

CONTRACT FOR
CONSTRUCTION PROJECT RFCSP No.WU-04-15

This Contract is entered into by and between the City of San Angelo, a home-rule municipal corporation of the State of Texas ("City") and _____, a _____ ("Contractor"), effective as of the _____ day of _____, 2015.

RECITALS:

A. City has issued a Request for Competitive Sealed Proposal No. WU-04-15, 2015 Water Treatment Plant Improvements ("RFCSP No.WU-04-15") for the replacement of existing filter underdrain caps, filtration media and large-diameter water valves at the City water treatment plant clarifiers and filter gallery as specified in the Contract Documents ("Work").

B. Contractor's proposal, in response thereto, has been selected as the most qualified proposal for the provision of Work.

C. The Council of the City of San Angelo approved the selection of Contractor on _____, 2015, and authorized the City Manager to negotiate and execute a contract, under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, City and Contractor agree as follows:

TERMS:

1. RECITALS AND INCORPORATIONS: The recitals are true and correct and are hereby incorporated into and made a part of this Contract. The RFCSP and Contractor's Proposal are sometimes referred to herein collectively as the Contract Documents ("Contract Documents"), which are by this reference incorporated herein and made a part of this Contract and attached hereto as **Exhibit "___"**.

2. STATEMENT OF WORK:

A. Contractor shall be responsible for completing Work as described in Contract Documents

for the replacement of existing filter underdrain caps, filtration media and large-diameter water valves at the City water treatment plant clarifiers and filter gallery as specified in the Contract Documents.

B. Contractor shall provide all labor for preparing the worksite and furnish all material, accessories, labor, and equipment necessary for completing the construction, replacement and installation; and, all other Work specified in the technical specification documents and drawings included with the Contract Documents incorporated herein by reference in Section 7. of this Contract and in accordance with the terms and conditions set forth herein and within those Contract Documents.

3. TIME OF PERFORMANCE: Contractor agrees to substantially complete Work within three hundred sixty-five (365) consecutive calendar days ("Contract Time") after the date Work commences as established by the Notice to Proceed. Upon Contractor's receipt of the Notice to Proceed from City, Contractor will commence and complete Work in accordance with specifications as set out in Contract Documents. Contractor further agrees that approval for beginning Work on the project will not be given and that Work will not start until all required bonds and insurance certificates specified in the bid documents have been received and approved by City.

4. LIQUIDATED DAMAGES: City and Contractor recognize that the time of performance is of the essence in this Contract and that City will suffer financial loss if Work is not substantially complete within the time specified in Section 3. above, plus any extensions thereof allowed. Both parties hereto also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by City if Work is not substantially complete on time. Accordingly, instead of requiring such proof, City and Contractor agree that a reasonable estimate of liquidated damages for any delay (but not as a penalty) would be for Contractor to pay City One Thousand Dollars (\$1,000.00) for each calendar day that expires after the time specified in Section 3. until Work is substantially complete. Therefore, Contractor shall pay City the aforesaid liquidated damages for each calendar day that expires after the time specified in Section 3. until Work is substantially complete.

5. CONTRACT PRICE: City shall pay to Contractor for performance of Work embraced in this Contract, and Contractor shall accept as full compensation therefore, the bid price of

_____ Dollars (_____) subject to adjustment only as provided by approved change order, for all Work covered by and included in the contract award; payment thereof to be made in current funds in the manner provided in Section 6. Payment Procedure.

6. PAYMENT PROCEDURE: Contractor shall submit Applications for Payment in accordance with the Owner's Construction General Conditions as shown in the Contract Documents and City shall process the Applications for Payment in accordance with the Owner's Construction General Conditions and Chapter 2251 of the Texas Government Code, except that progress payments and the final payment under this Contract shall be made as set forth below:

A. Progress Payments. City shall make progress payments of the Contract Price on the basis of Contractor's Application for Payment on or about the thirtieth (30th) day after submittal of the Application for Payment each month as provided below. All progress payments shall be based upon the progress of Work measured as provided for in the Owner's Construction General Conditions. Contractor shall subdivide Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Partial payment retainage shall not exceed five percent (5%) of the total price and shall be released when component part is complete and accepted. Upon approval of the value by City, it shall be incorporated into the form of a Partial Payment Estimate furnished by Contractor.

B. Partial Payment. City shall pay for Work performed under this Contract in the following manner:

1) For major material components delivered on the site which are to be fabricated into the Work, payment will be allowed for one hundred percent (100%) of the material cost, less retainage.

2) Upon completion of removal of old equipment and installation of the new equipment and once the new equipment has been placed in full operation, payment will be allowed for eighty percent (80%) for the bid item, less retainage.

3) Payment of the remaining twenty percent (20%), less retainage, will be allowed when the site has been fully restored to its required conditions, the equipment is fully operable

per Contract Documents, City personnel have received training on the operation of the new equipment installed as part of the Work, and removal of all old equipment and materials related to Work has been completed.

C. Upon substantial completion as described in the Owner's Construction General Conditions, City shall pay an amount sufficient to increase total payments to Contractor to ninety-five percent (95%) of the Contract Price, less such amounts, if any, City determines should be deducted in accordance with the Owner's Construction General Conditions.

D. Final Payment. Upon completion and acceptance of Work by City in accordance with the Owner's Construction General Conditions, City shall pay the remainder retainage of the Contract Price.

7. **CONTRACT DOCUMENTS:** The following documents from City are incorporated herein by reference for all purposes, as if fully set out verbatim:

- Request for Competitive Sealed Proposal No. WU-04-15 Water Treatment Valve Replacement ("RFCSP No. WU-04-15")
- Owner's Construction General Conditions, Attachment 1 to this Agreement, made a part hereof for all purposes.
- Contractor's Bid
- All of the documents, conditions, specifications, technical data, drawings, requirements and addenda comprising said Bid Invitation Number as of the time this Contract is entered into by Contractor and City.

8. **REPRESENTATIONS OF CONTRACTOR:** In order to induce City to enter into this Contract, Contractor makes the following representations to City:

A. Contractor has familiarized itself with the nature and extent of the Contract Documents, Work, and with all local conditions and federal, state and local laws.

B. Contractor has made, or caused to be made, examinations and investigations of information as it deems necessary for the performance of Work at the Contract Price, within the Contract

Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations or similar data are, or will be required by Contractor for such purposes.

C. Contractor has given City advanced written notice of all conflicts, errors, or discrepancies that it has discovered in the Contract Documents prior to bidding and the written resolution thereof by City is acceptable to Contractor.

D. Contractor is skilled and experienced to responsibly perform the type of Work described in the Contract Documents in a timely manner.

9. **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS:** Contractor understands that Contracts between private entities and local governments are subject to certain laws and regulations, including laws pertaining to public records, conflict of interest, recordkeeping, etc. City and Contractor agree to comply with and observe all applicable laws, codes and ordinances as they may be amended from time to time.

10. **OWNERSHIP OF DOCUMENTS:** Contractor understands and agrees that any information, document, report or any other material whatsoever which is given by City to Contractor or which is otherwise obtained or prepared by Contractor pursuant to or under the terms of this Contract is and shall at all times remain the property of City. Contractor agrees not to use any such information, document, report or material for any other purpose whatsoever without the written consent of City, which may be withheld or conditioned by City in its sole discretion.

11. **AUDIT AND INSPECTION RIGHTS:**

A. City may, at reasonable times, and for a period of up to three (3) years following the date of final payment by City to Contractor under this Contract, audit, or cause to be audited, those books and records of Contractor which are related to Contractor's performance under this Contract. Contractor agrees to maintain all such books and records at its principal place of business for a period of three (3) years after final payment is made under this Contract.

B. City may, at reasonable times during the term hereof, inspect Contractor's facilities and perform such tests, as City deems reasonably necessary, to determine whether the goods or services

required to be provided by Contractor under this Contract conform to the terms hereof, if applicable. Contractor shall make available to City all reasonable facilities and assistance to facilitate the performance of tests or inspections by City representatives. All tests and inspections shall be subject to, and made in accordance with, the provisions of the City of San Angelo Code of Ordinances, as same may be amended or supplemented from time to time.

12. AWARD OF CONTRACT: Contractor represents and warrants to City that it has not employed or retained any person or company employed by City to solicit or secure this Contract and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with the award of this Contract.

13. PUBLIC RECORDS: Contractor understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, and agrees to allow access by City and the public to all documents subject to disclosure under applicable law. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate cancellation of this Contract by City.

14. DEFAULT: If Contractor fails to comply with any term or condition of this Contract, or fails to perform any of its obligations hereunder, then Contractor shall be in default. Upon the occurrence of a default hereunder, City in addition to all remedies available to it by law, may immediately, upon written notice to Contractor, terminate this Contract whereupon all payments, advances, or other compensation paid by City to Contractor while Contractor was in default shall be immediately returned to City. Contractor understands and agrees that termination of this Contract under this section shall not release Contractor from any obligation accruing prior to the effective date of termination. Should Contractor be unable or unwilling to commence to perform Work within the time provided or contemplated herein, then, in addition to the foregoing, Contractor shall be liable to City for all expenses incurred by City in preparation and negotiation of this Contract, as well as all costs and expenses incurred by City in the procurement of Work, including consequential and incidental damages.

15. TERMINATION RIGHTS OF CITY:

A. City shall have the right to terminate this Contract, in its sole discretion, at any time, by giving written notice to Contractor at least five (5) business days prior to the effective date of such termination. In such event, City shall pay to Contractor compensation for Work rendered and expenses incurred prior to the effective date of termination. In no event shall City be liable to Contractor for any additional compensation, other than that provided herein, or for any consequential or incidental damages.

B. City shall have the right to terminate this Contract, without notice or liability to Contractor, upon the occurrence of an event of default hereunder. In such event, City shall not be obligated to pay any amounts to Contractor and Contractor shall reimburse to City all amounts received while Contractor was in default under this Contract.

16. RESOLUTION OF CONTRACT DISPUTES: **A.** Contractor understands and agrees that all disputes between Contractor and City concerning or relating to the denial or partial denial of a change, change order or extra work under paragraphs 2.17, 2.18 or 2.19 of the general conditions of the Contract shall be held for resolution until the Project has been substantially completed. The Contractor shall make a written request for resolution of the dispute (the "Request") to the City's designated official for determination of the matter in dispute. The Request shall clearly state the disputed issue and include or incorporate by specific reference all information or documents that the Contractor wants the official to consider in reaching a determination. The official shall issue a written notice of decision upon the Contractor's Request within the thirty (30) days of receipt of the Contractor's Request. If the official cannot issue a decision within thirty (30) days of the receipt of the Contractor's Request, the official shall notify the Contractor the date upon which a decision shall be issued. Submission of a Contractor's Request for determination of the dispute is a condition precedent to the Contractor's ability to engage in litigation against the City. If a decision is not issued by the

date indicated by the official or within ninety (90) days after the submission of the Contractor's written Request for determination, whichever occurs first, the Contractor will be deemed to have met the condition precedent required by this provision. Should the dispute be resolved through the submission of the Contractor's Request, the resolution of the dispute will be documented, if necessary, through a change to the Contract in accordance with the provisions contained in the Contract, to include but not limited to, paragraphs 2.17, 2.18 and 2.19. Should the dispute fail to reach resolution through the submission by the Contractor's Request, the dispute may be submitted to mediation at the sole discretion of the City. City agrees that it shall make an election within no later than sixty (60) days after the issuance of a determination by the official in response to a Contractor's Request, final completion, abandonment or termination of the Project, whichever is later. Such mediation shall be conducted by and between the parties in accordance with the AAA Rules of Mediation for Construction Cases then in effect. Contractor understands and agrees that it shall continue to perform its work under the Contract unless further performance has been excused by termination of the Contractor or stopping work is specifically allowed under the laws of the state of Texas. Contractor understands that should a settlement be reached at mediation it is subject to the approval of the City Council. If either mediation is unsuccessful or the City elects to not to proceed to mediation, then the dispute shall be submitted to litigation in keeping with the terms of this Contract and the laws of the state of Texas. .

B. Contractor understands and agrees that any and all other disputes arising between Contractor and City not related to changes, change orders or extra work, may be submitted to mediation at the sole discretion of the City. City agrees that it shall make such an election within no later than sixty (60) days from the date of final completion, abandonment or termination,

whichever is later. Such mediation shall be conducted by and between the parties in accordance with the AAA Rules of Mediation for Construction Cases then in effect. Contractor understands and agrees that it shall continue to perform its work under the Contract unless further performance has been excused by termination of the Contractor or is specifically allowed under the laws of the state of Texas. Contractor understands that should a settlement be reached at mediation it is subject to the approval of the City Council. If either mediation is unsuccessful or the City elects to not to proceed to mediation, then the dispute shall be submitted to litigation in keeping with the terms of this Contract and the laws of the state of Texas.

17. INSURANCE:

A. GENERAL CONDITIONS. The following conditions shall apply to all insurance policies obtained by Contractor for the purpose of complying with this Agreement.

1) Satisfactory Companies. Coverage shall be maintained with insurers and under forms of policies satisfactory to City and with insurers licensed to do business in Texas.

2) Named Insureds. All insurance policies required herein shall be drawn in the name of Contractor, with City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees named as additional insureds, except on Workers' Compensation coverage.

3) Waiver of Subrogation. Contractor shall require its insurance carrier(s), with respect to all insurance policies, to waive all rights of subrogation against City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees.

4) Certificates of Insurance. At or before the time of execution of this Agreement, Contractor shall furnish City's Risk Manager with certificates of insurance as evidence that all of the policies required herein are in full force and effect and provide the required coverage and limits of insurance. All certificates of insurance shall clearly state that all applicable

requirements have been satisfied. The certificates shall provide that any company issuing an insurance policy shall provide to City not less than thirty (30) days advance notice in writing of cancellation, non-renewal, or material change in the policy of insurance. In addition, Contractor and insurance company shall immediately provide written notice to City's Risk Manager upon receipt of notice of cancellation of any insurance policy, or of a decision to terminate or alter any insurance policy. Copies of required endorsements will be attached to the certificates to confirm the required endorsements are in effect. Certificates of insurance and notices of cancellations, terminations, or alterations shall be furnished to City's Risk Manager at City Hall, 72 W. College Ave., San Angelo, Texas 76903.

5) Contractor's Liability. The procurement of such policy of insurance shall not be construed to be a limitation upon Contractor's liability or as a full performance on its part of the indemnification provisions of this Agreement. Contractor's obligations are, notwithstanding any policy of insurance, for the full and total amount of any damage, injury or loss caused by or attributable to its activities conducted at or upon the premises. Failure of Contractor to maintain adequate coverage shall not relieve Contractor of any contractual responsibility or obligation.

6) Sub-providers' Insurance. Contractor shall cause each Sub-Contractor and Sub-Sub-Contractor of Contractor to purchase and maintain insurance of the types and in the amounts specified below. Contractor shall require Sub-providers and Sub-Sub-Contractors to furnish copies of certificates of insurance to Contractor's Risk Manager evidencing coverage for each Sub-Contractor and Sub-Sub-Contractor.

7) If in the judgment of City, prevailing conditions warrant the provision by Contractor of additional liability insurance coverage or coverage which is different in kind, City reserves the right to require the provision by Contractor of an amount of coverage different from the amounts or kind previously required and shall afford written notice of such change in requirements thirty (30) days prior to the date on which the requirements shall take effect. Should the Contractor fail or refuse to satisfy the requirement of changed coverage within thirty

(30) days following City's written notice, this Contract shall be considered terminated on the date that the required change in policy coverage would otherwise take effect.

B. TYPES AND AMOUNTS OF INSURANCE REQUIRED. Contractor shall obtain and continuously maintain in effect at all times during the term hereof, at Contractor's sole expense, insurance coverage as follows with limits not less than those set forth below:

1) Commercial General Liability. This policy shall be an occurrence-type policy and shall protect provider and additional insureds against all claims arising from bodily injury, sickness, disease or death of any person (other than provider's employees) and damage to property of the City or others arising out of the act or omission of provider or its agents and employees. This policy shall also include protection against claims for the contractual liability assumed by Contractor under the paragraph of this Agreement entitled "Indemnification," including completed operations, products liability, contractual coverage, broad form property coverage, explosion, collapse, underground, premises/operations, and independent providers (to remain in force for two years after final payment). Coverage limits shall not be less than:

\$ 1,000,000.00	General Aggregate
\$ 1,000,000.00	Products – Completed Operations
\$ 1,000,000.00	Personal & Advertising Injury
\$ 1,000,000.00	Each Occurrence
\$ 100,000.00	Fire Damage (any one fire)

2) Business Automobile Liability. This policy shall be written in comprehensive form and shall protect Contractor and the additional insureds against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles and shall cover operation on and off the premises of all motor vehicles licensed for highway use, whether they are owned, non-owned or hired. Coverage shall not be less than:

\$1,000,000.00	Combined Single Limit
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3) Workers' Compensation and Employer's Liability. If Contractor hires any

employees, Contractor shall maintain Workers' Compensation and Employer's Liability insurance, which shall protect provider against all claims under applicable state workers' compensation laws and employer's liability. The insured shall also be protected against claim for injury, disease or death of employees which for any reason, may not fall within the provisions of a workers' compensation law. Coverage shall not be less than:

Statutory Amount	Workers' Compensation
\$ 500,000.00	Employer's Liability, Each Accident
\$ 500,000.00	Employer's Liability, Disease - Each Employee
\$ 500,000.00	Employer's Liability, Disease – Policy Limit

The foregoing requirement will not be applicable if, and so long as, Contractor qualifies as a self-insurer under the rules and regulations of the commission or agency administering the workers' compensation program in Texas and furnishes evidence of such qualification to City in accordance with the notice provisions of this Agreement.

If Contractor uses contract labor, Contractor shall require its sub-provider to maintain the above referenced coverage and furnish copies of certificates of insurance as required herein.

18. INDEMNIFICATION:

A. GENERAL INDEMNIFICATION: CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AND ITS OFFICIALS, EMPLOYEES AND AGENTS (COLLECTIVELY REFERRED TO AS "INDEMNITEES") AND EACH OF THEM FROM AND AGAINST ALL LOSS, COSTS, PENALTIES, FINES, DAMAGES, CLAIMS, EXPENSES (INCLUDING ATTORNEY'S FEES) OR LIABILITIES (COLLECTIVELY REFERRED TO AS "LIABILITIES") ASSERTED BY ANY PERSON OR PERSONS, INCLUDING AGENTS OR EMPLOYEES OF CONTRACTOR OR CITY BY REASON OF ANY INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR DESTRUCTION OR LOSS OF ANY PROPERTY ARISING OUT OF, RESULTING FROM, OR IN CONNECTION WITH (I) THE PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES CONTEMPLATED BY THIS CONTRACT WHICH IS OR IS ALLEGED TO BE DIRECTLY OR INDIRECTLY CAUSED, IN WHOLE OR IN PART, BY ANY

ACT, OMISSION, DEFAULT OR NEGLIGENCE (WHETHER ACTIVE OR PASSIVE) OF CONTRACTOR OR ITS EMPLOYEES, AGENTS OR SUB-CONTRACTORS (COLLECTIVELY REFERRED TO AS "CONTRACTOR"), REGARDLESS OF WHETHER IT IS, OR IS ALLEGED TO BE, CAUSED IN WHOLE OR PART (WHETHER JOINT, CONCURRENT OR CONTRIBUTING) BY ANY ACT, OMISSION, DEFAULT OR NEGLIGENCE (WHETHER ACTIVE OR PASSIVE) OF THE INDEMNITEES, OR ANY OF THEM OR (II) THE FAILURE OF CONTRACTOR TO COMPLY WITH ANY OF THE PARAGRAPHS HEREIN OR THE FAILURE OF CONTRACTOR TO CONFORM TO STATUTES, ORDINANCES, OR OTHER REGULATIONS OR REQUIREMENTS OF ANY GOVERNMENTAL AUTHORITY, FEDERAL OR STATE, IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT OR SUSTAINED IN OR UPON THE PREMISES, OR AS A RESULT OF ANYTHING CLAIMED TO BE DONE OR ADMITTED TO BE DONE BY CONTRACTOR HEREUNDER. CONTRACTOR EXPRESSLY AGREES TO INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES, OR ANY OF THEM, FROM AND AGAINST ALL LIABILITIES WHICH MAY BE ASSERTED BY AN EMPLOYEE OR FORMER EMPLOYEE OF CONTRACTOR, OR ANY OF ITS SUB-CONTRACTORS, AS PROVIDED ABOVE, FOR WHICH CONTRACTOR'S LIABILITY TO SUCH EMPLOYEE OR FORMER EMPLOYEE WOULD OTHERWISE BE LIMITED TO PAYMENTS UNDER STATE WORKERS' COMPENSATION OR SIMILAR LAWS. THIS INDEMNIFICATION SHALL SURVIVE THE TERM OF THIS CONTRACT AS LONG AS ANY LIABILITY COULD BE ASSERTED. NOTHING HEREIN SHALL REQUIRE CONTRACTOR TO INDEMNIFY, DEFEND, OR HOLD HARMLESS ANY INDEMNIFIED PARTY FOR THE INDEMNIFIED PARTY'S OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

B. ENVIRONMENTAL INDEMNIFICATION: CONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD CITY AND ITS COUNCIL MEMBERS, BOARD AND COMMISSION MEMBERS, OFFICIALS, AGENTS, GUESTS, INVITEES, CONSULTANTS AND EMPLOYEES FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, PROCEEDINGS, SUITS, JUDGMENTS, COSTS, PENALTIES, FINES, DAMAGES, LOSSES, ATTORNEYS' FEES AND EXPENSES ASSERTED BY LOCAL, STATE OR FEDERAL ENVIRONMENTAL AGENCIES OR PRIVATE INDIVIDUALS OR ENTITIES IN CONNECTION WITH OR RESULTING FROM OR ARISING OUT OF CONTRACTOR'S HANDLING, COLLECTION, TRANSPORTATION, STORAGE, DISPOSAL, TREATMENT, RECOVERY, AND/OR REUSE BY ANY PERSON UNDER CONTRACTOR'S DIRECTION OR CONTROL OF WASTE COLLECTED, TRANSPORTED OR LANDFILLED OR ANY CLEANUP ASSOCIATED WITH ENVIRONMENTAL CONTAMINATION, WHETHER SUCH CLEANUP IS OF AIR, SOIL, STRUCTURE, GROUND WATER OR SURFACE WATER CONTAMINATION. CONTRACTOR

SPECIFICALLY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AGAINST ALL CLAIMS, DAMAGES AND LIABILITIES OF WHATEVER NATURE ASSERTED UNDER CERCLA CAUSED BY ACTS OR OMISSIONS OF CONTRACTOR REGARDLESS OF WHEN SUCH INCIDENT IS DISCOVERED. CONTRACTOR SHALL BE RESPONSIBLE AND LIABLE FOR ANY SPILL, UNDERGROUND POLLUTION OR ANY OTHER ENVIRONMENTAL IMPAIRMENT INCIDENT CAUSED BY ACTS OR OMISSIONS OF CONTRACTOR REGARDLESS OF WHEN SUCH INCIDENT IS DISCOVERED. IT IS THE INTENT OF THE PARTIES THAT THIS SECTION SHALL IN NO WAY LIMIT OTHER COVERAGE HEREIN AS IT MAY RELATE TO ANY ENVIRONMENTAL CLAIM, DAMAGE, LOSS OR LIABILITY OF ANY KIND.

C. PROSPECTIVE APPLICATION: ANY AND ALL INDEMNITY PROVIDED FOR IN THIS CONTRACT SHALL SURVIVE THE EXPIRATION OF THIS CONTRACT AND THE DISCHARGE OF ALL OTHER OBLIGATIONS OWED BY THE PARTIES TO EACH OTHER HEREUNDER AND SHALL APPLY PROSPECTIVELY NOT ONLY DURING THE TERM OF THIS CONTRACT BUT THEREAFTER SO LONG AS ANY LIABILITY COULD BE ASSERTED IN REGARD TO ANY ACTS OR OMISSIONS OF CONTRACTOR IN PERFORMING UNDER THIS CONTRACT.

D. RETROACTIVE APPLICATION: THE INDEMNITY PROVIDED FOR IN THIS CONTRACT SHALL EXTEND NOT ONLY TO CLAIMS AND ASSESSMENTS OCCURRING DURING THE TERM OF THIS CONTRACT BUT RETROACTIVELY TO CLAIMS AND ASSESSMENTS WHICH MAY HAVE OCCURRED DURING THE TERM OF PREVIOUS CONTRACTS BETWEEN CITY AND CONTRACTOR.

E. APPLICATION TO SURROUNDING PROPERTY: THE INDEMNIFICATION PROVISIONS OF THIS CONTRACT EXTEND TO CLAIMS AND ASSESSMENTS RELATING TO RUNOFF, LEACHATE, OR OTHER INFILTRATION THAT MAY OCCUR OR HAS OCCURRED AT OR NEAR THE SITE OF LANDFILLS, TRANSFER STATIONS, OR OTHER SOLID WASTE FACILITIES AND SURROUNDING AREAS WHICH ARE OR WERE USED BY THE CONTRACTOR, DURING THE TERM OF THIS CONTRACT OR PREVIOUS AGREEMENTS BETWEEN CITY AND CONTRACTOR. THIS SECTION DOES NOT MAKE CONTRACTOR LIABLE FOR ANY SITE IT HAS NEVER USED, CLOSED, MANAGED OR MONITORED.

19. *(Intentionally left blank)*

20. INDEPENDENT CONTRACTOR: Nothing contained in this Contract is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. Contractor shall at all times remain an independent contractor with respect to the services to

be performed under this Contract. City shall be exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and workers' compensation insurance on Contractor's employees.

21. NONDISCRIMINATION: Contractor represents and warrants to City that Contractor does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with Contractor's performance under this Contract on account of race, color, sex, religion, age, handicap, marital status or national origin. Contractor further covenants that no otherwise qualified individual shall, solely by reason of his/her race, color, sex, religion, age, handicap, marital status or national origin, be excluded from participation in, be denied services, or be subject to discrimination under any provision of this Contract.

22. VERIFICATION OF EMPLOYMENT ELIGIBILITY: Contractor must comply with the Immigration Reform and Control Act (IRCA) and may not knowingly obtain labor or services of an unauthorized alien. Contractor -- not City -- must verify eligibility for employment as required by IRCA.

23. AMENDMENTS: This Contract may be modified or amended only by a written instrument signed by City and Contractor, without further approval of City Council, unless such approval is otherwise required by law, subject to availability and appropriation of funds. Such amendments shall not invalidate this Contract, nor relieve or release City or Contractor from their respective obligations under this Contract.

24. ASSIGNMENT: No assignment by a party hereto of any rights under, or interest 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, moneys that may become due, and moneys that are due, may not be assigned without such prior consent (except to the extent that 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.

25. SUCCESSORS AND ASSIGNS: This Contract shall be binding upon the parties hereto, their

heirs, executors, legal representatives, successors, or assigns.

26. NOTICES: Communication and details concerning this Contract shall be directed to the following representatives:

CITY:

City of San Angelo
Attn: Russell Pehl, Interim City Engineer
72 W. College Ave.
San Angelo, Texas 76903

CONTRACTOR:

Attn: _____

Before City shall be liable to Contractor or any of its successors or assigns for any alleged breach of this Contract, notice must first be given City within six (6) months of the date Contractor alleges the breach occurred. Such notice shall be in accordance with and provide substantially the same information as required for notice of tort claims as specified in Article 2.05 of the City of San Angelo Code of Ordinances.

27. MISCELLANEOUS PROVISIONS:

A. Remedies: In the event of default by Contractor under the Contract Documents, City shall have all rights and remedies afforded to it at law or in equity to enforce the terms of the Contract Documents; however, arbitration is not an available remedy to resolve any disputes arising under this Contract unless City and Contractor mutually agree to such remedy in a separate written Contract. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity.

B. Attorneys' Fees: If any action at law or in equity is necessary by either City or Contractor to enforce or interpret the terms of the Contract Documents, the party prevailing on the majority of issues shall be entitled to reasonable attorneys' fees and costs and any necessary disbursements in addition to any other relief to which the prevailing party is entitled.

C. Conflicts: This Contract, the documents required to be provided, and the Contract Documents constitute the entire Contract between the parties hereto and supersede any prior written or oral Contracts and understandings between the parties. If any provision of this Contract, the Owner's

Construction General Conditions, the Specifications or any other provision contained within the Contract Documents conflicts, or is inconsistent with any other provision of the Contract Documents, then the conflict or inconsistency will be resolved first by reference to the terms of this Contract, then to the Owner's Construction General Conditions to this Contract and then finally to the Specifications therein, unless a federal law, regulation or restriction would require otherwise, in which case the federal provision would control.

D. Severability: If any provision of this Contract is held invalid or unenforceable, the remainder of the Contract shall not be affected thereby and all other parts of this Contract shall nevertheless be in full force and effect.

E. Venue: This Contract, including the Contract Documents, is governed by the laws of the State of Texas. Venue for any suit or claim or cause of action arising out of or related to Work covered by this Contract shall be in Tom Green County, Texas.

F. Counterparts: This Contract may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Contract.

G. Enforcement: This Contract shall be construed and enforced according to the laws of the State of Texas.

H. Headings: Titles and paragraphs are for convenient reference and are not a part of this Contract.

I. No Waiver: No waiver or breach of any provision of this Contract shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

J. Governing Laws: Should any provision, paragraph, sentence, word or phrase contained in this Contract be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Texas or the City of San Angelo, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such

laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Contract shall remain unmodified and in full force and effect or limitation of its use.

K. Applicable Law: This Contract and the Contract Documents are subject to all applicable federal and state laws, statutes, codes, rules and regulations and local ordinances, rules and regulations.

28. CONTINGENT ON FUNDING: Funding for this Contract is contingent on the availability of funds and continued authorization for program activities and the Contract is subject to amendment or termination due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) days notice.

29. SURVIVAL OF REMEDIES: 29. The provisions of the Lease relating to indemnification from one party hereto to the other party or relating to environmental remediation compliance shall survive termination or expiration of this Lease. Additionally, any provisions of this Lease which may require performance subsequent to the termination or expiration of this Lease shall also survive such termination or expiration.

30. ENTIRE CONTRACT: This Contract constitutes the sole and entire Contract between the parties hereto. No modification or amendment hereto shall be valid unless in writing and executed by properly authorized representatives of the parties hereto.

31. REAFFIRMATION OF REPRESENTATIONS: Contractor hereby reaffirms all of the representations contained in Contract Documents.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective officials thereunto duly authorized, this the day and year above written.

ATTEST:

(SEAL)

CONTRACTOR:

By: _____

_____, _____

CITY:

City of San Angelo

By: _____

Daniel Valenzuela, City Manager

ATTEST:

Bryan Kendrick, City Clerk

(SEAL)

**CONTRACT FOR PROJECT
BETWEEN CITY OF SAN ANGELO & _____
RFCSP No. WU-04-15**

Approved as to Content:

Russell Pehl, Interim City Engineer

Approved as to Form:

Dan Saluri, Interim City Attorney

Approved as to Content:

Julia Antilley, Purchasing Manager

Approved as to Insurance Requirements:

Marion McMinn, Risk Manager