycling company must be provided to validate receipt of the old engine.

**B. Old engine was sent to a remanufacturing facility.**  
 The facility will be operated by or authorized by the original engine manufacturer to remanufacture the engine. The process will include removing all parts and using the old block to build a remanufactured engine with a new serial number. A copy of the written documentation provided by the remanufacturing facility must be provided to validate the receipt of the old engine.

**Certification**

I, the undersigned, certify that to the best of my knowledge all submitted information is true. I understand that the TCEQ may not award grant funding or may require reimbursement of funds if disposition requirements are not met. I also understand that failure to comply with these grant requirements may result in my classification as a high risk candidate and that high risk candidates may be ineligible for grant awards in future rounds of funding.

|                        |      |
|------------------------|------|
| Signature              | Date |
| Printed Name and Title |      |



**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)  
USAGE REPORTING FORM FOR  
EMISSIONS REDUCTION INCENTIVE REDUCTION GRANT (ERIG)**

**SAMPLE FORMS**

This packet includes samples of the various forms that will need to be used by ERIG recipients to report on the different types of activities that may be funded under the grants program. You will only be asked to complete the forms that apply to your activities.

This packet includes blank samples of the reporting forms **FOR YOUR INFORMATION ONLY**.

Prior to each reporting deadline, we will mail you a form with pre-printed information about your project and the project activities. You will be asked to enter/update the usage information for that reporting period. Reports will be due in January and July of each year during the life of the grant-funded project.

March 27, 2007

**TCEQ - EMISSIONS REDUCTION INCENTIVE GRANT  
USAGE REPORT  
COVER FORM**

**Identifying Information**

TCEQ Contract Number: XXX-X-XXXX-XXX

Recipient Name:

Recipient Mailing Information (address):

Report Period: From: \_\_\_\_\_ To: \_\_\_\_\_

Contact Name:

Contact Telephone Number:

**Affirmation and Signature**

"I affirm, as an authorized representative of the grant recipient, that the information contained in this report is, to the best of my knowledge and understanding, complete and accurate."

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Forms Attached** (check beside those forms attached to this report):

- \_\_\_\_\_ *Cover Form*. This form must be submitted with each report. Be sure to sign the form.
- \_\_\_\_\_ *Form A. Lease/Purchase, Repower, Retrofit, and Add-on Activities*. Complete this form to report the required usage information for all lease/purchase, repower, retrofit, and add-on activities.
- \_\_\_\_\_ *Form B. Refueling Infrastructure*. Complete this form to report the required usage information for refueling infrastructure activities.
- \_\_\_\_\_ *Form C. On-site Infrastructure for Dispensing Electricity*. Complete this form to report the required usage information for activities involving on-site infrastructure for dispensing electricity.
- \_\_\_\_\_ *Form D. On-vehicle Infrastructure for Dispensing/Accepting Electricity*. Complete this form to report required usage information for activities involving on-vehicle infrastructure for dispensing/accepting electricity.
- \_\_\_\_\_ *Form E. Use of Qualifying Fuel*. Complete this form to report the required usage information for activities involving the use of qualifying fuel or fuel additives

**TCEQ - EMISSIONS REDUCTION INCENTIVE GRANT  
 USAGE REPORT  
 PROJECT/ACTIVITY SUMMARY**

This table contains information from your grant contract. Please notify TCEQ if this information conflicts with your records.

| Activity Number (s) | Activity Category | Activity Start Date | Activity End Date | Usage Factor (hours, miles, or fuel use)   | Total Annual Usage Commitment | Eligible County Areas of Use       | Commitment to Percentage of Total Annual Usage in Eligible County areas | Total Annual Usage Commitment in the Eligible County areas  |
|---------------------|-------------------|---------------------|-------------------|--|-------------------------------|------------------------------------|---|---|
| 01                  | Replacement       | June 20, 2006       | June 20, 2013     | Miles ___<br>Hours <u>X</u><br>Gallons ___ | 1735 Hours                    | DFW ___<br>HGB ___<br>BPA <u>X</u> | DFW ___ percent<br>HGB ___ percent<br>BPA <u>75</u> percent             | DFW ___ Miles/hours/gallons<br>HGB ___ Miles/hours/gallons<br>BPA <u>1301</u> Miles/hours/gallons |
|                     |                   |                     |                   |  |                               |                                    |   |   |
|                     |                   |                     |                   |  |                               |                                    |   |   |
|                     |                   |                     |                   |  |                               |                                    |   |   |
|                     |                   |                     |                   |  |                               |                                    |   |   |
|                     |                   |                     |                   |  |                               |                                    |   |   |
|                     |                   |                     |                   |  |                               |                                    |   |   |
|                     |                   |                     |                   |  |                               |                                    |   |   |
|                     |                   |                     |                   |  |                               |                                    |   |   |
|                     |                   |                     |                   |  |                               |                                    |   |   |

**Eligible County Areas Described:**

DFW - Denton, Collin, Tarrant, Dallas, Rockwall, Kaufman, Ellis, Johnson, and Parker Counties

HGA - Brazoria, Fort Bend, Waller, Montgomery, Liberty, Chambers, Galveston, and Harris Counties

BPA - Hardin, Orange, and Jefferson Counties

TYL - Upshur, Harrison, Gregg, Rusk, and Smith Counties

AUS - Williamson, Bastrop, Travis, Hays, and Caldwell Counties

SAT - Comal, Guadalupe, Wilson, and Bexar Counties

**TCEQ - EMISSIONS REDUCTION INCENTIVE GRANT  
USAGE REPORT  
COMMENTS AND EXPLANATION OF PROBLEMS**

Use this form (or attach a separate summary sheet) to explain any problems encountered with fulfilling the usage commitments for each activity, in accordance with the terms of your grant contract. Also explain any change in use of grant-funded vehicles or equipment. Note that you are required to notify the TCEQ before any grant-funded equipment is sold, transferred to another area, or otherwise not used

**Remember that the reductions in NO<sub>x</sub> emissions attributable to your project were calculated based on the annual usage (hours, mile, or fuel use) that you committed to in your contract.**

Failure to meet the annual usage commitments may, ultimately, result in an obligation for you to return a pro-rata share of the grant funds to the TCEQ, due to a failure to achieve the expected emission reductions. Therefore, it is important that you let us know of any problems you may have encountered with the use of the equipment or vehicles covered under your grant. TCEQ will work closely with you to resolve any problems, before a return of grant funds must be contemplated.

| Activity Number(s) | Description of Issue or Problem |
|--------------------|---------------------------------|
|                    |                                 |
|                    |                                 |
|                    |                                 |
|                    |                                 |
|                    |                                 |
|                    |                                 |
|                    |                                 |







**FORM A. Lease/Purchase, Repower, Retrofit, and Add-on Activities  
Instructions**

Complete this form to report the required usage information for all lease/purchase, repower, retrofit, and add-on activities. You may use an alternative format, such as a spreadsheet, as long as the requested information is included.

Line Explanation

1. List the Activity Number. An activity number was assigned to each activity included in the grant project. Those numbers are shown on each supplemental activity application form included in the Approved Application, which was made part of the grant contract.
2. Indicate if this is the final report for that activity.
3. Enter the dates of use for each activity during this reporting period.
4. Enter the appropriate usage information for the reporting period. Indicate the units used. The type of usage information that must be tracked and reported (hours of operation, miles of operation, or fuel use) is based on the information that was used to originally estimate the NO<sub>x</sub> emission reductions for the activity. The supplemental activity application form, included in the Approved Application as part of the grant contract, lists the type of usage information that applies. For marine vessels, where applicable, please distinguish between annual usage in the different operational modes (Hotelling, Maneuvering, and Cruise). For dual-fuel engines, the usage information must be for operation in the dual-fuel mode.
5. Identify the eligible county areas where the equipment or vehicle was operated during the reporting period.
6. Enter the usage that occurred in the eligible county areas if different than the total usage.

**FORM A.1. Supplemental Data for Selective Catalytic Reduction (SCR) System Activities**

This supplemental reporting sheet is for activities involving the use of **selective catalytic reduction (SCR)** systems, requiring the use of a reductant (urea or ammonia) to reduce NO<sub>x</sub>. Because the effective operation of the SCR and the associated emission reductions are dependent upon the user maintaining the reductant levels, it is important that we verify the amount of reductant used in relation to the miles or hours of operation reported. For SCR activities, please enter the amount of reductant used during the reporting period. In most cases, this amount should be determined by tracking the amount of reductant used to replenish the SCR reductant reservoirs during the reporting period.

**FORM A.2. Supplemental Data for Dual-Fuel Engines**

This supplemental reporting sheet is for activities involving the use of dual-fuel engines. In some cases, dual-fuel engines may be capable of operating in diesel-only mode, therefore it is important that we verify that the usage information provided on Form A reflects use of the engine in dual-fuel mode. Please provide information on the total amount of alternative fuel (LNG/CNG) used by the vehicles or equipment during the reporting period. Check with TCEQ staff if you have questions about whether or not you are required to report this information.



## TERP Helpful Contract Facts Now That I Have a Contract, What Happens?

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The Texas Commission on Environmental Quality (TCEQ) appreciates your interest in the Texas Emissions Reduction Plan (TERP) Emissions Reduction Incentive Grants (ERIG) Program. Your participation in this program will result in important reductions in NO<sub>x</sub> emissions, which lead to the formation of harmful ground-level ozone (smog). The following information will assist you in understanding the contracting phase of TERP. Other fact sheets are available for the application phase. Please note that this information does not take the place of the grant contract, which you should carefully review to be sure that you understand all of the contract provisions.

The attached fact sheets help answer the following questions:

- FACT SHEET 1:** What are the Contract Requirements for New Purchase or Retrofit/Add-on Device Projects?
- FACT SHEET 2:** What are the Contract Requirements for Replacement or Repower of Vehicles, Equipment, and Engine Projects?
- FACT SHEET 3:** How Do I Get Paid?
- FACT SHEET 4:** What Happens After I Get Paid?

For more information:

- 1. General Information about TERP**  
1-800-919-TERP (8377)  
[www.terpgrants.org](http://www.terpgrants.org)
- 2. Contract and Grant Administration**  
TERP Senior Grants Manager  
Mr. Roger Jay  
512/239-2272  
[rjay@tceq.state.tx.us](mailto:rjay@tceq.state.tx.us)
- 3. Vehicle/Equipment/Engine Disposition**  
TERP Disposition Staff  
Ms. Lois Harris  
512/239-0236  
[lharris@tceq.state.us](mailto:lharris@tceq.state.us)
- 4. Reimbursement and Fiscal Processes**  
TERP Fiscal Coordinator  
Mr. Roy Middleton  
512/239-5727  
[rmiddlet@tceq.state.tx.us](mailto:rmiddlet@tceq.state.tx.us)

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## Fact Sheet 1

### What are the Contract Requirements for New Purchase or Retrofit/Add-on Device Projects?

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- 1. Identification of Vehicles and Equipment to be purchased.** The calculation of the projected NO<sub>x</sub> emission reductions for your project was based on the characteristics of the specific vehicle or equipment that you identified in the application, which became part of your contract. Included was detailed information about the vehicle or equipment make, model, model year, gross vehicle weight rating, horsepower, and engine model year of your proposed purchases. We realize that, in some cases, a vehicle or equipment that you proposed to purchase may not be available when you are ready to make the purchase. If this occurs, please contact us before you take any action. We will work with you regarding possible contract amendments that could still achieve the committed emission reductions. Keep in mind that, in most cases, once a grant is awarded the grant amount may not be increased. If you purchase something that is not in the approved contract, TCEQ may not be able to reimburse you for your purchase or, if we find out after you receive the grant, you may need to refund money to the state.
- 2. Identification of Vehicles and Equipment to have retrofit or add-on devices installed.** The same situation as in #1 applies to retrofit/add-on device projects. The eligible vehicles or equipment to be retrofitted are the ones identified in your approved application and contract. If there is a problem, contact TCEQ before you are ready to do the installations or TCEQ may not be able to reimburse you for the expenses.
- 3. Certified or Verified NO<sub>x</sub> Emission Levels.** Included in your approved contract is the certified NO<sub>x</sub> emission standard for the vehicle or equipment you proposed to purchase or the verified NO<sub>x</sub> emission reduction rate of the retrofit system that you proposed to install. It is important that when you make your final purchases, you have the dealer or vendor confirm that what is being purchased or installed is equivalent to the approved emission standard or reduction rate. Manufacturers have flexibility in producing engines of the same model and year that have different certified NO<sub>x</sub> emission standards. On-road vehicle standards are usually expressed in *grams of NO<sub>x</sub> per brake horsepower hour (g/bhp-hr)*; non-road equipment standards are usually expressed by a *federal Tier Level*. This information may be found on the engine block or in materials the dealer or vendor receives from the manufacturer. The verified NO<sub>x</sub> emission reduction rate for retrofit and add-on devices is included in the approval papers the company receives from the federal U.S. Environmental Protection Agency (EPA) or California Air Resource Board (ARB). Helpful EPA and ARB websites for retrofit/add-on devices are:  
<http://www.epa.gov/otaq/retrofit/retroverifiedlist.htm> and  
<http://www.arb.ca.gov/diesel/verdev/background.htm>



## Fact Sheet 2

### What are the Contract Requirements for Replacement or Repower of Vehicles, Equipment, and Engine Projects?

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1. **Identification of Vehicles and Equipment to be replaced.** The grant amount for your project is based on the projected NO<sub>x</sub> emissions reductions that are calculated from the specific vehicle or equipment that you identified in the application, which is now part of your contract. The detailed bid/quote and application you provided included information about the vehicle/equipment make, model, model year, gross vehicle weight rating, horsepower, and engine model year. In some cases the vehicle/equipment that you proposed to purchase at the time of applying may not be available when you are ready to actually make the purchase. If this occurs, please contact us before you take any action. Possible contract amendments could be made in order to achieve the committed emissions reductions without affecting the funding amount. Please note: TCEQ may not be able to reimburse you if you purchase something other than what is listed in your contract. If reimbursement is made prior to the discovery, you may be required to refund the money to the state.
  
2. **Old Vehicle/Equipment/Engine Disposition Options.** In your application, you stated how you intend to dispose of the vehicle, equipment, and/or engine being replaced or repowered under the grant. You are required to scrap (destroy) the old vehicle/equipment and engine for Replacement projects and provide the appropriate information regarding the activity. For Repower projects, you had the option to either scrap the old engine or send it to a remanufacturing facility. Old vehicles and equipment may not be sold to another user, either in Texas or out of the state. Failure to destroy the old vehicle, equipment, and/or engine may result in TCEQ not providing reimbursement. If reimbursement is made prior to the discovery of an unauthorized disposition, you may be required to refund the money to the state.
  
3. **Disposition Verification and Reimbursement.** Included in the grant administration forms with your contract is a Disposition Verification Form. Your contract (see the Terms and Conditions section entitled, "*Use of Vehicles, Equipment, and Engines Being Replaced*") outlines the time frames within which you must dispose of the vehicle/equipment/engine and report the action to us. The Disposition Verification Form also explains the time frames and provides instructions for completion and submission of the form. The reason for verifying disposition is to confirm that there is an emissions reduction associated with your project to allow for reimbursement processing. Please notify us immediately if there will be a delay in the disposal completion so that we may consider a contract deadline extension. You will be required to also submit the following information with the Disposition Verification Form:
  - a. Photographs depicting the vehicle/engine BEFORE and AFTER destroying/rendering it inoperable.
  - b. Photographs showing the vehicle and engine identification numbers, and they must be clearly visible and readable.
  - c. A photograph of the state inspection sticker for on-road vehicles.



## Fact Sheet 3 How Do I Get Paid?

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- 1. Reimbursement.** *The State is precluded by law from paying you the grant funds in advance of your purchase, so please do not submit a reimbursement until you have proof of payment and have taken possession of the vehicle or equipment.* Included with your contract are grant administration forms and instructions. You can also access electronic versions of the forms at [www.terpgrants.org](http://www.terpgrants.org). You will need to use these forms to request reimbursement of your eligible expenses. The standard processing time is 30 days from the date we receive your reimbursement request. It will take longer if your request does not include all of the required expense documentation materials, so please call if you are not sure of what needs to be submitted.
- 2. Assignment of Grant Payments.** You have the option to assign your grant payments to another entity, such as your vehicle or equipment dealer or financing entity. If you opt to do this, you may use the assignment forms included in your contract package. This approach precludes you from having to pay the grant amount from your own funds. However, you must work with the dealer or financing entity to ensure that they are willing to complete the sales transaction, pending receipt of the assigned payments from the state.
- 3. Contract Length.** There are three significant time periods related to your contract. The first is the disposition deadline of your old vehicle/equipment/engine (see Fact Sheet 2). The second is the deadline by which you must make your purchase (this Fact Sheet). It is important that you note the termination date of your contract. Your purchases must occur prior to that date. We will try to remind you when that date is approaching, but it is your responsibility to ensure that you complete the purchases by the deadline. We will not be able to reimburse your costs for purchases completed after the contract termination date. If you are having difficulties in complying with this contract provision, please contact us *as soon as possible* to discuss. In many cases, we may be able to amend the contract to give you more time, but you must let us know in enough time to make the required changes to the contract.

The third important time period is the activity life over which you must track and report the use of the funded vehicle and/or equipment to TCEQ (see Fact Sheet 4).



## Fact Sheet 4

### What Happens After I Get Paid?

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- 1. Vehicle/Equipment Activity Life.** In the application, you designated an Activity Life for each of the individual activities. This is the time period over which you are committed to retain ownership and use the grant-funded vehicles or equipment within the eligible counties. The time period start and end dates for each funded activity will be included in the contract "close-out" letter we will send you after the reimbursement process is complete.
- 2. Maintenance of the Vehicles and Equipment.** The contract requires that you maintain the grant-funded vehicles and equipment in operating condition. You should keep maintenance records of routine maintenance and repair activities to verify efforts to keep the vehicle or equipment operating. You also are required to maintain property loss insurance to be able to repair or replace damaged or stolen vehicles and equipment.
- 3. Emission Reduction Commitment.** In signing the contract, you are committing to achieve the projected NO<sub>x</sub> emissions reductions in the areas you identified. The emissions reduction commitment for each activity is listed in the Approved Application Summary portion of your grant contract. The commitment is based on your anticipated annual use of the grant-funded vehicle or equipment, and the percentage of that annual use within the eligible counties. Depending upon the type of activity, this usage amount is expressed in annual miles, hours, or fuel use. You must notify us of any change in use or other conditions that would result in your not being able to meet the emissions reduction commitments.
- 4. Usage Monitoring and Reporting.** The Usage Report is used to compare your actual emissions reductions to the emissions reductions commitment. With your approved contract, we will provide you a sample version of the reporting forms that you can refer to as you set up your tracking system to document the use and location of use for each grant-funded vehicle and equipment. Prior to each report deadline, we will send you a reporting form to complete and return to us. That form will reiterate the usage commitment for each activity, request on the miles, hours, or fuel use of the grant-funded vehicles or equipment over the reporting period. You will also need to report the percentage of use that occurred both inside and outside of the eligible counties.
- 5. Failure to Achieve the Emission Reduction Commitment.** The TCEQ may require a grantee to return funds if the emissions reductions committed to under the contract are not achieved. In most cases, your compliance with this requirement will be evaluated over time, and short term usage shortfalls will not result in sanctions. However, if it becomes clear that you will not be able to use the grant-funded vehicles and equipment enough to achieve the committed emissions reductions, it is very important that you contact us. In some cases, we may be able to adjust the grant commitments.

**Texas Commission on Environmental Quality  
TERP - Emissions Reduction Incentive Grants Program  
NOTICE TO PROCEED**

Contract Number: 582-7-70810-0333  
PERFORMING PARTY: City Of San Antonio  
Contract Amount: \$336,475.00

The Texas Commission on Environmental Quality (TCEQ) contract number 582-7-70810-0333 was executed on August 23, 2007, contingent upon the TCEQ receiving sufficient funds to cover the grant and issuing a Notice to Proceed. The TCEQ has now received the funds for this contract. In accordance with the terms of the contract (Grant Agreement, Article 5), TCEQ hereby provides the PERFORMING PARTY with a Notice to Proceed for the activities described in the above-noted contract. The PERFORMING PARTY may now proceed with any unfinished activities described in the contract, and may also submit Requests For Reimbursement for completed contract activities, in accordance with the terms of the contract.

**Texas Commission on Environmental Quality**

By: Roy Middleton

Roy Middleton, Fiscal Coordinator

Implementation Grants Section

Air Quality Division

Date: 2/19/08

By: D. Lynne Haase

D. Lynne Haase, Manager

Implementation Grants Section

Air Quality Division

Date: 19 Feb 08

TCEQ/EMS  
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Ms. Rose Ryan  
Page 2  
February 19, 2008

Please refer to the enclosed TERP Contract Fact Sheet for additional information regarding your TERP grant contract and how to contact us with questions about your grant.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. Lynne Haase".

D. Lynne Haase, Manager  
Implementation Grants Section  
Texas Commission on Environmental Quality

DLH/sm

Enclosures

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

February 19, 2008

Ms. Rose Ryan  
City Of San Antonio  
1940 Grandstand  
San Antonio, Texas 78238

Re: Emissions Reduction Incentive Grant - Contract Number: 582-7-70810-0333

Dear Ms. Ryan:

Enclosed are an original copy of the executed contract and an original copy of the executed Amendment No. 01 for your grant under the Texas Commission on Environmental Quality (TCEQ) Emissions Reduction Incentive Grants Program. The signed amendment incorporates the new Approved Application Summary and Special Conditions into the final grant contract agreement. It is recommended that you keep a copy of this contract and this amendment in a central file along with any future amendments and other records pertaining to this project.

A signed Notice to Proceed for the grant is enclosed. You may now submit a Request for Reimbursement for grant activities completed to date and proceed with any remaining contract activities, according to the terms of the grant contract.

Also enclosed are forms for your use in requesting reimbursement for grant expenses and for reporting to us on the status and completion of your grant activities. Electronic versions of these forms are available at <http://www.terpgrants.org>. The instructions accompanying the forms explain the deadlines for submission of forms.

As a condition of receiving a grant, you have committed to monitoring and reporting the annual usage information for the entire Activity Life for each grant activity designated in the approved application forms. This legally binding commitment extends past the termination date listed in the grant agreement. The monitoring requirement begins at the time the grant-funded vehicles, equipment, infrastructure, and/or fuels are put into use and does not expire until the end of the Activity Life for each grant activity. Failure to meet these continuing monitoring and reporting requirements may lead to TCEQ action including, but not limited to, requiring you to repay grant funds.

An example of the annual usage monitoring forms for reporting to the TCEQ is enclosed. We will provide you with further instructions for submitting the reports once the reimbursements are completed and the Activity Life begins.

**TCEQ GRANT AGREEMENT  
for Emissions Reduction Incentive Grant**

**THIS AGREEMENT** is entered by and between the Texas Commission on Environmental Quality (hereinafter called TCEQ) and City Of San Antonio (hereinafter called PERFORMING PARTY and includes all such parties, whether one or more).

The TCEQ and the PERFORMING PARTY, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1. GRANT ACTIVITIES**

1.1. Subject to the provisions of this Article, the PERFORMING PARTY agrees to complete all Grant Activities as described in the Approved Application and Approved Application Summary and in accordance with the Contract Documents.

1.2. The TCEQ may accept partial performance, at its sole discretion, and reimburse the PERFORMING PARTY for only those Grant Activities that are completed. For projects where a cost-effectiveness determination is required, if the changes to the Grant Activities result in an overall project cost-effectiveness that is higher than was originally approved for the project, the TCEQ is not obligated to reimburse the PERFORMING PARTY at the amount originally authorized for each Grant Activity. The TCEQ may reimburse authorized expenses at a lesser amount in order to achieve the same cost-effectiveness as was originally approved for the project, or may accept a higher cost-effectiveness for the project, as long as the cost-effectiveness does not exceed \$13,000 per ton of Oxides of Nitrogen (NO<sub>x</sub>) emissions estimated to be reduced.

1.3. If the PERFORMING PARTY does not complete any of the Grant Activities prior to the termination date of this Agreement, and no reimbursement of expenses has been provided to the PERFORMING PARTY, this Agreement will terminate with no obligation to either party.

**ARTICLE 2. PURPOSE**

The purpose of this Agreement is to provide a grant to financially assist the PERFORMING PARTY in implementing the Grant Activities.

**ARTICLE 3. MAXIMUM AMOUNT OF REIMBURSEMENT**

3.1. The TCEQ will reimburse PERFORMING PARTY's eligible costs of implementing the Grant Activities under the conditions in the Contract Documents, not to exceed the maximum amount of Three Hundred Thirty-Six Thousand Four Hundred Seventy-Five Dollars (\$336,475.00), unless the parties amend this amount in accordance with the Contract Documents.

3.2. Reimbursement is limited to costs determined by the TCEQ in its sole discretion as eligible costs under the conditions in the Contract Documents.

3.3. The maximum amount of reimbursement is not a guarantee of payment. The actual amount of reimbursement may be less than the maximum and will be determined under the conditions of the Contract Documents.

#### **ARTICLE 4. CONTRACT TIMES**

4.1. This Agreement will commence on the Effective Date of the Agreement. For purposes of availability of funding and completion of TCEQ's obligations to reimburse the PERFORMING PARTY for authorized expenses, this Agreement shall terminate on August 31, 2008, or upon payment of reimbursement for completion of all grant activities, whichever is earlier, unless otherwise terminated by an act performed in accordance with the Contract Documents.

4.2. As provided for in the Contract Documents, the PERFORMING PARTY agrees and obligates to performance in accordance with the Contract Documents beyond the termination date of this Agreement and through the end of the Activity Life of each Activity included in the Approved Application.

4.3. For repower activities, eligible costs submitted for reimbursement under a grant may not have been incurred prior to June 1, 2006 and must be approved by the TCEQ.

4.4. For replacement projects, the vehicle or piece of equipment being purchased under a grant may not have been acquired prior to April 2, 2007, unless otherwise approved by the TCEQ.

4.5. This Agreement shall immediately terminate at the end of any state fiscal year for which the Texas Legislature fails to appropriate and/or to provide sufficient funds in the subsequent fiscal year necessary to perform this Agreement.

#### **ARTICLE 5. NOTICE TO PROCEED**

5.1. The Performing Party understands, and agrees to, the provisions of this Article.

5.1.1. The TCEQ's funding for the reimbursement grants described in this Agreement may currently be unavailable or uncertain and the amount of funding may be unknown. Efficient use of public funds may be achieved by entering into agreements with potential grantees in which reimbursements are contingent on availability of funds and a subsequent selection by the TCEQ. If funding for a reimbursement grant becomes available, the TCEQ, in its sole discretion, will select which of the contingent agreements will receive reimbursement and will issue a Notice to Proceed for any selected project.

5.1.2. The PERFORMING PARTY may begin the Grant Activities, at its own risk, prior to receiving a Notice to Proceed. However, regardless of the availability of funding, if this Agreement is not selected and a Notice to Proceed is not issued, the TCEQ will not provide reimbursement for the cost of the Grant Activities. Either party may terminate this Agreement prior to issuance of a Notice to Proceed, with no further obligation under this Agreement. If this

Agreement is selected, the TCEQ will issue to the PERFORMING PARTY a Notice to Proceed, after which all other obligations and provisions of this Agreement shall apply.

5.1.3. Regardless of selection of this Agreement and the issuance of the Notice to Proceed, the reimbursement of the costs of the Grant Activities is subject to all other requirements of this Agreement. This Agreement does not create an entitlement to receive state funds and all payments are solely within the discretion of the TCEQ.

5.2. This Agreement may be entered into before the completion of the Approved Application. The TCEQ reserves the right to withhold issuance of the Notice to Proceed until the Approved Application is completed and incorporated into this Agreement. Completion and incorporation of the Approved Application in no way obligates TCEQ to issue the Notice to Proceed.

## **ARTICLE 6. REIMBURSEMENT PROCEDURES**

6.1. The PERFORMING PARTY will submit requests for reimbursement in accordance with the conditions in the Contract Documents.

6.2. The TCEQ may reject requests for reimbursement which fail to demonstrate that costs are eligible for reimbursement or which fail to conform to the requirements of the Contract Documents.

6.3. The PERFORMING PARTY is not a "vendor" of goods and services within the meaning of Texas Government Code, Chapter 2251. Therefore, the provisions for interest on payments under that statute do not apply to this Agreement.

## **ARTICLE 7. LEGAL REQUIREMENTS**

7.1. The PERFORMING PARTY must maintain sufficient property insurance for the repair or replacement of any Grant Equipment for the Activity Life as required by the Contract Documents, unless otherwise expressly agreed by the TCEQ.

7.2. Any insurance proceeds received by or on behalf of the PERFORMING PARTY under an insurance policy due to the damage or destruction of a low emissions engine or other Grant Equipment must be utilized to acquire an equivalent or better low emissions engine or other Grant Equipment or be paid to the TCEQ.

7.3. At the sole discretion of the TCEQ, the PERFORMING PARTY will return to the TCEQ any reimbursement in proportion to any loss of emissions reductions compared with the volume of emissions reductions that was projected in awarding the grant.

7.4. Any notice issued pursuant to this Agreement shall be addressed to the respective party's Authorized Project Representative, or at such other address as they have theretofore specified by written notice. Such notices shall be sent by certified mail, return receipt requested, or shall be delivered in hand

and a receipt provided thereof. Any notice or other written communication shall be considered delivered upon date of receipt.

7.5. In order for this Agreement to be effective, all authorized principals of an unincorporated business organization or association must sign the Agreement. An agent signing for a corporation must be authorized to sign by the corporation.

## **ARTICLE 8. FUNDING, LEGAL AUTHORITY AND LIABILITY**

8.1. This Agreement and all claims, suits or obligations arising under or related to this Agreement are subject to and limited to those funds which are both: 1) appropriated by the Texas Legislature for the purposes of this Agreement and 2) actually received and deposited into an account of the treasury dedicated to the TCEQ for the purposes of this Agreement.

8.2. Any state funds provided are appropriated to TCEQ under the Appropriations Act (House Bill 1) of the 79th Texas Legislature and expenditure is authorized by Chapter 386, Texas Health and Safety Code.

8.3. This contract is entered into by and between the TCEQ and the PERFORMING PARTY pursuant to Chapter 386, Texas Health and Safety Code. Further authority is contained in the Texas Water Code, Chapter 5, Subchapter D, Section 5.124 (Authority to Award Grants) and Texas Water Code, Section 5.229, pertaining to the TCEQ's general authority to enter contracts.

## **ARTICLE 9. REPRESENTATIONS**

The PERFORMING PARTY hereby ratifies and attests to all representations in the Approved Application and deliverables it has provided to the TCEQ during the proposal process and agrees to give prompt written notice to the TCEQ if there is any material change in these certifications or deliverables.

## **ARTICLE 10. MISCELLANEOUS**

Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

## **ARTICLE 11. CONTRACT DOCUMENTS**

11.1. The Contract Documents which comprise the entire Agreement between TCEQ and PERFORMING PARTY are (in order of precedence in the event of conflicts):

- 11.1.1. The TCEQ Grant Agreement for Emissions Reduction Incentive Grants
- 11.1.2. The General Conditions for Emissions Reduction Incentive Grants
- 11.1.3. The Guidelines for Emissions Reduction Incentive Grants (RG-388)
- 11.1.4. The Special Conditions for Emissions Reduction Incentive Grants
- 11.1.5. The Approved Application Summary
- 11.1.6. The Approved Application

11.1.7. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: all written Notices to Proceed, Amendments, and other documents amending, modifying or supplementing the Contract Documents pursuant to the General Conditions.

11.2. The information and data provided in the original application submitted by the PERFORMING PARTY may have been altered after submittal to the TCEQ, to ensure that the information in the application is accurate. The PERFORMING PARTY has reviewed the Approved Application (a Contract Document) and hereby ratifies, adopts, and agrees to all such alterations.

11.3. There are no Contract Documents other than those listed above in this Article. The Contract Documents may be amended, modified, or supplemented only as provided in the General Conditions.

## **ARTICLE 12. AUTHORIZED REPRESENTATIVES**

### ***TCEQ Project Representative***

12.1. The individual named below is the TCEQ Project Representative, who is authorized to give and receive communications and directions on behalf of the TCEQ. All communications including all payment requests must be addressed to the TCEQ Project Representative or his or her designee.

**Mailing Address:**

Ms. Lynne Haase  
Texas Commission on Environmental Quality  
Air Quality Division  
MC-204  
P.O. Box 13087  
Austin, TX 78711-3087  
Telephone No.: 512/239-4950  
Facsimile No.: 512/239-0077

**Physical Address:**

Ms. Lynne Haase  
Texas Commission on Environmental Quality  
Air Quality Division  
MC-204  
12100 Park 35 Circle, Bldg. F  
Austin, TX 78753

### ***PERFORMING PARTY Project Representative***

12.2. The individual named in the Approved Application is the PERFORMING PARTY Project Representative, who is authorized to give and receive communications and directions on behalf of the PERFORMING PARTY. All communications, original contracts and related documents, and written correspondence to the PERFORMING PARTY will be addressed and delivered to the PERFORMING PARTY Project Representative or his or her designee.

### ***Designated Location for Records Access and Review***

12.3. The PERFORMING PARTY designates the physical location identified in the Approved Application for record access and review pursuant to any applicable provision of this contract. IN WITNESS WHEREOF, TCEQ and PERFORMING PARTY have signed three (3) originals of this Agreement. One original has been delivered to PERFORMING PARTY and two originals have been delivered to TCEQ.

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The Effective Date of this Agreement is the date on which the Agreement is signed by the last of the parties to sign.

|   |
|---|
| <b>Texas Commission on Environmental Quality<br/>(TCEQ)</b>   |
| By: <br>Authorized Signature |
| Mark R. Vickery, P.G.<br>Printed name   |
| Deputy Executive Director<br>Title  |
| 8-23-07<br>Date of Signature  |

|  |
|--|
| <b>City Of San Antonio<br/>(PERFORMING PARTY)</b>  |
| By: <br>Authorized Signature |
| Rose Ryan<br>Printed name  |
| Interim Director<br>Title  |
| 8-6-07<br>Date of Signature  |

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dm



CMS or Ordinance Number: OR00000200710041056

TSLGRS File Code: 1000-05

Document Title:

ORD - Construction Contract Portion of a Design Build Project for a Compressed natural gas refueling facility.

**Ordinance Date:**

**10/4/2007**

40002543  
8300

DM



CMS or Ordinance Number: OR00000200710041056

TSLGRS File Code: 1000-05

Document Title:

ORD - In May 2007, Texas Emissions Reduction Plan (TERP) grant program, administered by the Texas Commission on Environmental Quality (TCEQ),

**Ordinance Date:**

**10/4/2007**

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