

# **ON-CALL LEAD ABATEMENT CONTRACTOR AGREEMENT**

## **PROJECT NAME: TEXAS CERTIFIED LEAD ABATEMENT CONTRACTOR SERVICES**

This ON-CALL LEAD ABATEMENT CONTRACTOR AGREEMENT (this “**CONTRACT**”), effective as of April 15th, 2025 (the “**Effective Date**”) is hereby made and entered into by and between CITY OF SAN ANTONIO, a Texas municipal corporation (“**CITY**”) and BG CONSTRUCTOR SOLUTIONS, LLC, a Texas limited liability company (“**CONTRACTOR**”), pursuant to Ordinance No. 2025-04-10-\_\_\_\_\_, dated April 10, 2025 (the “**Ordinance**”). CITY and CONTRACTOR are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

### **RECITALS**

**WHEREAS**, pursuant to and in accordance with the aforementioned Ordinance, CITY wishes to engage a pool of up to six (6) lead abatement contractors licensed by the Texas Department of State Health Services (collectively, the “**STANDBY CONTRACTORS**”) to provide on-call, as-requested, lead abatement and environmental remediation construction services in connection with the housing programs administered by the Department of Neighborhood and Housing Services (the “**Services**”); and

**WHEREAS**, pursuant to and in accordance with the Ordinance, CITY has allocated the aggregate sum of Six Million, Five Hundred Thousand and No/100 Dollars (\$6,500,000.00) (the “**AGGREGATE CONTRACT AMOUNT**”) to pay the STANDBY CONTRACTORS for the Services rendered during the term of this CONTRACT;

**WHEREAS**, funding for payment of the services provided under this CONTRACT comes from the United States Department of Housing and Urban Development’s Lead Hazard Reduction Demonstration Grant program (“**LHRDG**”), Community Development Block Grant program (“**CDBG**”), and HOME Investment Partnerships program (“**HOME**”), as well as the City’s General Fund and 2022-2027 Housing Bond; and

**WHEREAS**, CITY will assign projects on a rotating basis to each of the STANDBY CONTRACTORS, subject to availability of the contractor, timeliness concerns, quality of prior or existing services, or any other reason, in CITY’s sole discretion, that may warrant departure from the sequence of rotating schedule; and

**WHEREAS**, none of the STANDBY CONTRACTORS are guaranteed a minimum amount of work or any compensation hereunder by virtue of being placed in the pool of STANDBY CONTRACTORS; and

**WHEREAS**, CONTRACTOR applied to be one of the STANDBY CONTRACTORS and has represented to CITY that it possesses the necessary qualifications, skills, experience, licenses and certifications to perform the Services and is willing to serve as an on-call contractor when and as requested by CITY; and

**WHEREAS**, CITY has approved CONTRACTOR's application to be a STANDBY CONTRACTOR and, subject to the terms hereof, has placed CONTRACTOR in the pool of STANDBY CONTRACTORS to provide the Services when and as requested by CITY.

**NOW THEREFORE**, the parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

## **ARTICLE I DEFINITIONS**

1.1 Definitions. For purposes of this CONTRACT, in addition to the definitions and references set elsewhere in this CONTRACT, the following terms shall have the meanings ascribed to them below:

***"Abatement"*** means permanently eliminating environmental hazards, through removal, component replacement, encapsulation, and enclosure.

***"Business Day"*** means every day of the week, except all Saturdays, Sundays, and those scheduled holidays officially adopted and approved by City Council for its employees.

***"Clearance"*** means an activity conducted following environmental hazard reduction activities to determine that the environmental hazard reduction activities are complete.

***"Days"*** shall mean calendar days.

***"Environmental Law"*** means any federal, state, or local law, statute, ordinance, or regulation pertaining to health, industrial hygiene, or the environmental conditions on, under or about the property upon which Services under this CONTRACT are performed.

***"Force Majeure"*** means any event beyond the control of a party and without the fault or negligence of the party affected and which by the exercise of reasonable diligence the party affected was unable to prevent that event or circumstance, including, without limitation, acts of God; fire; flood; storm; earthquake; accident; war; rebellion; insurrection; riot; order of any kind of any governmental authority, including without limitation any civil or military authority; epidemics; pandemics; restraint of government and people; or invasion.

***"Governmental Authority"*** means any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, or otherwise), whether now or hereafter in existence.

***"Hazardous Materials"*** means any flammables, explosives, radioactive materials, asbestos, petroleum products, or other hazardous waste, including, without limitation, substances defined as "hazardous substances," "hazardous materials" or "toxic substances" in any Environmental Law.

***“Homeowner”*** means the owner(s) of the land and improvements in, on, or at which the CONTRACTOR will perform Work pursuant to this CONTRACT.

***“Interim Control and Standard Treatment”*** includes addressing friction and impact surfaces, creating smooth and cleanable surfaces, paint stabilization, and sodding of bare soil.

***“Lead Hazard Evaluation”*** means a risk assessment, a comprehensive lead inspection or a combination of these activities to determine the presence of lead-based paint hazards or lead-based paint in compliance with Residential Lead-Based Paint Hazard Reduction Act of 1992 – Title X and 24 CFR Part 35.

***“Lead Hazard Reduction”*** means activities designed to reduce or eliminate exposure to lead-based paint hazards through methods including interim controls or abatement.

***“Legal Requirements”*** means (A) any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates, or ordinances of any Governmental Authority in any way applicable to CONTRACTOR, the aforementioned grants, or the Property, including, without limitation, the ownership, use, construction, rehabilitation, development, occupancy, possession, operation, maintenance, alteration, repair, or reconstruction thereof; (B) any and all covenants, conditions, and restrictions contained in any deed or other form of conveyance or in any other instrument of any nature that relate in any way or are applicable to the Property or the ownership, use, construction, occupancy, possession, operation, maintenance, alteration, repair, or reconstruction thereof; (C) CONTRACTOR’s presently or subsequently effective bylaws, certificate of formation, or partnership, limited partnership, joint venturer, trust or other form of business association agreement; (D) any and all leases related to the Property; and (E) other contracts, whether written or oral, of any nature to which CONTRACTOR may be bound and that relate in any way to the Property or the Project.

***“Occupant Protection Plan”*** means the measures and management procedures that will be taken during the lead hazard control activities to protect the occupants of the property from exposure to any lead-based paint hazards.

***“Property”*** means the land and improvements owned by the Homeowner, and in, on or at which the CONTRACTOR will perform the Work (defined below) pursuant to this CONTRACT.

***“Specifications”*** means any plans, designs, drawings, descriptions, or written course of action approved by CITY and prepared by the lead consultant assigned to the Property for the abatement of lead based paint hazards at such Property, together with any changes approved by the CONTRACTOR, the Homeowner and CITY, and all materials and equipment incorporated or to be incorporated in the Property during the course of such lead-based paint hazard abatement.

***“Work”*** means all labor necessary to complete the lead-based paint hazard control work at, in, or on each Property in strict accordance with the Specifications, and all materials and

equipment incorporated or to be incorporated in the Property during the course of such lead-based paint hazard control work.

## **ARTICLE II TERM**

2.1 Unless renewed and extended pursuant to Section 2.2 or earlier terminated pursuant to pursuant to Article XXX, this CONTRACT shall commence on the Effective Date and shall terminate on the earlier of i) **April 15th, 2027**, or ii) expiration of all aggregate funding allotted for this pool of STANDBY CONTRACTORS pursuant to the Ordinance.

2.2 CITY may, in CITY's sole and absolute discretion, unilaterally elect to renew and extend the CONTRACT for up to three (3) additional one (1) year extensions on the same terms provided herein. CITY may elect to exercise each option to renew and extend at any time, subject only to and contingent upon the availability and appropriation of funding by City Council for that renewal period. Each one (1) year renewal and extension period shall commence on the effective date of the amendment pursuant to Section 31.1.

2.3 Funding under this CONTRACT and any amendments or waivers that may be granted hereunder shall not be automatically renewed. CONTRACTOR will notify CITY in writing to request an extension of this CONTRACT prior to its termination date; however, CONTRACTOR understands CITY is under no obligation to extend the term of this CONTRACT.

## **ARTICLE III RESPONSIBILITIES**

3.1 CONTRACTOR hereby accepts responsibility for the performance, in a satisfactory and efficient manner as solely determined by CITY, of all services and activities set forth in this CONTRACT. All work performed by CONTRACTOR hereunder shall be performed to the satisfaction of the Director (the "**Director**") of the Neighborhood and Housing Services Department ("**NHSD**"). The determination made by the Director shall be final, binding and conclusive on all parties hereto. CITY shall have no obligation to pay for any work performed by CONTRACTOR which is not satisfactory to the Director. CITY shall have the right to terminate this CONTRACT, in accordance with Article XXX, in whole or in part, should CONTRACTOR's work not be satisfactory to Director; however, CITY shall have no obligation to terminate and instead may elect to withhold payment for any unsatisfactory work. Should CITY elect to terminate, it will do so in accordance with the provisions of this CONTRACT.

3.2 Unless written notification by CONTRACTOR to the contrary is received and approved by CITY, CONTRACTOR's President shall be CONTRACTOR's designated representative responsible for the management of all contractual matters pertaining to this CONTRACT. CITY's Director of Neighborhood and Housing Services Department ("**NHSD**") or her designee shall be CITY's representative responsible for the administration of this CONTRACT. Communications to CITY and CONTRACTOR shall be directed to each of their respective designated representatives as set forth in this Section 3.2.

## **ARTICLE IV**

### **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

4.1 CONTRACTOR understands that funds provided to it pursuant to this CONTRACT are funds which have been made available to CITY by the federal government and with other specific assurances made and executed by CITY. Therefore, CONTRACTOR agrees and acknowledges that it will comply with all applicable LHRDG, CDBG, HOME, OHSA, EPA and Texas Environmental Lead Reduction Rules and regulations in the performance of this contract, and all other applicable Legal Requirements, including, but not limited to, the following:

- (A) Copeland “Anti-Kickback” Act, 40 U.S.C. § 3145, which governs the deductions from paychecks which are allowable and makes it a criminal offense to induce anyone employed on a federally assisted project to relinquish any compensation to which he/she is entitled, and requires all contractors to submit weekly payrolls and statements of compliance;
- (B) *Reserved.*
- (C) Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 3701 et seq., which provides that mechanics and laborers employed on federally assisted construction jobs are paid time and one-half for work in excess of 40 hours per week, and provides for the payment of liquidated damages where violations occur. This act also addresses safe and healthy working conditions.
- (D) Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, which requires that CONTRACTOR sign and submit an anti-lobbying certification and that subcontractors that apply or bid for an award exceeding One Hundred Thousand and 00/100 Dollars (\$100,000.00) file the same certification;
- (E) Chapter 2258 of the Texas Government Code and CITY Ordinance 2008-11-20-1045, Wage and Hour Labor Standard Provisions, as set forth below:
  - (i) CONTRACTOR shall provide the CITY with sufficient documentation to verify that the provisions of Chapter 2258 of the Texas Government Code, and Ordinance 2008-11-20-1045 are met, and CONTRACTOR understands and acknowledges that CITY may request periodic reports or support to ensure adherence to prevailing wage rates provisions;
  - (ii) If, as a result of CITY’s review, CITY finds any violations, CONTRACTOR shall forfeit as a penalty to 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 this CONTRACT, by CONTRACTOR or any subcontractor; and
  - (iii) CONTRACTOR understands and agrees that the establishment of

prevailing wage rates pursuant to Ordinance 2008-11-20-1045 shall not be construed to relieve CONTRACTOR, CONTRACTOR's subcontractor or any subcontractor from their 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;

- (F) 24 C.F.R. § 570.604, *Environmental standards*;
- (G) 24 C.F.R. § 570.602, *Section 109 of Title I of the Community and Housing Development Act of 1974*, which prohibits discrimination or exclusion of benefits in any program or activity funded in whole or in part with federal funds, and also incorporates the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1974;
- (H) 24 C.F.R. § 570.608, *Lead-based paint*, which incorporates the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. §§ 4821-4846, the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851-4856, and the applicable implementing regulations;
- (I) 24 C.F.R. § 570.611, *Conflict of interest*, which provides that no persons who exercise or have exercised any functions or responsibilities with respect to federal funded activities assisted under this part, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a federal-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a federal-assisted activity, or with respect to the proceeds of the federal-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one (1) year thereafter;
- (J) 24 C.F.R. § 570.614, which requires compliance with the Architectural Barriers Act of 1968, 42 U.S.C. §§ 4151-4157, and with the Americans with Disabilities Act (the "**ADA**"), 42 U.S.C. § 12131, 47 U.S.C. §§ 155, 201, 218, and 225;
- (K) Title I and V of the Americans with Disabilities Act of 1990, as amended, which prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments;
- (L) Subject to 24 C.F.R. § 570.702, the provisions of 2 C.F.R. Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*;
- (M) 2 C.F.R. Part 2424, which prohibits the use of HUD funds either directly or indirectly to engage any contractor during any period of debarment, suspension or placement in ineligibility status. CONTRACTOR shall check all employees, subcontractors and lower-tier contractors against the excluded parties list

maintained on the Federal System for Award Management;

- (N) Title VI of the Civil Rights Act of 1964 and the implementing regulations issued in 24 C.F.R. Part 1, as related to non-discrimination in federally-assisted programs;
- (O) Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex, or national origin;
- (P) Title VIII of the Civil Rights Act of 1968 (Fair Housing Act);
- (Q) National Historic Preservation Act of 1966, as amended, 16 U.S.C. § 470, and the implementing regulations at 36 C.F.R. Part 800;
- (R) Equal Pay Act of 1963, which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;
- (S) Age Discrimination in Employment Act of 1967, which protects individuals who are forty (40) years of age or older from discrimination in employment;
- (T) Clean Air Act, 42 U.S.C. § 7401 *et seq.*, and Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, and CONTRACTOR further agrees to report each violation to CITY and understands that CITY will, in turn, report each violation to HUD and the appropriate EPA Regional Office;
- (U) CONTRACTOR and its subcontractors shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including, but not limited to, the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of items designated in Subpart B of 40 C.F.R. Part 247;
- (V) Drug-Free Workplace Act of 1988, 41 U.S.C. § 701, *et seq.*, and the implementing regulations at 2 C.F.R. Part 2429;
- (W) CONTRACTOR hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. Chapter 60, which is paid for in whole or in part with funds obtained from the federal government or borrowed on the credit of the federal government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

“During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender

identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.



- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States."
- (X) The federal regulations as promulgated in the Section 3 clause of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u ("Section 3"), including the implementing regulations set forth in 24 C.F.R. Part 75, and if requested by CITY, CONTRACTOR shall provide CITY with the information requested in the Section 3 Utilization Plan, which is available from the CITY, and provide the reporting data stated therein.
  - (i) CONTRACTOR agrees to comply with HUD's regulations in 24 C.F.R. Part 75, which implement Section 3. As evidenced by CONTRACTOR's execution of this CONTRACT, CONTRACTOR certifies that CONTRACTOR is under no contractual or other impediment that would prevent it from complying with the Section 3 requirements, as applicable.
  - (ii) CONTRACTOR shall assure that all contractors and subcontractors receiving funds in connection with the Services performed under this CONTRACT are familiar with, and comply with, any and all applicable rules and regulations as required by the Section 3 requirements and shall include any applicable Section 3 requirements as a part of every contract awarded in connection with the Services performed under the CONTRACT.
- (Y) 2 C.F.R. § 200.321, *Contracting with small and minority businesses, women's*

*business enterprises, veteran-owned businesses, and labor surplus area firms, by taking all necessary affirmative steps to assure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are considered when possible; such consideration means:*

- (i) These business types are included on solicitation lists;
  - (ii) These business types are solicited whenever they are deemed as eligible potential sources;
  - (iii) Dividing procurement transactions into separate procurements to permit maximum participation by these business types;
  - (iv) Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;
  - (v) Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
  - (vi) Requiring a contractor under a Federal award to apply this section to subcontracts.
- (Z) CONTRACTOR agrees to comply with City of San Antonio Ordinance No. 2023-08-31-0585, *Heat Illness Prevention Requirements*.

4.2 CONTRACTOR understands that said requirements in Section 4.1 are summaries and are intended only as such and are in no way are meant to constitute a complete compilation of all duties imposed upon CONTRACTOR by law or administrative ruling, or to narrow the standards which CONTRACTOR must follow. CONTRACTOR must at all times remain in compliance with the requirements set out in Section 4.1 above, and shall observe and comply with all other applicable legal requirements.

4.3 CONTRACTOR assures that all subcontractors receiving funds in connection with the services performed hereunder are familiar with, and shall comply with, any and all applicable rules and regulations as contained in Section 4.1 and that CONTRACTOR shall include Section 4.1 as part of every contract awarded in connection with the Project. Notwithstanding this provision, CONTRACTOR may not subcontract any Services to be performed under the CONTRACT with the prior written approval of the CITY.

4.4 CONTRACTOR shall observe and comply with all city, state and federal laws, rules, regulations ordinances and codes affecting CONTRACTOR's operations pursuant to this CONTRACT.

**ARTICLE V**  
***RESERVED***

**ARTICLE VI**  
**LEGAL AUTHORITY**

6.1 CONTRACTOR represents, warrants, assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate, and official motion, resolution, or action passed or taken, to enter into this CONTRACT and to perform the responsibilities herein required.

6.2 The signer of this CONTRACT for CONTRACTOR represents, warrants, assures, and guarantees that he or she has full legal authority to execute this CONTRACT on behalf of CONTRACTOR and to bind CONTRACTOR to all terms, performances, and provisions herein contained.

6.3 In the event that a dispute arises as to the legal authority to enter into this CONTRACT of either the CONTRACTOR or the person signing on behalf of CONTRACTOR, CITY shall have the right, at its option, to either temporarily suspend or terminate this CONTRACT. If CITY suspends or terminates this CONTRACT for such reasons, CONTRACTOR shall be liable to CITY for any funds CONTRACTOR has received from CITY for performance of the Work under this CONTRACT.

**ARTICLE VII**  
**MAINTENANCE OF EFFORT**

7.1 CONTRACTOR agrees that the funds and resources provided to it under the terms of this CONTRACT shall in no way be substituted for funds and resources provided from other sources, nor shall such funds and resources in any way serve to reduce the funds, resources, services, or other benefits which would have been available to, or provided through CONTRACTOR had this CONTRACT not been executed.

**ARTICLE VIII**  
**PERFORMANCE OF WORK**

8.1 Only certified lead personnel and certified lead firms, certified to perform lead-based paint activities in accordance with Sections 295.205-211 of the Texas Environmental Lead Reduction Rules, as may be amended from time to time, shall perform the Work. Accordingly, CONTRACTOR must be certified by the State of Texas to perform lead abatement work prior to conducting lead hazard control work.

8.2 CONTRACTOR shall ensure that the Work to be performed is in accordance with Section 295.212-214 of the Texas Environmental Lead Reduction Rules, as amended from time to time, and in strict accordance with any other applicable Legal Requirements relating to lead hazard control work, including but not limited to HUD's Lead Safe Housing Rule and applicable

requirements established by the Office of Healthy Homes and Lead Hazard Control, EPA's Renovation, Repair and Painting Rule and applicable Lead Regulations, and OSHA Lead in Construction regulations/guidance.

8.3 CONTRACTOR shall also ensure that the Work performed is in strict accordance with the Specifications completed by lead consultants for the Property. Modifications or alterations to the Specifications completed by the lead consultants for the Property may be made only pursuant to the prior written approval of CITY's Director of NHSD or her designee.

8.4 For each Property specified by CITY, CONTRACTOR shall manage, perform, and provide all of the Work to CITY's satisfaction and in accordance with the Lead Specifications Guide, which is attached hereto and incorporated herein for all purposes as Exhibit "A", utilizing only those funds remitted to CONTRACTOR by CITY under this CONTRACT.

8.5 CONTRACTOR shall comply with any and all federal standards, regulations, and abatement requirements in accordance with the provisions outlined in 24 C.F.R. Part 35.

8.6 If CONTRACTOR performs Work that it knows or reasonably should know is contrary to or varies from any Legal Requirement, and does not have written approval from the Texas Department of State Health Services and CITY to conduct such variance, the CONTRACTOR shall bear all costs and damages arising therefrom and shall remain personally liable therefore.

8.7 Prior to commencing the Work, CONTRACTOR shall submit evidence of CONTRACTOR's state certification(s), the results of CONTRACTOR's respiratory fit tests, and proof of insurance coverage required under Article XVIII of this CONTRACT.

8.8 CONTRACTOR shall coordinate all abatement and construction related activities with CITY's Development Services Department to ensure compliance with CITY's requirements for certificates of occupancy, building inspections, and building and demolition permits.

8.9 CITY shall procure a state certified project designer to prepare the Occupant Protection Plan.

8.10 CONTRACTOR shall commence Work on each Property only after CITY issues a Notice to Proceed, which shall specify the dates for commencement and termination of the Work for such Property. Prior to CITY's issuance of a Notice to Proceed, unless otherwise waived in writing by CITY, CONTRACTOR shall be required to secure a payment bond for each Property wherein the cost to perform the lead hazard control work exceeds Twenty-five Thousand and 00/100 Dollars (\$25,000.00), and to secure both a performance and payment bond for each Property wherein the cost to perform the lead hazard control work exceeds One Hundred Thousand and 00/100 Dollars (\$100,000.00).

8.11 CONTRACTOR and CITY recognize that time is of the essence with regard to the Work and that CITY will suffer financial loss if the Work is not completed within the timeline specified in the Notice to Proceed. In the event that the Work is not completed within the timeline specified each Notice to Proceed, CONTRACTOR shall be held responsible and shall be liable for

all costs associated with the delay, including, but not limited to, any additional hotel or relocation expenses associated with protection or shelter of the Homeowner.

8.12 If performance by CONTRACTOR is delayed as a direct result of riot, insurrection, fire, act of God, or operation of law, the CONTRACTOR shall notify CITY in writing specifying the reasons for such delay within three (3) days following the start of the delay. Upon written approval by CITY, CONTRACTOR may extend the allotted time for completion of Work by one (1) day for each day lost.

8.13 CONTRACTOR is responsible for, and shall take all necessary steps to secure the site surrounding the Property at, in, or on which the Work is to be, or is being, performed. CONTRACTOR shall also ensure that unauthorized individuals are prohibited and prevented from entering the designated area of containment and that appropriate measures are taken to provide notice that the area is inaccessible.

8.14 CONTRACTOR shall comply with all provisions of Section 295.214 of the Texas Environmental Lead Reduction Rules, as amended from time to time, relating to the submission of, amendment to, cancellation of, and payment of fees for, notifications to the Texas Department of State Health Services. CONTRACTOR shall provide a copy of all submitted or cancelled notifications to the lead consultant or supervisor assigned to the Property and to CITY.

8.15 For all Work to be performed by the CONTRACTOR pursuant to this CONTRACT, CONTRACTOR shall utilize the Contractor Fixed Unit Cost List and Specifications Manual, which are attached hereto and incorporated herein for all purposes as Exhibit "B", in order to determine the rate of reimbursement for the Work. The Contractor Fixed Unit Cost List and Specifications Manual may be updated bi-annually, or as otherwise may be deemed necessary in the sole discretion of the CITY, without further approval of City Council provided that the adjustments do not increase the AGGREGATE CONTRACT AMOUNT. Each price adjustment, if any, shall be subject to an assessment of cost reasonableness as required by 2 C.F.R. Part 200 and such determination shall be made by the Director of NHSD or their designee in their sole discretion; any price adjustment that is determined not to be cost reasonable is prohibited.

8.16 Upon completion of the Work for each Property, the appropriate certified lead personnel shall perform a visual inspection and clearance of such Property to ensure that the Property is cleared of all surplus material, hazard, waste, refuse, dirt, and rubbish resulting from the Work and to ensure that dust lead levels are within HUD-approved standards. In the event that the Property is not "cleared" by the aforesaid certified lead personnel, CONTRACTOR shall be held responsible and shall be liable for all costs associated with re-testing, including, but not limited to, wipe samples and time expended by a lead inspector or lead risk assessor, and any additional hotel or relocation expenses associated with protection or shelter of the Homeowner as a result of the additional time needed to clear the Property.

8.17 CONTRACTOR shall immediately provide a copy of all notices received by the CONTRACTOR relating to alleged or actual violations of the Texas Environmental Lead Reduction Rules to CITY, with a copy also to the lead consultant or supervisor assigned to the subject Property for which such investigation of a potential violation is pending or for which determination of an actual violation has been made. CONTRACTOR shall immediately cure the

violation and shall provide evidence of such cure along with evidence of the Texas Department of State Health Services' determination that the violation has been satisfactorily resolved to CITY, with a copy to the lead consultant or supervisor assigned to the subject Property. CITY reserves the right to suspend or terminate this CONTRACT or any Work being performed in, at or on Property pursuant to this CONTRACT, if, in CITY's sole discretion, the occurrence or existence of a violation suggests that the CONTRACTOR is unable to satisfactorily or safely perform the Work.

8.18 CITY reserves the right to have CONTRACTOR's personnel removed from the Project who are not performing the Work in a workmanlike and professional manner, or who are not performing the Work in compliance with the Texas Environmental Lead Reduction Rules, as may be amended from time to time.

8.19 CONTRACTOR understands that CONTRACTOR's engagement pursuant to this CONTRACT involves the performance of the Work on a standby, as-needed basis, and CONTRACTOR expressly acknowledges and agrees that specific requirements as to types, number, locations, conditions, and procedures pertaining to the Work may be established or directed by the NHSD on a case-by-case basis for each Property.

8.20 CITY shall have the right to direct unrestricted access and contact with laboratories and testing facilities used by CONTRACTOR for the Work, and CITY, at its discretion, shall have the right to obtain original or duplicate copies of reports and testing results directly from the laboratory or testing facility used by CONTRACTOR.

8.21 CONTRACTOR warrants and certifies that CONTRACTOR and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services being provided herein. CONTRACTOR shall ensure the services performed are in accordance with Texas Department of State Health and Human Services requirements and in strict compliance with any other applicable local, state and federal regulations relating to lead, mold or asbestos. Only State certified/licensed personnel and firms shall perform the services required under this CONTRACT.

8.22 CITY reserves the right, but does not assume the obligation, to have CONTRACTOR's personnel removed from a project who are not performing the services hereunder in a workmanlike and professional manner, or who are not performing services in compliance with applicable Legal Requirements.

8.23 Any and all writings, documents or information in whatsoever form or character produced by CONTRACTOR pursuant to the provisions of this CONTRACT is the exclusive property of the CITY without limitation; and no such writing, documentation or information shall be the subject of any copyright or proprietary claim by CONTRACTOR. CONTRACTOR understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, CITY has the right to use all such writings, documents and information as CITY desires, without restriction.

8.24 Upon completion of the Work on a Property, CONTRACTOR shall perform the necessary clearance requirements on the Property to ensure that the Property is cleared of all surplus material, hazards, waste, refuse, dirt and rubbish resulting from the work performed hereunder and ensure that clearance levels are within state and federal standards and regulations.

## **ARTICLE IX REIMBURSEMENT**

9.1 In consideration of CONTRACTORS performance at CONTRACTOR's sole expense, and in a satisfactory and efficient manner as determined by the Director, of all services and activities requested by the CITY under this CONTRACT, CITY agrees to pay CONTRACTOR for all eligible services and reimburse for all eligible expenses at the rates specified in Exhibit "B" attached hereto; *provided, however*, unless otherwise agreed in writing by CITY, the total of all payments and other obligations paid or incurred by CITY during the term of this CONTRACT to all of the STANDBY CONTRACTORS shall not exceed the AGGREGATE CONTRACT AMOUNT identified herein. CONTRACTOR understands and agrees that CITY does not guarantee any minimum amount of Work under this CONTRACT.

9.2 It is expressly understood and agreed by CONTRACTOR that CITY's obligations under this Article IX are contingent upon the actual receipt of adequate funds to meet CITY's liabilities hereunder. Should CITY not receive funds to make payments pursuant to this CONTRACT or should fund awards be reduced or cancelled, CITY shall notify CONTRACTOR in writing within a reasonable time after such fact has been determined and CITY may, at its option, either terminate this CONTRACT or reduce the amount of its liability accordingly.

9.3 CITY shall not be liable for any portion of a CONTRACTOR cost, which is or was incurred in connection with an activity of CONTRACTOR where prior written authorization from CITY is required for the activity and such authorization was not first procured, or where CITY has requested that CONTRACTOR furnish data concerning an activity prior to proceeding further therewith and CONTRACTOR nonetheless proceeds without first submitting the data and receiving CITY's approval. Further, CITY shall not be liable for any CONTRACTOR cost, or portion thereof, which: (A) has been paid, reimbursed, or is subject to payment or reimbursement from another source; (B) was incurred prior to the Effective Date or subsequent to the termination date of this CONTRACT; (C) is not in strict accordance with the terms of this CONTRACT, including all Exhibits attached hereto; (D) has not been billed to CITY within thirty (30) days following billing to CONTRACTOR, or termination of this CONTRACT, whichever is earlier; (E) is not an allowable cost under this CONTRACT; (F) prior written authorization from CITY is required for the activity and such authorization was not first procured; or (F) CITY has requested that CONTRACTOR furnish data concerning an activity prior to proceeding further therewith and CONTRACTOR nonetheless proceeds without first submitting the data and receiving CITY approval thereof. CITY shall not be obligated or liable under this CONTRACT to any party, other than CONTRACTOR, for payment of any monies or provision of any goods or services.

9.4 Final acceptance of work products and services require written approval by the CITY. The approving official shall be the Director, or her designee. Payment will be made to CONTRACTOR following written approval of the final work products and services by the

Director or her designee. CITY shall not be liable under this CONTRACT to any party, other than CONTRACTOR, for the payment of monies or the provision of any goods or services.

## **ARTICLE X**

### **RECEIPT, DISBURSEMENT, AND ACCOUNT OF FUNDS BY CONTRACTOR**

10.1 Regarding method of payment, CITY and CONTRACT agree as follows:

- (A) CONTRACTOR shall deliver invoices, in a form acceptable to CITY, to NHSD, which shall include, but is not limited to, the address of the Property at, on, or in which the service is performed, line item of services, number of site visits, any applicable reports for such services, and any such other information as may be required by the CITY;
- (B) CONTRACTOR shall submit to CITY such other reports as may be required by CITY to document CITY liabilities under this CONTRACT;
- (C) Upon receipt of and approval by CITY of each of CONTRACTOR's invoices, CITY shall pay to CONTRACTOR an amount equal to CITY's liabilities not previously billed to and subsequently paid by CITY, subject to deduction for any costs questioned or not allowable; *provided, however*, delinquent or unacceptable billing of CITY by CONTRACTOR shall justify delay of payment by CITY;

10.2 Within ten (10) business days after receipt of CITY's written request, CONTRACTOR shall refund to CITY any sum of money paid by CITY to CONTRACTOR later determined to: (A) have resulted in overpayment to CONTRACTOR; (B) have not been spent by CONTRACTOR strictly in accordance with the terms of this CONTRACT; and/or (C) not be supported by adequate documentation to fully justify the expenditure. Any such amounts not remitted within ten (10) business days may, at CITY's option, be subject to offset against future funding obligations by CITY.

10.3 Upon termination of this CONTRACT, should any expense or charge for which payment made be subsequently disallowed or disapproved as a result of any auditing or monitoring by CITY, HUD, or any other federal agency, CONTRACTOR shall refund such amount to CITY within ten (10) business days of CITY's written request therefore wherein the amount disallowed or disapproved shall be specified. Refunds of disallowed or disapproved costs, however, shall not be made from funds received pursuant to this CONTRACT or from funds received from or through the federal government or CITY.

10.4 In the event that the actual amount expended by CONTRACTOR to meet the level of performance specified in Exhibit "A" or elsewhere in this CONTRACT, or any amendment thereto, is less than that amount provided to CONTRACTOR pursuant to this CONTRACT, then CITY reserves the right to reappropriate or recapture any such underexpended funds.

10.5 Utilizing a format approved by CITY, a Close-Out Package, together with together with a final invoice requesting reimbursement of funds pursuant to this CONTRACT, shall be



submitted by CONTRACTOR to CITY within fifteen (15) business days following the completion of the Work for each Property. The Close-Out Package shall include, but not be limited to, notifications from the Texas Department of State Health Services, daily job site logs, and hazardous waste manifest forms.

10.6 Within fifteen (15) business days following termination of this CONTRACT, CONTRACTOR shall submit a final Close-Out Package with a final expenditure report, for the period commencing on the date of CONTRACTOR's last invoice requesting reimbursement of funds through the date of termination of this CONTRACT.

## **ARTICLE XI ALLOWABLE COSTS**

11.1 Costs shall be considered allowable only if approved by CITY in writing prior to being incurred and incurred directly and specifically in the performance of and in compliance with this CONTRACT and with all Legal Requirements.

11.2 CITY's prior written authorization shall be required in order for the following to be considered allowable costs: (A) subcontracts, specifically, CITY shall not be obligated to any third parties (including any subcontractors of CONTRACTOR) nor shall CITY funds be used to pay for contract services extending beyond the termination of this CONTRACT; (B) costs or fees associated with the alteration or relocation of the facilities on and in which the activities specified in Exhibit "A" or in the Notice to Proceed are conducted; (C) costs or fees for temporary employees or services; (D) costs or fees for consultant and/or professional services; and (E) costs or fees associated with attendance at meetings, seminars, or conferences.

11.3 Written requests for prior approval shall be CONTRACTOR's responsibility and shall be made with sufficient time to permit a thorough review by CITY. Written approval by CITY must be obtained prior to the commencement of procedures to solicit or purchase services, equipment, or real or personal property. Procurements and/or purchases which must be approved pursuant to the terms of this CONTRACT shall be conducted entirely in accordance with all applicable terms, provisions, and requirements hereof.

## **ARTICLE XII PROGRAM INCOME**

12.1 For purposes of this CONTRACT, "***Program Income***" shall mean earnings of CONTRACTOR realized from activities resulting from this CONTRACT or from CONTRACTOR's management of funding provided or received hereunder. Such earnings shall include, but shall not be limited to, interest income, usage or rental/lease fees, income produced from contract-supported services of individuals or employees or from the use of equipment or facilities of CONTRACTOR provided as a result of this CONTRACT; and payments from clients or third parties for services rendered by CONTRACTOR pursuant to this CONTRACT.

12.2 On a monthly basis, CONTRACTOR shall report and return to CITY all Program Income received or accrued during the preceding quarter. Alternative arrangements to this

requirement may only be made upon written request to and written approval by CITY.

12.3 Records of the receipt and disposition of Program Income shall be maintained by CONTRACTOR in the same manner as required for other CONTRACT funds and shall be submitted to the CITY in the format prescribed by CITY.

12.4 CONTRACTOR shall include this Article XII, in its entirety, in all of its subcontracts involving income-producing services or activities.

12.5 It shall be CONTRACTOR's responsibility to obtain from CITY a prior written determination as to whether or not income arising directly or indirectly from this CONTRACT, or from the performance thereof, constitutes Program Income, and unless otherwise approved in writing by CITY, CONTRACTOR shall be responsible to CITY for the repayment of any and all amounts determined by CITY to be Program Income.

### **ARTICLE XIII FURTHER REPRESENTATIONS AND WARRANTIES**

13.1 In addition to the representations and warranties set forth elsewhere in this CONTRACT, CONTRACTOR further represents and warrants that:

- (A) All information, data, or reports heretofore or hereafter provided to CITY are, shall be and shall remain complete and accurate as of the date shown on the information, data, or report, and that since said date shown, shall not have undergone any significant change without written notice to CITY;
- (B) Any supporting financial statements heretofore or hereafter provided to CITY are, shall be and shall remain complete, accurate, and reflective of the financial condition of CONTRACTOR on the date shown on said statements and during the period covered thereby, and that since said date shown, except as provided by written notice to CITY, there has been no material change, adverse or otherwise, in the financial condition of CONTRACTOR;
- (C) No litigation or proceedings are presently pending or threatened against CONTRACTOR and CONTRACTOR has no information or cause to believe that litigation or proceedings, whether judicial or administrative against CONTRACTOR is imminent;
- (D) None of the provisions contained herein contravene or in any way conflict with the authority under which CONTRACTOR is doing business or with the provisions of any existing indenture or agreement of CONTRACTOR;
- (E) CONTRACTOR has the legal authority to enter into this CONTRACT and accept payments hereunder, and has taken all necessary measures to authorize such execution of the CONTRACT and acceptance of payments pursuant to the terms and conditions hereof; and

- (F) None of the assets of CONTRACTOR are both currently and for the duration of this CONTRACT subject to any lien or encumbrance of any character, except for current taxes not delinquent and except as shown in the financial statements provided by CONTRACTOR to CITY.

13.2 CONTRACTOR warrants that any and all taxes that it is obligated for, including, but not limited to, federal, state, and local taxes, fees, special assessments, federal and state payroll and income taxes, personal property, real estate, sales and franchise taxes, are current, and paid to the fullest extent liable as of the effective execution date of this CONTRACT. During the term hereof, CONTRACTOR shall comply with all applicable local, state, and federal laws including, but not limited to:

- (A) Worker's compensation;
- (B) Unemployment insurance;
- (C) Timely deposits of payroll deductions;
- (D) Filing of Information on Tax Return form 990 or 990T, Quarterly Tax Return Form 941, W-2's Form 1099 on individuals who received compensation other than wages, such as car allowance, Forms 1099 and 1096 for contract or consultant work, non-employee compensation, etc.;
- (E) Occupational Safety and Health Act regulations; and
- (F) Employee Retirement Income Security Act of 1974, P.L. 93-406.

13.3 CONTRACTOR or its management shall maintain an employee integrity policy for itself and shall maintain and use internal program management procedures to preclude theft, embezzlement, improper inducement, obstruction of investigation or other criminal action, and to prevent fraud and program abuse. These procedures must specify the consequences to employees and vendors involved in such illegal activities to include, but not be limited to, termination and prosecution where necessary. Said procedures shall be provided to CITY upon written request.

13.4 CONTRACTOR shall provide written notification to the CITY of any and all third-party agreements funded hereunder, prior to the expenditure of funding provided through this CONTRACT. Notification should at a minimum detail the process/method of procurement utilized, selection of contract type, the contractor selection process, the price of the contract, along with a description of the work to be performed, payment terms, and activity timeline.

13.5 Upon reasonable advance notice to CONTRACTOR of no less than twenty-four (24) hours, and during normal business hours, CONTRACTOR shall permit CITY to examine, copy, and make extracts of the books, records, accounting data, and other documents of CONTRACTOR that relate in any way to the Property or Services being performed under this CONTRACT, including without limiting the generality of the foregoing, all permits and licenses in connection with the Services being rendered and all the relevant books and records as applicable, of contractors, subcontractors, agents, or consultants supplying goods and/or services in connection with the Services under this CONTRACT. Additionally, at all reasonable times during the Project, CONTRACTOR shall (A) permit CITY or any other contractor, engineer, agent, consultant, or other inspector representing or selected by CITY, to enter upon the Property, with prior reasonable notice, to inspect the same and all materials to be used in the Project; (B) deliver

to CITY, within a reasonable time not to exceed ten (10) business days after receipt of written request by CITY, counterparts and/or conditional assignments of any and all contracts related in any manner to the Project, bills of sale, statements, conveyances, receipted vouchers or agreements of any nature under which CONTRACTOR claims title to any materials or supplies used or to be used in the Project; and (C) upon receipt by CONTRACTOR, provide copies or on-line access to CITY of all building permits and final inspection reports, as applicable.

13.6 CONTRACTOR shall be responsible for ensuring compliance with all applicable federal, state and local labor standards, rules and regulations, including Davis-Bacon administration if applicable, and shall be responsible for any costs associated therewith.

#### **ARTICLE XIV MAINTENANCE OF RECORDS**

14.1 CONTRACTOR shall maintain all records required by the federal regulations specified in 24 CFR § 570.506 that are pertinent to the activities to be funded under this CONTRACT, including, but not limited to: (A) records providing a full description of each activity undertaken; (B) records demonstrating that each activity undertaken meets one of the National Objectives of the Office of Lead Hazard Control and Health Homes, the CDBG Program or the HOME program; (C) records required to determine the eligibility of activities; (D) records required to document the acquisition, improvement, use or disposition of real property acquired or improved with assistance hereunder; (E) records documenting compliance with the fair housing and equal opportunity components of the federal programs; (F) financial records in accordance with the applicable requirements listed in 24 C.F.R. § 570.502; and (G) other records necessary to document compliance with Subpart K of 24 CFR Part 570.

14.2 CONTRACTOR shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the CONTRACT for a period of five (5) years. The retention period begins on the date of the submission of CITY's annual performance and evaluation report to HUD in which the activities assisted under this CONTRACT are reported on for the final time. Notwithstanding the above, if there are litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five (5) year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five (5) year period, whichever occurs later.

14.3 Nothing in this Article XIV shall be construed to relieve CONTRACTOR of: (A) responsibility for retaining accurate and current records which clearly reflect the level and benefit of services provided under this CONTRACT; and (B) fiscal accountability and liability pursuant to this CONTRACT and any applicable rules, regulations, and laws.

14.4 CONTRACTOR agrees to include the substance of this Article XIV in all of its subcontracts.

**ARTICLE XV**  
**ACCESSIBILITY OF RECORDS**

15.1 At any reasonable time and as often as CITY may deem necessary, CONTRACTOR shall make all of its records available to CITY, HUD, or any of their authorized representatives, and shall permit CITY, HUD, or any of their authorized representatives to audit, examine, and make excerpts and/or copies of same. CONTRACTOR's records shall include, but shall not be limited to, the following: reports, test results, laboratory results, field notes, and other data.

**ARTICLE XVI**  
**PERFORMANCE RECORDS AND REPORTS**

16.1 As often and in such form as CITY may require, CONTRACTOR shall furnish CITY with performance records and reports as deemed by CITY as pertinent to the matters covered by this CONTRACT.

**ARTICLE XVII**  
**MONITORING AND EVALUATION**

17.1 CONTRACTOR agrees that CITY may carry out monitoring and evaluation activities so as to ensure CONTRACTOR's compliance with this CONTRACT and all applicable Legal Requirements. CONTRACTOR shall cooperate fully with CITY in the development, implementation, and maintenance of record-keeping systems and to provide CITY with any data determined by CITY to be reasonably necessary for its effective fulfillment of its monitoring and evaluation responsibilities. CONTRACTOR agrees that it will cooperate with CITY in such a way so as not to obstruct or delay CITY in its monitoring of CONTRACTOR's performance and, to the extent necessary, CONTRACTOR will designate one of its staff to coordinate the monitoring process as reasonably requested by CITY staff. After each official monitoring visit, CITY shall provide CONTRACTOR with a written report of monitoring findings. Copies of any fiscal, management, or audit reports by any of CONTRACTOR's funding or regulatory bodies shall be submitted to CITY within five (5) business days of receipt thereof by CONTRACTOR.

17.2 Notwithstanding anything to the contrary in this CONTRACT, it is expressly understood and agreed by the Parties that CITY shall have no duty to supervise or to inspect the work or any activity conducted or to be conducted on the Property, or any books and records, and that any such inspection shall be for the sole purpose of determining whether or not the obligations of CONTRACTOR hereunder are being properly discharged and of preserving CITY's rights hereunder. If CITY or its representative should inspect the Property and the work thereon or any books and records of CONTRACTOR, CITY or such representative shall have no liability or obligation to CONTRACTOR or any third party arising out of such inspection. Inspection not followed by notice of default shall not constitute a waiver of any default then existing; nor shall it constitute an acknowledgment or representation by CITY and its representative that there has been or will be compliance with all Legal Requirements, unless otherwise stated by CITY in the report provided under section 17.1, or that the work done in connection with the Project is free from defective materials or workmanship or a waiver of CITY's right thereafter to insist that the improvements be constructed in accordance with all applicable Legal Requirements. CITY's

failure to inspect the Project or any part thereof or any books and records shall not constitute a waiver of any of CITY's rights hereunder. Neither CONTRACTOR nor any third party shall be entitled to rely upon any such inspection or review. CITY and its representatives owe no duty of care to CONTRACTOR, or any third person, with regards to the work performed by CONTRACTOR under this CONTRACT.

## **ARTICLE XVIII INSURANCE REQUIREMENTS**

18.1 CONTRACTOR agrees to comply with the following insurance provisions:

- (A) Prior to the commencement of any work under this CONTRACT, CONTRACTOR shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to CITY's Neighborhood and Housing Services Department, which shall be clearly labeled "BG Constructor Solutions, LLC; Texas Certified Lead Abatement Contractor Services" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. CITY will not accept a Memorandum of Insurance or Binders as proof of insurance. The certificate(s) must be signed by the authorized representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed or sent via email, with copies of all applicable endorsements, directly from the insurer's authorized representative to CITY. CITY shall have no duty to pay or perform under this CONTRACT until such certificate and endorsements have been received and approved by NHSD. No officer or employee, other than CITY's Risk Manager, shall have authority to waive this requirement.
- (B) CITY reserves the right to review the insurance requirements of this Article XVIII during the term of this CONTRACT and any extension hereof and to modify insurance coverages, their limits, and deductibles when deemed necessary and prudent by CITY's Risk Manager based upon changes in statutory law, court decisions, changes in the insurance market which presents as increased risk of exposure, or circumstances surrounding this CONTRACT. In no instance will CITY allow modification whereby CITY may incur increased risk.
- (C) CONTRACTOR shall obtain and maintain in full force and effect for the duration of this CONTRACT, and any extension hereof, at CONTRACTOR's sole expense, insurance coverage written on an occurrence basis, by companies authorized to do business in the State of Texas and with an A.M. Best's rating of no less than A-(VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability, to include coverage for the following:	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence;

a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors f. Damage to Property rented by you	\$2,000,000 General Aggregate, or its equivalent in Umbrella Liability Coverage  f. \$300,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>C</u> ombined <u>S</u> ingle <u>L</u> imit for <u>B</u> odily <u>I</u> njury and <u>P</u> roperty <u>D</u> amage of \$1,000,000 per occurrence
5. Professional Liability	\$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 act, malpractice, error, or omission in professional services.
6. Environmental Insurance – (Contractor’s Pollution Legal Liability for transporting or handling hazardous materials or regulated substances)	\$1,000,000 per occurrence; \$2,000,000 general aggregate for claims associated with hazardous materials, to include spills and mitigation
*7. Cyber Liability	\$1,000,000 per claim \$1,000,000 general aggregate, or its equivalent in Umbrella Liability Coverage.
8. Installation Floater	All Risk Policy written on occurrence basis for 100% replacement cost of “equipment & materials” to be installed to any new or existing structure.
9. Umbrella Liability Coverage	\$2,000,000 per occurrence combined limit Bodily Injury (including death) and Property Damage.
* If Applicable	

- (D) CONTRACTOR agrees to require, by written contract, that all subcontractors providing goods or services under this CONTRACT obtain the same categories of insurance coverages required of CONTRACTOR herein, and provide a certificate of insurance and endorsement that names CONTRACTOR and CITY as additional insureds. CONTRACTOR shall provide CITY with subcontractor certificates and endorsements prior to the commencement of any work by the subcontractor. This provision may be modified by CITY’s Risk Manager, without subsequent City

Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this CONTRACT. Such modification may be enacted by letter signed by CITY's Risk Manager, which shall become a part of the contract for all purposes.

- (E) As they apply to the limits required by CITY, CITY is entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. CONTRACTOR shall pay any costs incurred resulting from provision of said documents. CONTRACTOR must comply with such requests within 10 days by submitting the requested insurance documents to CITY at the address provided below:

City of San Antonio  
Attention: Neighborhood & Housing Services Department  
100 W. Houston Street  
San Antonio, Texas 78205

- (F) CONTRACTOR agrees that with respect to the above-required insurance, all insurance policies must contain or be endorsed to contain the following provisions:
- (i) Name CITY and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, with respect to operations and activities of, or on behalf of, the named insured performed under contract with CITY, with the exception of the workers' compensation and professional liability policies;
  - (ii) Provide for an endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy. CITY's insurance is not applicable in the event of a claim;
  - (iii) Workers' compensation and employers' liability, general liability and automotive liability policies will provide a waiver of subrogation in favor of CITY; and
  - (iv) Provide thirty (30) days advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) days advance notice for nonpayment of premium.
- (G) Within five (5) days of a suspension, cancellation, material change in coverage, or non-renewal of coverage, CONTRACTOR shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend CONTRACTOR's performance should there be a lapse in coverage at any time during this CONTRACT. Failure to provide and to maintain the required insurance shall constitute a material breach of this CONTRACT.



- (H) In addition to any other remedies CITY may have upon CONTRACTOR's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order CONTRACTOR to stop work hereunder, and/or withhold any payment(s) which become due to CONTRACTOR under this CONTRACT until CONTRACTOR demonstrates compliance with the requirements hereof.
- (I) 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 CONTRACT.
- (J) CONTRACTOR understands and agrees that its insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by CITY for liability arising out of the activities under this CONTRACT.
- (K) CONTRACTOR understands and agrees that the insurance required is in addition to and separate from any other obligation contained in this CONTRACT and that no claim or action by or on behalf of CITY shall be limited to insurance coverage provided.
- (L) CONTRACTOR and any subcontractors are responsible for all damage to their own equipment and/or property resulting from their own negligence.

## ARTICLE XIX INDEMNIFICATION

### 19.1 INDEMNIFICATION.

(A) CONTRACTOR covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of CITY (each, an "*Indemnified Party*" and collectively, "*Indemnified Parties*"), individually and collectively, from and against any and all actual costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon CITY directly or indirectly arising out of, resulting from or related to CONTRACTOR'S activities under this CONTRACT, including any acts or omissions of CONTRACTOR, any of CONTRACTOR's agents, officers, directors, representatives, employees, consultants or subcontractors of CONTRACTOR, while in the exercise of the rights or performance of the duties under this CONTRACT. The indemnity provided for in this Section 19.1 shall not apply to any liability resulting from the negligence of the CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONTRACTOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF

**TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. In addition, CONTRACTOR agrees to indemnify, defend, and hold the CITY harmless from any claim involving patent infringement, trademarks, trade secrets, and copyrights on goods supplied.**

(B) The indemnity provisions set forth in Section 19.1 are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONTRACTOR shall advise CITY in writing within twenty-four (24) hours of any claim or demand against CITY or CONTRACTOR 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. 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 Section 19.1.

(C) City shall have the right to select or to approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. CONTRACTOR shall retain CITY approved defense counsel within seven (7) business days of CITY's written notice that CITY is invoking its right to indemnification under this 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.

(D) In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any subcontractor under worker's compensation or other employee benefits act.

## **ARTICLE XX EQUAL EMPLOYMENT OPPORTUNITY**

20.1 CONTRACTOR shall comply with all applicable local, state, and federal equal employment opportunity rules, regulations, and laws. So that CITY can investigate compliance with local, state, and federal equal employment opportunity rules, regulations, and laws, CONTRACTOR shall furnish to CITY any and all information and reports reasonably requested by CITY, and shall permit access by CITY of any and all of its books, records, and accounts. In the event of non-compliance by CONTRACTOR (or CONTRACTOR's contractors, if any) with local, state, and federal equal employment opportunity, regulations, and laws, this contract may be canceled, terminated, or suspended by CITY, in whole or in part, and CONTRACTOR may be barred from further contracts with CITY.

## **ARTICLE XXI NONDISCRIMINATION**

21.1 As a condition of entering into this contract, CONTRACTOR represents and warrants that it will not unlawfully discriminate against, deny benefits to, or exclude from participation, any person under any program or activity funded in or in part with funds provided under this contract on the grounds of race, color, sex (including gender identity and sexual orientation), age, religion, national origin, disability or familial status, nor shall CONTRACTOR retaliate against any person for reporting instances of such discrimination. CONTRACTOR also represents that it will not unlawfully discriminate in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or customers, nor shall CONTRACTOR retaliate against any person for reporting instances of such discrimination. CONTRACTOR shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its subcontracting and supply opportunities. CONTRACTOR covenants that it, its agents, employees or anyone under CONTRACTOR's control, will not discriminate against any individual or group on account of race, color, sex (including gender identity and sexual orientation), age, religion, national origin, handicap or familial status, in employment practices or in the use of or admission to the premises at, in or on which the Project is to be performed, which said discrimination CONTRACTOR acknowledges is prohibited.

## **ARTICLE XXII NO SOLICITATION/CONFLICTS OF INTEREST**

22.1 CONTRACTOR warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this CONTRACT upon a contract or understanding for a commission, percentage, brokerage, or contingent fee and further that no such understanding or agreement exists or has existed with any employee of CONTRACTOR or CITY. For breach or violation of this warranty, CITY shall have the right to terminate this CONTRACT without liability or, at its discretion, to deduct from this CONTRACT or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.

22.2 CONTRACTOR covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this CONTRACT. CONTRACTOR further covenants that in the performance of this CONTRACT, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

22.3 CONTRACTOR further covenants that in connection with the performance of this CONTRACT or participation in any decisions related hereto, no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.

22.4 No member of CITY's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this CONTRACT shall:

- (A) Participate in any decision relating to this CONTRACT which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest; or
- (B) Have any direct or indirect interest in this CONTRACT or the proceeds thereof .

22.5 CONTRACTOR acknowledges that it is informed that CITY's Charter 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 CITY or any CITY agency, such as CITY owned utilities. An officer or employee has a "***prohibited financial interest***" in a contract with CITY or in the sale to 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/her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity; a business entity in which the officer or employee, or his/her parent, child or spouse directly or indirectly owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10%) or more of the fair market value of the business entity; or a business entity in which any individual or entity above listed is a sub-contractor on a CITY contract, a partner or a parent or subsidiary business entity. CONTRACTOR warrants and certifies, and this contract is made in reliance thereon, that it, its employees, agents, consultants, officers, or any other party providing services under this Agreement, are neither a CITY officer nor employee with a "***prohibited financial interest***" as identified herein. CONTRACTOR further warrants and certifies that it has tendered to CITY a Discretionary Contracts Disclosure Statement in compliance with CITY's Ethics Code.

22.6 In accordance with 24 CFR 92.356, CONTRACTOR acknowledges and agrees that that no employee, agent, consultant, officer, or CITY officers or employees who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities may obtain a financial interest or financial benefit from a HOME assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to the HOME-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

### **ARTICLE XXIII POLITICAL AND SECTARIAN ACTIVITY**

23.1 Political Activity. None of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state, or federal legislation.

23.2 Sectarian Activity. None of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, directly or indirectly, for the construction, operations, maintenance or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.

**ARTICLE XXIV**  
**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,**  
**PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS**

24.1 Certification Regarding Debarment, Suspension, and Proposed Debarment. CONTRACTOR certifies, and CITY relies thereon in execution of this CONTRACT, that neither CONTRACTOR nor its principals are presently debarred, suspended, proposed for debarment, or declared ineligible, or voluntarily excluded for the award of contracts by any federal governmental agency or department. “*Principals*,” for the purposes of this certification, means officers, directors, owners, partners, members, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions).

- (A) CONTRACTOR shall provide immediate written notice to CITY if at any time during the term of this CONTRACT, including any renewals hereof, CONTRACTOR learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.
- (B) CONTRACTOR’s certification is a material representation of fact upon which CITY has relied in entering into this CONTRACT. Should CITY determine, at any time during this CONTRACT, including any renewals hereof, that this certification is false, or should it become false due to changed circumstances, City may terminate this CONTRACT in accordance with Article XXX.

24.2 Section 2271.002, Tex. Gov. Code – Prohibition on Contracts with Companies Boycotting Israel. Section 2271.002 of the Texas Government Code provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. By executing this CONTRACT, CONTRACTOR hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of this CONTRACT. For purpose of this representation, “*Boycott Israel*” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes and does not include actions otherwise required or authorized by applicable federal law. CONTRACTOR’s verification is a material representation of fact upon which the CITY has relied in entering into this CONTRACT. Should CITY determine, at any time during this CONTRACT, including any renewals or extensions hereof, that this certification is false, or should it become false due to changed circumstances, the CITY may terminate this CONTRACT.

24.3 Submission of Form 1295. Section 2252.908 of Texas Government Code provides that a governmental entity may not enter into a contract described therein with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity at the time the business entity submits the signed contract to the governmental entity. The Texas Ethics Commission has adopted a form ("**Form 1295**") and rules regarding the filing of Form 1295 with the Texas Ethics Commission and submission of a copy of Form 1295 to the governmental entity. Form 1295 and additional information may be found on the Texas Ethics Commission website. If applicable, CONTRACTOR warrants and certifies that prior to entering into this CONTRACT, CONTRACTOR filed Form 1295 with the Texas Ethics Commission and submitted a copy of said form to CITY.

24.4 Section 2252.152, Tex. Gov. Code – Contracts With Companies Engaged in Business With Iran, Sudan, or Foreign Terrorist Organization Prohibited. Texas Government Code § 2252.152 provides that a governmental entity may not enter into a governmental contract with an entity or organization that is identified on a list prepared and maintained under Texas Government Code §§ 2270.0201 or 2252.153. By executing this CONTRACT with CITY, CONTRACTOR hereby certifies that is not identified on such a list and that it will notify CITY should it be placed on such a list while under contract with CITY. CITY hereby relies on CONTRACTOR's certification. If found to be false, CITY may terminate this CONTRACT for material breach.

24.5 Chapter 2276, Tex. Gov. Code – Certain Energy Companies. Texas Government Code Chapter 2276 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. "*Company*" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship. "*Boycott energy company*" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described in (A). CONTRACTOR hereby verifies that it does not boycott energy companies and will not boycott energy companies during the term of this CONTRACT. City hereby relies on Company's verification. If found to be false, City may terminate this CONTRACT for material breach. This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

24.6 Chapter 2274, Tex. Gov. Code – Firearm and Ammunition Industries. Texas Government Code Chapter 2274 provides that a governmental entity may not enter into a contract

with a company for goods or services, unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. "*Company*" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. This term does not include a sole proprietorship. "*Discriminate against a firearm entity or firearm trade association*": (A) means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association, and (B) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy or regulations or a directive by a regulatory agency or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association. CONTRACTOR hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate against a firearm entity or firearm trade association during the term of this CONTRACT. City hereby relies on CONTRACTOR's verification. If found to be false, City may terminate the CONTRACT for material breach. This section only applies to a contract that:

- (1) is between a governmental entity and a company with 10 or more full-time employees; and
- (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

## **ARTICLE XXV PUBLICITY**

25.1 When appropriate, as determined by and upon written approval of CITY, CONTRACTOR shall publicize the activities conducted by CONTRACTOR pursuant to the terms of this CONTRACT. In any news release, sign, brochure, or other advertising medium disseminating information prepared or distributed by or for CONTRACTOR, however, mention shall be made that the Project was made possible with HUD funding and CITY participation.

## **ARTICLE XXVI SPECIAL PROVISIONS**

26.1 CONTRACTOR must conduct lead hazard control work as stated in the Master Specifications and Occupant Protection Plan ("*OPP*") completed by CITY's environmental consultants and in accordance with the Program's Policies and Procedures, local, state and federal

regulations including but not limited to: HUD 24 C.F.R. Part 35, Title IV of the Toxic Substances Control Act 15 U.S.C. §2681 et seq, EPA 40 C.F.R. Part 745, OSHA 29 C.F.R. §1926.62, and Texas Department of State Health Services (“**DSHS**”) Environmental Lead Reduction Rules. In addition, all work performed shall meet or exceed all applicable local code, ordinances, and regulations and comply with all applicable federal and state laws and regulations.

26.2 CONTRACTOR will work each weekday, Monday-Friday, 8:00am-5:00pm, Central Time, unless otherwise authorized, in writing by CITY to work other hours or days.

26.3 CONTRACTOR shall submit copies of certifications, respiratory fit tests and proof of insurance to CITY’s San Antonio Green and Healthy Homes Program Manager prior to commencing any lead hazard control work.

26.4 CONTRACTOR shall submit DSHS notifications/amendments and copy the assigned environmental consultant and CITY’s staff prior to start of lead hazard control work. CONTRACTOR is responsible for updating the notification when deemed necessary.

26.5 CONTRACTOR shall be responsible, at its sole costs, for any costs associated with failed clearances, which include but not limited to: dust wipes, soil samples, visuals, and environmental consultant’s fees.

26.6 CONTRACTOR shall be responsible for, at its sole costs, for any costs associated with exceeding the allotted time for lead hazard control work to include relocation costs and other related expenses.

26.7 CONTRACTOR shall be responsible for securing the job site and ensuring unauthorized persons do not enter the designated area of containment.

26.8 CONTRACTOR shall submit a close-out package with final invoice, in the form and containing information requested by the CITY, at the end of each project to include, but not limited to: copies of DSHS notifications, daily job site logs, and waste manifest for an EPA regulated landfill.

26.9 CONTRACTOR shall obtain and close out permits as required through CITY’s Developmental Services Department.

26.10 CONTRACTOR shall utilize the Fixed Cost Unit List attached hereto as Exhibit “B” to determine costs of lead hazard work on any given project. (Note: The Fixed Cost Unit list may be updated by the CITY on a bi-annual basis, or when deemed necessary and prudent in the sole discretion of the CITY.)

26.11 CONTRACTOR shall have a minimum of two (2) employees on the job site at all times, unless final clearances are pending and no other work is necessary.

26.12 CONTRACTOR shall possess and maintain a U.S. Environmental Protection Agency (“**EPA**”) Remodeling, Renovation and Painting Certification as required by law at all times during the term of this CONTRACT.



26.13 CONTRACTOR shall possess and maintain a DSHS certification for lead abatement contractors as required by law at all times during the term of this CONTRACT.

26.14 CONTRACTOR agrees to follow CITY staff direction on all Projects covered by this contract and further agrees to follow any phasing plans which may be provided by the CITY in writing. If deviation from the phasing plans provided by the CITY is necessary, CONTRACTOR agrees to notify CITY in writing no later than 72 hours in advance of any necessary deviation.

26.15 CONTRACTOR agrees to submit a proposal within two (2) weeks of walkthrough with CITY staff. If the submitted proposal requires more than three (3) revisions, CITY staff shall have the option to proceed to the next available contractor on rotation.

26.15 CONTRACTOR agrees to submit any and all Change Orders to CITY staff for review and approval prior to commencing the requested additional work. CONTRACTOR may request additional day(s) in the CHANGE ORDER; however, CITY staff shall have sole discretion to accept or lower the request number of additional day(s) requested. Failure of CONTRACTOR to follow the Change Order procedure outlined herein may result in no additional days being granted or no payment of the Change Order amount requested.

26.16 CONTRACTOR agrees that CITY staff will have the option, in their sole discretion, to remove CONTRACTOR from the work rotation if: (i) CONTRACTOR refuses six (6) case assignments from the CITY in a calendar year; (ii) CONTRACTOR fails to respond to three (3) case assignments in a calendar year; or (iii) CONTRACTOR withdraws from previously accepted case assignments, up to a total of six (6) case assignments in a calendar year.

26.17 CONTRACTOR agrees to request any necessary visual inspections from CITY staff by providing, at minimum, twenty-four (24) hour advanced written notice to CITY staff.

26.18 In the sole and absolute discretion of the CITY, CONTRACTOR agrees that excessive delays caused by no work undertaken by CONTRACTOR on a daily basis may result CITY's election to terminate this contract for non-performance.

## **ARTICLE XXVII**

### **RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL**

27.1 All finished or unfinished reports, documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, and any responses, inquiries, correspondence and related material submitted by CONTRACTOR shall, upon receipt, become the property of CITY.

27.2 Intellectual Property. CONTRACTOR agrees to abide by the following intellectual property rights:

- (A) CONTRACTOR shall pay all royalties and licensing fees. CONTRACTOR shall hold the CITY harmless and indemnify CITY from the payment of any royalties,

damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials, and methods used in the performance of services under this contract. CONTRACTOR agrees to defend all suits for infringement of any intellectual property rights. Further, if CONTRACTOR has reason to believe that the design, service, process, or product specified is an infringement of an intellectual property right, CONTRACTOR shall promptly give such information to CITY.

- (B) Upon receipt of notification that a third party claims that the program(s), hardware, or both, infringe upon any United States patent or copyright, CONTRACTOR will immediately either:
  - i. Obtain, at CONTRACTOR's sole expense, the necessary license(s) or rights that would allow the CITY to continue using the programs, hardware, or both, as the case may be, or, alter the programs, hardware, or both, so that the alleged infringement is eliminated, and
  - ii. Reimburse the CITY for any expenses incurred by CITY to implement emergency backup measures if the CITY is prevented from using the programs, hardware, or both, while the dispute is pending.
- (C) CONTRACTOR further agrees to assume the defense of any claim, suit, or proceeding brought against the CITY for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this contract, and to assume the expense of any such defense, including costs of investigations, reasonable attorney's fees, expert witness fees, damages, and any other litigation-related expenses and to indemnify the CITY against any monetary damages and/or costs awarded in such suit; provided that –
  - i. CONTRACTOR is given the sole and exclusive control of all negotiations relative to the settlement thereof, but that CONTRACTOR agrees to consult with the CITY ATTORNEY and CITY during such defense or negotiations and will make a good faith effort to avoid any position adverse to the interest of the CITY; and
  - ii. The software or the equipment is used by the CITY in the form, state, or condition as delivered by the CONTRACTOR or as is modified without the permission of the CONTRACTOR, so long as such modification is not the source of the infringement claim; and
  - iii. The liability claimed shall not have arisen out of the CITY's negligent act or omission, and the CITY promptly provides CONTRACTOR with written notice fifteen (15) days following formal assertion of any claim with respect to which the CITY asserts that CONTRACTOR assumes responsibility for under this section.

27.3 Ownership and Licenses. In accordance with Texas law, CONTRACTOR acknowledges and agrees that:

- (A) All local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on behalf of the CONTRACTOR as a result of work performance under this contract shall be the subject of any copyright or proprietary claim by CONTRACTOR.
- (B) The term “*local government record*” means any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to any law including an ordinance, or in the transaction of official business.
- (C) CONTRACTOR acknowledges and agrees that all local government records as described above and produced in the course of work covered by the contract will belong to and be the property of the CITY.
- (D) CONTRACTOR further acknowledges and agrees that it shall not, under any circumstances, release any records created during performance of this contract to any entity without the prior written permission of the CITY, unless required to do so by a court of competent jurisdiction.

27.4 City Data. CONTRACTOR agrees to comply with CITY’s Data Governance Administrative Directive 7.12 and Data Security Administrative Directive 7.3a in the same manner required of CITY employees, interns, volunteers and trainees, for City Data arising out of, resulting from, or related to CONTRACTOR’s activities under this contract.

## ARTICLE XXVIII SUBCONTRACTING

### 28.1 Subcontracting.

- (A) Notwithstanding anything to the contrary in this CONTRACT, none of the Work or Services performed under this CONTRACT shall be subcontracted without the prior written approval of the CITY. Any Work or Services approved by CITY for subcontracting shall be subcontracted only by written contract or agreement and, unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of this CONTRACT. Compliance by subcontractors with this CONTRACT shall be the responsibility of CONTRACTOR.
- (B) CONTRACTOR agrees that no subcontract approved pursuant to this CONTRACT shall provide for payment on a “cost plus a percentage of cost” basis

- (C) Despite CITY approval of a subcontract, CITY shall in no event be obligated to any third party, including any subcontractor of CONTRACTOR, for performance of work or services, nor shall CITY funds ever be used for payment of work or services performed prior to Effective Date of this CONTRACT or extending beyond termination of this CONTRACT.
- (D) CONTRACTOR shall ensure that all subcontractors are certified, reputable, and competent. CONTRACTOR shall provide CITY copies of all certificates of its employees, subcontractors, and their employees who will be performing Work which requires a certificate under the Texas Environmental Lead Reduction Rules, as may be amended for time to time. Such certificates shall provide the name of the certified worker and certificate number.

## **ARTICLE XXIX SUSPENSION OF FUNDING**

29.1 Upon the occurrence of any of the following events, (each an “***Event of Default***”) CITY, without limiting or waiving any rights it may otherwise have, may, at its discretion, withhold further payments to CONTRACTOR by providing CONTRACTOR five (5) business days’ written notice specifying the alleged default or failure as well as the action required for cure thereof, if any:

- (A) Neglect or failure by CONTRACTOR to perform or observe any of the terms, conditions, covenants or guarantees of this CONTRACT, or any other valid, written contract or amendment between CITY and CONTRACTOR that continues beyond all applicable notice, grace, and cure periods;
- (B) Finding by CITY, in its reasonable judgment, that CONTRACTOR is in such unsatisfactory financial condition as to endanger performance under this CONTRACT, including, but not limited to:
  - (i) Apparent inability of CONTRACTOR to meet its financial obligations;
  - (ii) Appearance of items that reflect detrimentally on the creditworthiness of CONTRACTOR, including, but not limited to, liens, encumbrances, etc., on the assets of CONTRACTOR; or
  - (iii) CONTRACTOR is delinquent, in the ordinary course of business, in the payment of taxes or in the payment of costs of performance of this CONTRACT;
- (C) Appointment of a trustee, receiver or liquidator for all or a substantial part of CONTRACTOR’s property, or institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against CONTRACTOR;
- (D) The entry by a court of competent jurisdiction of a final order providing for the modification or alteration of the rights of CONTRACTOR’s creditors; or

- (E) Violation by CONTRACTOR of any Legal Requirement to which CONTRACTOR is bound or shall be bound under the terms of this CONTRACT.

29.2 Upon the occurrence of an Event of Default, CITY shall grant CONTRACTOR such period of time as CITY, in its sole discretion, deems appropriate to take and complete corrective action, but such period of time shall not exceed ten (10) days to correct monetary Events of Default and thirty (30) days to correct non-monetary Events of Default unless otherwise agreed by CITY. At the end of the applicable remedial period, if any, CITY shall review CONTRACTOR's effort to correct the Event of Default. Upon expiration of the suspension period: (A) Should CITY determine that the Event of Default has been cured, CONTRACTOR may be restored to full compliance status and paid all eligible funds withheld during the suspension period; or (B) Should CITY determine continued non-compliance, the termination provisions of Article XXX may be effectuated.

### **ARTICLE XXX TERMINATION**

30.1 If an Event of Default specified in Section 29.1 continues beyond all applicable notice cure period (if any), CITY may immediately terminate this CONTRACT for cause by providing written notice to CONTRACTOR. CITY also retains the right, in its sole and absolute discretion, to immediately terminate this contract should any compliance issues be raised by the Texas Department of State Health Services during the course of an active abatement.

30.2 Notwithstanding anything to the contrary in this CONTRACT, CITY may terminate this CONTRACT for convenience at any time, in whole or in part, if CITY determines that continuation of this CONTRACT is not in CITY's interest. CITY shall provide CONTRACTOR at least thirty (30) days' advance written notice prior to termination under this Section 30.2; *provided however*, if termination is due to the expenditure, reduction or termination by HUD or the federal government of funds allocated for the Project, termination shall be effective immediately upon CITY providing notice to CONTRACTOR.

30.3 Upon termination of this CONTRACT, CONTRACTOR shall be entitled to receive just and equitable compensation for any Work satisfactorily completed and approved in accordance with this CONTRACT prior to the termination date. The question of satisfactory completion of such Work shall be determined by the CITY alone, and its decision shall be final.

30.4 CONTRACTOR may terminate this CONTRACT for any of the following reasons: (A) cessation of outside funding upon which CONTRACTOR depends for performance hereunder; or (B) upon the dissolution of CONTRACTOR's organization, provided such dissolution was not occasioned by a breach of this CONTRACT.

30.5 Upon decision to terminate by either CITY or CONTRACTOR, the terminating party shall promptly provide written notice to the other party with the effective date of termination. Upon receipt of a termination notice from CITY or determination by CONTRACTOR to terminate this CONTRACT, CONTRACTOR shall immediately cancel, withdraw, or otherwise terminate any outstanding orders or subcontracts which relate to the performance of this CONTRACT. CITY

shall not be liable to CONTRACTOR for any expense, encumbrances, or obligations whatsoever incurred after the date of termination.

30.6 Upon receipt of notice to terminate, all finished or unfinished documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, prepared by or on behalf of CONTRACTOR under this CONTRACT shall, at the option of CITY, and in accordance with Article XXVII, become the property of CITY and shall, if requested or agreed to by CITY, be delivered by CONTRACTOR to CITY in a timely and expeditious manner.

30.7 Within thirty (30) days after the termination date, CONTRACTOR shall submit a statement to CITY indicating in detail the Work performed under this CONTRACT prior to the effective date of termination.

30.8 Termination of this CONTRACT shall not relieve CONTRACTOR from the payment of any sum(s) that shall then be due and payable or become due and payable to CITY hereunder or as provided for at law or in equity, or any claim for damages then or theretofore accruing against CONTRACTOR hereunder or by law or in equity, and any such termination shall not prevent CITY from enforcing the payment of any such sum(s) or claim for damages from CONTRACTOR. Instead, all rights, options, and remedies of CITY contained in this CONTRACT shall be construed and held to be cumulative and no one of them shall be exclusive of the other, and CITY shall have the right to pursue any one or all of such remedies or any such other remedy or relief which may be provided by law or in equity whether or not stated in this CONTRACT.

30.9 Notwithstanding anything to the contrary in this CONTRACT, if CONTRACTOR's Work is not fully completed to the satisfaction of CITY in accordance with the terms of this CONTRACT, CONTRACTOR shall refund any and all sums of money paid by CITY to CONTRACTOR within ten (10) business days of its receipt of CITY's written request.

30.10 Upon termination of this CONTRACT by CITY under Section 29.1, CONTRACTOR shall be barred from future CONTRACTS with CITY absent the express written consent of CITY's City Manager or her designee.

## **ARTICLE XXXI MISCELLANEOUS**

31.1 Entire Contract; Amendments. This CONTRACT, including any Exhibits attached hereto and thereto, contains the complete and entire understanding and agreement of the Parties with respect to the subject matter hereof and thereof and supersedes all prior and contemporaneous understandings, conditions and agreements, oral or written, express or implied, between the Parties. Except when the terms of this CONTRACT expressly provide otherwise, CITY and CONTRACTOR may amend this CONTRACT (and any Exhibits attached hereto) by an instrument in writing executed by duly authorized by representatives of both parties. Notwithstanding the foregoing, it is understood and agreed by the Parties that applicable changes in local, state and federal rules, regulations or laws shall automatically be incorporated into this CONTRACT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation, or law.

31.2 Governing Law. THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES ARE PERFORMABLE IN BEXAR COUNTY, TEXAS. THE PARTIES HEREBY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE STATE OF TEXAS AND COURTS LOCATED IN BEXAR COUNTY, TEXAS AND AGREE THAT VENUE IS PROPER THEREIN, WITH RESPECT TO ANY DISPUTE, CLAIM, CAUSE OF ACTION OR THE LIKE ARISING FROM OR OUT OF THIS CONTRACT OR ANY RELATED CONTRACT, ARRANGEMENT OR UNDERSTANDING.

31.3 Parties Bound. This CONTRACT shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, except as otherwise provided for herein.

31.4 Severability. In case any one or more of the provisions of this CONTRACT shall for any reason be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision and this CONTRACT shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

31.5 Interpretation. When a reference is made in this CONTRACT to an Article, Section, Attachment, or Exhibit, such reference will be to an Article, Section, Attachment, or Exhibit of this CONTRACT unless otherwise indicated. When a reference is made to this CONTRACT in this CONTRACT, such reference will be to this CONTRACT and the Attachments and Exhibits attached hereto, as this CONTRACT and the Attachments and Exhibits may be amended from time to time in accordance with Section 31.1. The headings in this CONTRACT are for reference only and shall not affect the interpretation of this CONTRACT. Where appropriate, all personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all other genders and singular nouns used herein including the plural and vice versa. In the event any issue should arise between the Parties pertaining to the interpretation or meaning of any part of this CONTRACT or its governing rules, regulations, or laws, CITY, as the Party ultimately responsible to HUD for matters of compliance, shall have the final authority to render or secure an interpretation.

31.6 Assignment. CONTRACTOR shall not transfer, pledge, or otherwise assign this CONTRACT, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of CITY, which may be withheld in its sole discretion. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person. If an assignment is made without obtaining the CITY's written consent, CITY shall have the option, in its sole discretion, to immediately terminate this CONTRACT.

31.7 Waiver. No waiver by CITY of a breach of any of the terms, conditions, covenants, or guarantees of this CONTRACT shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of CITY to insist in any one or more cases upon the strict performance of any of the covenants of this CONTRACT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. No act or omission of CITY shall in any manner impair or prejudice any right, power, privilege, or remedy

available to CITY hereunder or by law or in equity; such rights, powers, privileges, or remedies to be always specifically preserved hereby. No representative or agent of CITY may waive the effect of the provisions of this Section 31.7.

31.8 Legal Expenses for Adversarial Proceedings. Under no circumstances will the funds received under this CONTRACT be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against CITY or any other public entity. During the term of this CONTRACT, if CONTRACTOR files and/or pursues an adversarial proceeding against CITY then, at CITY's option, this CONTRACT and all access to the funding provided for hereunder may terminate. CONTRACTOR, at CITY's sole option, may be ineligible for consideration to receive any future funding while any adversarial proceeding against CITY remains unresolved. For purposes of this Section 31.8, "***adversarial proceeding***" includes any cause of action filed by CONTRACTOR in a state or federal court, as well as any state or federal administrative hearing, but does not include alternative dispute resolution proceedings.

31.9 Notices. All notices, demand, requests, and other communications hereunder shall be in writing and shall be deemed to have been given: (A) when delivered by hand (with written confirmation of receipt); (B) one (1) business day after being sent by reputable private courier service for next business day delivery (receipt requested); or (C) five (5) business days after being deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested. A Party's rejection or other refusal of a notice, demand or request submitted by the other Party, or the inability to deliver such communications because of changed address of which no notice was given as herein required, shall be deemed to be receipt of the notice, demand or request sent. All notices, demands, requests or other communications to be sent to a Party must be sent to or made at the address set forth below or at such other address as such Party may specify by providing at least thirty (30) days' prior written notice thereof to the other Party in accordance with this Section 31.9.

CITY:

City of San Antonio  
Neighborhood and Housing Services Department  
Attention: Director  
P.O. Box 839966  
San Antonio, Texas 78283-3966  
Attention: Grants Administrator

CONTRACTOR:

BG Constructor Solutions, LLC  
1716 South San Marcos, Suite #9  
San Antonio, Texas 78207  
Attention: Daniel Dickson, President

31.10 CONTRACTOR's Documents. CONTRACTOR understands that the preparation and execution of any and all documents between CONTRACTOR and any third party in furtherance of this CONTRACT and the Services to be provided hereunder is the sole



responsibility of CONTRACTOR; therefore, CONTRACTOR agrees and warrants that any such documents shall contain all provisions that will adequately protect CITY's interests and prevent CITY from incurring any liability thereunder.

31.11 Independent Contractor. CONTRACTOR is an independent contractor and is not an employee, servant, agent, partner or joint venturer of CITY. CITY is interested only in the results achieved by the services of the CONTRACTOR, and the manner of legally achieving those results is the responsibility of the CONTRACTOR. CITY is not responsible for deducting, and shall not deduct, from payments to CONTRACTOR any amounts for withholding tax, FICA, insurance or other similar item relating to CONTRACTOR or CONTRACTOR's employees. Neither CONTRACTOR nor its employees shall be entitled to receive any benefits which employees of CITY are entitled to receive and shall not be entitled to workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension, profit sharing, or social security on account of their work for CITY.

31.12 Savings Clause. If any provision of this CONTRACT, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this CONTRACT, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby; provided, however, CITY shall have the option, in its discretion, to terminate this CONTRACT and require the immediate repayment of any funds which may have been advanced hereunder within ten (10) business days after written request therefor if: (A) any provision of this CONTRACT, or the application of such provision to any person or circumstance, shall be held invalid by a court, and as a direct result of such invalidity, CITY is in material non-compliance with applicable federal or HUD statutes, regulations or rules and is required to repay to HUD or the federal government any funds which may have been advanced hereunder; or (B) HUD makes a determination that the Services provided fail to comply with applicable HUD or federal statutes, regulations or rules and requires CITY to repay to HUD or the federal government any funds which may have been advanced hereunder.

31.13 Notification of Action Brought. In the event any claim, demand, suit, proceeding, cause of action or other action (collectively, a "***Claim***") is made or brought against CONTRACTOR, CONTRACTOR shall give written notice thereof to CITY within two (2) business days after itself being notified. CONTRACTOR's notice to CITY shall state the date and hour of notification to CONTRACTOR of the Claim; the names and addresses of those instituting or threatening to institute the Claim, the basis of the Claim; and the name(s) of any others against whom the Claim is being made or threatened.

31.14 Headings. The headings in this CONTRACT are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

31.15 Errors and Omissions. Subject to the terms of this CONTRACT, neither Party hereto shall be prejudiced in any way by inadvertent errors or omissions made by such Party in connection with this CONTRACT. Upon the discovery of an inadvertent error or omission by either Party hereto, appropriate adjustments to this CONTRACT shall be made as soon as practicable to restore the Parties to the fullest extent possible to the position they would have been in had no such inadvertent error or omission occurred.

31.16 Counterparts. This CONTRACT may be executed in any number of multiple counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument. Each such counterpart shall be deemed an original, but all of which together shall constitute one and the same instrument.

*[Signatures on the Following Page]*

IN WITNESS WHEREOF, the undersigned parties have executed this CONTRACT on the dates shown below to be effective as of the *Effective Date*.

**CITY OF SAN ANTONIO,**  
a Texas municipal corporation

**BG CONSTRUCTOR SOLUTIONS, LLC**  
a Texas limited liability company

By: \_\_\_\_\_  
VERONICA GARCIA  
Director  
Neighborhood and Housing  
Services Department

By:  \_\_\_\_\_  
DANIEL DICKSON  
President

Date: \_\_\_\_\_

01 April 2025  
Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
JOE GUILLAUMIN  
Assistant City Attorney

**ATTACHMENT:**

Exhibit "A" – Lead Specifications

Exhibit "B" – Contractor Fixed Unit Cost List and Specifications Manual