



RFP No. 13-07

**COLLECTION SERVICES
FOR MUNICIPAL COURT**

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1.0 Notice to Proposers

The City of Kingsville (the "City") is soliciting sealed proposals for Request for Proposal ("RFP") No. 13-07 Collection Services for the Kingsville Municipal Court.

All addenda, notices, additional information, etc. will be posted on the City of Kingsville's website, <http://www.cityofkingsville.com/>. Five printed copies (one original plus four copies) of responses must be sealed and returned to the City of Kingsville, Attention: David Mason, Purchasing/IT Director, P. O. Box 1458, Kingsville, Texas 78364 (mailing address) or 200 E. Kleberg, Kingsville, Texas 78363 (physical address) by 1:30 p.m., Central Standard Time, on February 12, 2013. All responses must be plainly marked with the proposal name and RFP number: "RFP 13-07 Collection Services for the Kingsville Municipal Court".

Proposer is responsible for delivery of response by the due date and time set. Responses received after the due date and time will not be considered.

The information contained in these specifications is confidential and is to be used only in connection with preparing this proposal.

The City of Kingsville reserves the right to reject any and all proposals and waive informalities in proposals received.

All questions concerning this RFP must be addressed to the following point of contact:

David Mason
Purchasing/IT Director
200 E. Kleberg 78363
P.O. Box 1458 78364
Kingsville, Texas
Phone: (361) 595-8025
Fax: (361) 595-8035
Email: dmason@cityofkingsville.com

2.0 Background and Current Circumstances

2.1 City of Kingsville

Based on the reviewed 2010 Census of Kingsville, the City now has a population 26,213; this represents a 2.49 percent increase over the 2000 Census of 25,757. The geographic location of the City is on U.S. Highway 77 which has been proposed to be the new Interstate 69 which will facilitate travel from Mexico, Central and South America to the U.S. and Canada. The City is also the home to a major military installation, NAS Kingsville, and tourist attraction, the King Ranch.

2.2 Kingsville Municipal Court

The mission of the Municipal Court is to effectively coordinate the operation of the Municipal Court, which enhances the quality of life for the citizens and the community, while providing dignity, respect, and friendly customer service to each individual.

The Municipal Court handles the judicial processing of class "C" misdemeanors that originate from traffic citations, citizen complaints, code violations, and misdemeanor arrests, occurring

within the territorial limits of the City of Kingsville. The Municipal Court processing is pre-determined by the Texas Code of Criminal Procedure and the Code of Judicial Conduct.

The Municipal Court Judge holds bi-monthly arraignment, juvenile, show cause and trial dockets. He presides over Teen Court by providing guidance and direction to the program.

A Court Administrator and two customer service representatives perform administrative and clerical activities.

3.0 Project Purpose and Objectives

3.1 Scope of Procurement

The City of Kingsville, Texas (hereafter “the City”) desires to contract for professional collection services with a private attorney or a public or private vendor, meeting all requirements of this RFP.

The Municipal Court (the “Court”) processes approximately 6,000 citations annually. The Court has over 8,251 cases in warrant status with assessed fines of approximately \$2.16 million. The objective of this RFP is to collect and/or resolve delinquent cases and decrease any accumulated backlog.

3.2 Anticipated Approach

The City expects the successful Proposer provide one or more of the services outlined in Section 3.2.1 on an as needed basis. The City authorizes the addition of a collection fee in the amount of 30 percent on each item described in Subsection (a) that is more than 60 days past due and has been referred to the attorney or vendor for collection. The collection fee does not apply to a case that has been dismissed or acquitted by a court of competent jurisdiction, or to any amount that has been satisfied through jail credit or community service. The collection fee may be applied to any balance remaining after a partial credit for time served or community service if the balance is more than 60 days past due. A defendant will not be held liable for the collection fee if the Court determines the defendant indigent or possessing insufficient resources or income, or is otherwise unable to pay all or part of the underlying fine or costs. The judge reserves the right to determine any non- collection of fees on any case. All payments must be made directly to the Court. Successful Proposer will provide an itemized invoice monthly detailing all cases known to have been resolved in the prior month. Payment will be made to successful proposer after review and acceptance of the invoice in accordance with the Texas Prompt Payment Act. The City does not consider submission of a partial payment as a satisfaction of the outstanding debt. The final payment will constitute the case being close. The City will retain ownership of all information collected while providing the services covered under this RFP.

3.2.1 Included Services

Collection of:

Debts and accounts receivable such as unpaid fines, fees, court costs, forfeited bonds and restitution ordered to be paid by the Court for citation and outstanding warrants;
Amounts in cases where the accused has failed to appear as promised by written notice; and/or
Amounts as ordered paid by the Court after plea or trial.

4.0 RFP Key Events Schedule

Issue RFP	January 16, 2013
Deadline for questions on RFP	January 30, 2013, 5PM, Central Standard Time
Proposals Due	February 12, 2013, 1:30 PM, Central Standard Time
City evaluation of proposals completed (approx.)	February 22, 2013
Selection of contractor (approx.)	February 22, 2013
Commission Approval of Contract Award (approx.)	March 11, 2013

It is the expectation of the City that services will commence within 60 days of execution of contract

5.0 Proposal Submission Requirements

5.1 Proposal Submission Format

The Purchasing Office will not accept verbal proposals, or proposals received by telephone, FAX machine, nor telegraph.

The proposal must be submitted in hard copy. The Proposer shall submit one (1) original and four (4) copies of the proposal, consisting of:

Section 1: Proposal Cover Page, including authorized signatures – cover page must include:

RFP title and number

Proposer's company name, phone number, fax number, address, primary contact person, including their title and phone number

Section 2: Profile of Proposer – must include:

Previous (within the past 5 years) experience with collection services for municipal courts and/or municipalities, detailing length of service, types of services provided and collection rate.

Credentials

Affiliations

Current work load and flexibility of scheduling, size of collection staff, location where work/research will primarily be performed.

References from five (5) clients, similar in size and requirements to the City, including contact names and phone number

Complete description of data security systems in place to ensure confidentiality of records.

Complete description of collection techniques used, along with phone etiquette policies and procedures.

Description of software and other technology utilized in location of defendants, and abilities to communicate with the Court

Provide policy and procedure manual used for collections.

Section 3: Approach to be used in supplying required services – must include:

Implementation plan

Description of Proposer's ability to comply with all requirements of the RFP
Description of any additional related services Proposer provides
Completed pricing schedule (reference Section 10)

Section 4: Additional Information – must include the following:

Copies of insurance certificates

Copy of bonding certificate

Copy of disaster recovery plan and ability to rebuild or backup the City's records

Clear definition of the Proposer's participation and responsibility, including what training will be provided to City personnel.

Complete description of job positions that perform collection services as described in this RFP, and complete description of qualifications and experience of personnel holding such positions.

The Proposer may also provide supplemental marketing or technical materials, to be packaged separately from the Proposal. No materials provided by the Proposer will be returned at any time during or following this procurement.

5.2 Proposal Time Stamp

The time proposals are received shall be determined by the Purchasing Office. Purchasing Office personnel will promptly note receipt time on submissions as they are received. Proposers are responsible for insuring that their proposals are received and marked by Purchasing Office personnel by the deadline indicated.

5.3 Proposer Representations and Responsibilities

By submitting a proposal in response to this Request for Proposal, the Proposer represents that it has read and understands all elements of this Request for Proposal and has familiarized itself with all federal, state, and local laws, ordinances, and rules and regulations that in any manner may affect the cost, progress, or performance of the work contemplated under this RFP.

By submitting a proposal in response to this Request for Proposal, the Proposer represents that it has not relied exclusively upon the City's description of the services required, but has supplemented this information through due diligence research and reliance on previous experience, and that the Proposer sufficiently understands the all issues relative to the requirements of this RFP.

The failure or omission of any Proposer to receive or examine any form, instrument, addendum, or other documents or to become acquainted with conditions existing at the City or details of Court's requirements, shall in no way relieve any Proposer from any obligations with respect to its proposal or to the contract.

5.4 Proposal Withdrawal

A proposal may be modified or withdrawn by the Proposer any time prior to the time and date set for the receipt of proposals. The Proposer shall notify the Purchasing Office in writing of its intentions.

1. If a change in the proposal is requested, the modification must be so worded by the Proposer as to not reveal the original amount of the proposal.

2. Modified and withdrawn proposals may be resubmitted to the Purchasing Office up to the time and date set for the receipt of proposals.
3. No proposal can be withdrawn after the time set for the receipt of proposals and for 60 days thereafter.

5.5 Late Proposals

All proposals received in the Purchasing Office on time shall be accepted. All late proposals received by the Purchasing Office shall be returned upon request to the Proposer unopened. Proposals shall be open to public inspection only after award of the contract.

5.6 Proposer Questions

Proposers may contact the individual listed in Section 1 with any questions regarding this RFP. Proposers should not attempt to contact City Commission members, the City staff or management directly during the pre-proposal or post proposal period.

6.0 Proposal Evaluation/Selection Process

The City has attempted to provide Proposers with a comprehensive statement of requirements through this RFP for Collection Services. Proposers are requested to make written proposals which present the Proposer's qualifications and understanding of the work to be performed. Proposers are asked to address each evaluation criteria and to be specific in presenting their qualifications. Proposals should be as thorough and detailed as possible so the City may properly evaluate your capabilities to provide the required goods/services.

Selection may be made of one or more Proposers deemed to be fully qualified and best suited among those submitting proposals. The City reserves the right to award based on the responses received or to negotiate with any or all of the Proposers so selected. Price shall be considered, but will not be the sole determining factor. The City shall select the Proposer which, in its opinion, has made the proposal that is most beneficial to the City, and shall award the contract to that Proposer. Should the City determine in writing and in its sole discretion that only one Proposer is fully qualified or that one Proposer is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Proposer. The award document will be a contract incorporating by reference all the requirements, terms and conditions of the solicitation and the Proposer's proposal as negotiated.

6.1 Evaluation Criteria

The City has established specific, weighted criteria for selection. This section presents the evaluation criteria, their description, and the relative weight assigned to each (100 points maximum).

6.1.1 Qualifications and experience with collection services – 30 points

The City will evaluate each Proposer's responses to the requirements of the RFP in the following areas:

- Proposer's profile
- References supplied by Proposer

6.1.2 Demonstrated ability to manage workload with results – 30 points

The City will evaluate each Proposer's proposed services, including the following elements:

Proposer's description of current workload and flexibility
Proposed approach to providing services
Quality of references with regard to successful collections

6.1.3 Quality and collection etiquette – 30 points

Ability to offer bilingual specialists for collection contacts
Reporting documentation of number of attempts versus hits
Training and/or qualifications of collection specialists

6.1.4 Quality of response – 10 points

6.2 Proposal Evaluation Process

Each Proposer-submitted proposal will be reviewed, evaluated, and scored as part of the formal selection process. The Proposer's proposal will be a substantial part of the decision process to select a Proposer. Each proposal will be reviewed independently based solely on the merits of the proposal. The proposals will then be scored and, if necessary, a short list of Proposers will be selected for additional evaluation, Proposer presentations, demonstrations, and reference checks.

7.0 Instructions to Proposers

7.1 General Conditions

- A. Qualified Proposers or Proposers interested in responding to this RFP should include the following information as a part of their proposal. Failure to provide in the proposal any information requested in this RFP may result in the disqualification of the proposal.
1. Each Proposer shall furnish a complete name, mailing address and telephone number.
 2. Each proposal must designate the individual(s), along with respective telephone numbers, who will be responsible for answering technical and contractual questions with respect to their proposal.
 3. The City, in its sole discretion, expressly reserves the right to request and/or require any additional information from the Proposer(s) that it deems relevant with respect to this RFP.
 4. Cost for developing proposals is entirely the responsibility of the Proposer and shall not be chargeable to the City.
 5. Proposals should not contain promotional or display materials, except as they may directly answer, in whole or in part, questions contained in the RFP. Such exhibits shall be clearly marked with the applicable reference number of the questions in the RFP.
 6. The contents of the proposal and any clarification or counter proposal thereto submitted by the successful Proposer shall become part of the contractual obligation and incorporated by reference into the ensuing contract.
 7. Products and services not specifically mentioned in this RFP, but which are necessary to provide the services described by the Proposer shall be included in the proposal.
 8. It is intended that this RFP describe the requirements and response format in sufficient detail to secure comparable proposals.

9. A Proposer may withdraw his/her proposal by submitting a written request for its withdrawal over the signature of an authorized individual as described in Section 5.4 above, to the Purchasing Director any time prior to the submission deadline. The Proposer may thereafter submit a new proposal prior to the deadline. Modifications offered in any manner will not be considered if submitted after the deadline.
10. The successful Proposer may be required to provide an affidavit that he/she has not conspired with other potential suppliers in any manner to attempt to control competitive pricing. This paragraph does not, however, preclude two or more suppliers of certain parts of the requirements from presenting a combined or joint proposal for the purpose of providing a complete proposal.
11. Proposals shall be opened so as to avoid disclosure of the contents to competing offers. Details will not be released until all ensuing negotiations have been completed and contractual agreements have been executed. All information submitted on this RFP will be public record.
12. All proposals become the property of the City and will not be returned to the Proposer.
13. By submitting a response, Proposer certifies that he/she is a duly qualified, capable and otherwise bondable business entity that he/she is not in Receivership or contemplates same, and has not filed for bankruptcy.
14. Submission of a proposal in response to this Request for Proposal will affirm that the Proposer will not discriminate against any employee or applicant for employment because of race, religion, sex, sexual preference, color or national origin and that the firm will make efforts to ensure that employment is offered to applicants without regard to their race, religion, sexual preference, color and national origin.
15. Successful Proposer, its employees, subcontractors, and agents shall comply with all applicable federal and state laws, the charter and ordinances of the City of Kingsville, Texas, and all applicable rules and regulations promulgated by all local, state, and national boards, bureaus, and agencies. Successful Proposer shall further obtain and maintain all permits and licenses required, if any, for the performance of any services required hereunder.

B. Award of Contract

1. The award of the contract shall be made to the responsible Proposer, whose proposal is determined to be the best evaluated offer from negotiation, taking into consideration the relative importance of price and other evaluation factors set forth in Section 6. All proposals must be valid for a minimum of six (6) months from the date of submission.
2. All proposals submitted in accordance with the requirements of this RFP shall be considered offers to contract on the terms contained in the proposals and in this RFP and at the price offered by the successful Proposer. When the City awards a contract to the successful Proposer, it will constitute an acceptance of that offer and a contract between the City and the successful Proposer embodying the terms of this RFP and the proposal will become effective on the date of such award.

C. Reservations

1. The City expressly reserves the right to:
Waive any defect, irregularity or informality in any proposal;
Reject or cancel any or all proposals, or part(s) of any proposal;
Accept proposals from one or more Proposers; and/or;
Procure services by other means.
2. In considering the proposal(s), the City reserves the right to select the acceptable Proposer(s) who will offer contractual terms and conditions most favorable to the City.
3. Requirements stated in the RFP shall become part of any contract with the Proposer(s) resulting from this RFP, and any deviations from these requirements must be specifically defined by the Proposer in the resulting proposal, request for clarification and/or counter proposal which, if accepted, shall also become part of any contract resulting from this RFP. The City, however, reserves the right to modify the specifications of this RFP contract for segments of this RFP, and/or negotiate the price and any other terms with prospective Proposers, as needed.

D. Other Conditions

1. Venue:
Any contract awarded based on this RFP shall be governed by and construed in accordance with the laws of the State of Texas, is fully performable in Kingsville, Texas, and venue for any action related to this contract will be Kingsville, Texas.
2. Warranties and Service:
The implied warranties of merchantability and fitness for a particular purpose shall not be waived under this RFP or any contract awarded from this RFP except as expressly authorized in writing by the City granting the waiver.
3. Assignment:
The work to be provided under this RFP, or any part of the work to be provided under this RFP, shall not be assignable by the Proposer without the express written permission of the City.
4. Insurance – – the minimum insurance requirements will apply to this RFP and any resulting contract:
The successful proposer shall procure and maintain at his sole cost and expense for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the successful proposer, his agents, representatives, volunteers, employees or subcontractors. Copy of the insurance requirement affidavit as provided herein, shall be completed and returned with proposal.
Certificate of insurance documenting the following required insurance must be included in response:
Professional Liability Insurance in an amount no less than \$1,000,000 per claim and aggregate

Noncompliance may result in disqualification.

- E. Safety - successful proposer shall perform the work in accordance with applicable laws, codes, ordinances, and regulations of the state of Texas and the United States and in

compliance with OSHA and other laws as they apply to its employees. The successful proposer assumes responsibility and liability and hereby agrees to indemnify the City from any liability caused by successful proposer's failure to comply with applicable federal, state, or local regulations.

F. Authorized Signature

1. Persons who have the legal authority must sign all proposal forms.

G. Successful Proposer's Understanding and Duty

1. The successful Proposer, its employees, subcontractors, and agents shall comply with all applicable federal and state laws, the charter and ordinances of the City of Kingsville, Texas, and all applicable rules and regulations promulgated by all local, state, and national boards, bureaus, and agencies. Successful Proposer shall further obtain and maintain all permits and licenses required, if any, for the performance of any services required hereunder.
2. Successful proposer will be responsible for conducting criminal background checks and verifying employment eligibility on all custodial employees that will have access to City property and confidential information in accordance with the state and federal laws.
3. If the item(s) or service(s) specified in this Request for Proposals require successful Proposer have access to confidential data (including, but not limited to, social security numbers), successful Proposer agrees that it may (1) create, (2) receive from or on behalf of the City, or (3) have access to records or systems containing confidential data, and successful Proposer represents, warrants, and certifies that it will: (1) hold information in the strictest confidence and will not use or disclose information except as (a) permitted or required by required by this Request for Proposals and any resulting agreement, (b) required by law, or (c) otherwise authorized by the City in writing; (2) safeguard information according to commercially reasonable administrative, physical and technical standards (e.g., National Institute of Standards and Technology, Center for Internet Security, Gramm Leach Bliley Act, Payment Card Industry Data Security Standards (PCI-DSS); and (3) continually monitor its operations and take any action necessary to assure the information is safeguarded in accordance with the terms of this Request for Proposals and any resulting agreement. At the request of the City, successful Proposer agrees to provide to the City a written summary of the procedures the successful Proposer uses to safeguard this information. If an impermissible use or disclosure of any of the confidential data occurs, successful Proposer must provide written notice to the City within one (1) business day after successful Proposer's discovery of use or disclosure. Successful Proposer will promptly provide the City all information requested by the City regarding the impermissible use or disclosure. In addition to any other termination rights set forth in this Request for Proposals and any resulting and any other rights at law or equity, if the City reasonably determines that the successful Proposer has breached any restrictions or obligations set forth in this section, the City may immediately terminate any Agreement resulting from this Request for Proposals *without notice or opportunity to cure*

I. Identification

1. Identification must be worn by employees of the successful Proposer while fulfilling their duties at the specified City sites. The successful Proposer shall be responsible for instructing its employees in regard to safe working habits and shall be responsible for compliance with all Occupational Safety and Health Administration regulations.

8.0 Terms and Conditions

The City expects the successful Proposer to agree to the standard terms and conditions that would be extended by the City for the purchase of comparable services. The City's standard terms and conditions are attached for reference. These terms and conditions or, in the sole discretion of City, terms and conditions substantially similar, will constitute and govern any agreement resulting from this RFP. If Proposer takes exception to any terms or conditions, Proposer will submit a list of the exceptions as part of its proposal. Proposer's exceptions will be reviewed by City and may result in disqualification of Proposer's proposal as non-responsive to this RFP. If Proposer's exceptions do not result in disqualification of Proposer's proposal, then City may consider Proposer's exceptions when City evaluates the Proposer's proposal.

9.0 Scope of Work

This Scope of Work specifies the services that the City expects to acquire from the successful Proposer as a result of this solicitation.

9.1 Professional Collection Services consisting of:

- Notification of annual statewide warrant roundup to be mailed out by collection service at no charge to the City.
- Notification of local "mini" warrant roundup to be mailed out by collection service up to and including three per fiscal year, at no charge to the City.
- The collection service will follow ALL State and Federal guidelines.
- Actively pursue collections for a minimum of 180 days after data is transferred.

Proposers are expected to outline their corporate history and future direction in providing services specified in this RFP.

9.2 Vendor Requirements:

Must be in good financial standing, not in any form of bankruptcy, current in all payments of fees and taxes;

Must maintain a surety bond in compliance with *Texas Finance Code* 392.101 in the amount of \$10,000 issued by a surety company authorizing the vendor to do business in the State of Texas;

Must provide services in a professional manner, maintaining a constructive environment and complete communication while pursuing unpaid balances;

Must maintain a high level of customer service while pursuing collections;

Must refrain from making false statements at all times during collection process;

Must maintain good standing with all federal, state and local regulatory agencies;

Must be in good standing with ACA International;

Must follow all Fair Debt Collection Practices Act (FDCPA) guidelines, Federal Credit Reporting Act (FCRA) guidelines and any applicable Texas statutes;

Must be in compliance with Driver Privacy Protection Act (DPPA) 18 USC 2721 guidelines;

Must maintain all confidential information collected in the process of providing these services in a secured environment, and take all necessary steps to prevent exposure of confidential information to third parties by unauthorized access or use;
Must comply with the City's Records Retention Schedule; and
Must provide updated address/name or status information to the City as necessary

9.3 Requirements of the City and the Court:

The court will transmit files to the selected collection provider on cases that are more than 60 days past due. Files will include post judgment and prejudgment cases.

Kingsville Municipal Court uses Tyler Technologies/Incode as its software vendor. The selected collection provider must have software that is compatible to obtain the data transfer file from the court.

The court will be given the opportunity to approve the text letter template that will be mailed to the defendant on behalf of the City and make any revisions, if needed. The notice must include the person's right to enter a plea or go to trial on any offense charged and that they must contact the court for additional information.

A reconciliation and/or audit shall be performed at least once per year. The provider will send a file of the outstanding cases in alphabetical order with case and docket numbers with the outstanding amounts to the City for review.

EXHIBIT A – City of Kingsville’s Standard Terms and Conditions

By acceptance of a purchase order or agreement, or response to a solicitation, Vendor agrees the following terms and conditions, without modification, will govern:

I. DEFINITIONS

The following definitions shall be used to identify terms throughout procurement documents:

- A. **AGREEMENT/CONTRACT** – A mutually binding legal document obligating the Vendor to furnish the goods, equipment or services specified within the solicitation and obligating the City to pay for the goods, equipment, or services specified. .
- B. **BID/PROPOSAL /RESPONSE/OFFER/QUOTATION**– A complete, properly signed response to a solicitation that, if accepted, would bind the Respondent to perform the resulting contract.
- C. **BIDDER/PROPOSER/RESPONDENT/OFFERER** – The Respondent identified throughout the solicitation that they consider themselves qualified to provide the goods, equipment or services specified herein, and are interested in making an offer to provide the goods, equipment or services to the City.
- D. **CITY** – The City of Kingsville, located in Kleberg County, Texas.
- E. **GOODS** –Materials, supplies, commodities and/or equipment.
- F. **PIGGYBACK CONTRACT** – A contract or agreement that has been competitively bid in accordance with State of Texas statutes, rules, policies and procedures and has been extended for the use of state and local agencies and active State of Texas CO-OP entities.
- G. **PURCHASE ORDER** – An order placed by the City for the purchase of goods or services issued on the City’s standard purchase order form and which, when accepted by the Vendor, becomes a contract. The purchase order is the Vendor’s authority to deliver and invoice the City for goods or services specified, and the City’s commitment to accept the goods or services for an agreed upon price.
- H. **SERVICES** – Work performed to meet the requirements and demand of the purchase order. The furnishing of labor, time, or effort by the Vendor and their ability to comply with promised delivery dates, specification and technical assistance specified.
- I. **SOLICITATION/INVITATION TO BID/REQUEST FOR PROPOSALS/REQUEST FOR QUOTES** – The solicitation document issued by the City containing terms, conditions and specifications for the service or commodity to be procured.
- J. **SUBCONTRACTOR** – Any person or business enterprise providing goods, labor, and/or services to a Vendor if such goods, equipment, labor, and/or services are procured or used in fulfillment of the Vendor’s obligations arising from a contract with the City.
- K. **VENDOR/CONTRACTOR** – Person or business enterprise providing goods, equipment, labor and/or services to the City as fulfillment of obligations arising from an agreement or purchase order.

II. SOLICITATIONS

A. **CONFLICT OF INTEREST:**

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code (HB 914) requires an entity contracting or seeking to contract for the sale or purchase of property, goods, or services with a local governmental entity to disclose any affiliation or business relationship which might create a conflict of interest with a local government entity. The Conflict of Interest Questionnaire is available from the Texas Ethics Commission at www.ethics.state.tx.us, and completed forms must be submitted to the appropriate records administrator of the City not later than the seventh business day after the date the entity begins contract discussions or negotiations with the local governmental entity, or submits to the local governmental entity an application, response to a Request for Proposals or Bids, correspondence, or another writing related to a potential Agreement with the local governmental entity. If responding to a Solicitation, the Conflict of Interest Form may be submitted with the Response. The completed forms may be mailed or hand delivered to the City Secretary at the following address: The City of Kingsville, Office of the City Secretary, City Hall, 200 E. Kleberg, Kingsville, TX 78363. This legislation is subject to change and each entity should consult its own attorney regarding the current law. Any attempt to intentionally or unintentionally conceal a conflict of interest may result in disqualification of any response to a solicitation. The validity of the Contract is not affected solely because of failure to comply with the conflict of interest disclosure requirements.

B. **COMMUNICATIONS WITH THE CITY:**

To insure the proper and fair evaluation of a Solicitation, the City prohibits ex parte communication (e.g., unsolicited) initiated by the Offeror to the City Official or Employee evaluating or considering the Responses prior to the time an award has been made. Communication between Offeror and the City will be initiated

by the appropriate City Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the Solicitation. Ex parte communication may be grounds for disqualifying the offending Offeror from consideration or award of the Solicitation then in evaluation, or any future Solicitation.

Unless otherwise specified, all requests for clarification or questions regarding a Solicitation must be directed to the City of Kingsville, Purchasing Office, Attn.: Purchasing/IT Director, PO Box 1438, Kingsville, TX 78364, Office Phone: (361) 595-8025, FAX: (361) 595-8035, Email: dmason@cityofkingsville.com

DISCLOSURE OF PENDING LITIGATION:

Each Respondent shall include in its proposal a complete disclosure of any material civil or criminal litigation or pending investigation which involves the Respondent or in which the Respondent has been judged guilty.

D. CONFIDENTIALITY OF RESPONSES, PUBLIC INFORMATION ACT:

All Responses are subject to release as public information unless the Response or specific parts of the Response can be shown to be exempt from the Texas Public Information Act. Respondents are advised to consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or any other proprietary information. The City assumes no obligation or responsibility for asserting legal arguments on behalf of potential Respondents.

If a Respondent believes that a Response or parts of a Response are confidential, then the Respondent shall so specify. The Respondent shall stamp in bold red letters the term "**CONFIDENTIAL**" on that part of the Response, which the Respondent believes to be confidential. Vague and general claims as to confidentiality shall not be accepted. All Responses and parts of Responses that are not marked as confidential will be automatically considered public information. Notwithstanding, responses to Requests for Proposals shall be opened in a manner that avoids disclosure of the contents to competing Offeror and keeps the proposals secret during negotiations as provided for in Section 252.049 of the Local Government Code.

E. CLARIFICATIONS, WAIVER OF MINOR TECHNICALITIES OR DISCREPANCIES:

The City reserves the right to request clarification or additional information specific to any response after all Responses have been received and the Solicitation due date has passed. Additionally, the City reserves the right to accept or reject all or part of any Response, waive any formalities or technical inconsistencies, delete any requirement or specification from the Solicitation, or terminate the Solicitation when deemed to be in City's best interest.

F. COST OF PREPARATION OF RESPONSE:

All costs directly or indirectly related to preparation of a Response to this Solicitation or any oral presentation required to supplement and/or clarify a Response which may be required by the City shall be the sole responsibility of the Respondent.

G. RESPONSES BECOME PROPERTY OF THE CITY:

Submissions received in response to a Solicitation become the sole property of the City.

H. WITHDRAWAL OF A RESPONSE:

A Response may be withdrawn prior to the submission deadline by submitting a written request for its withdrawal to the Purchasing Manager. A new Response may be submitted and must be received prior to the submission deadline to be considered. Modifications offered in any manner will not be considered if submitted after the submission deadline.

I. DETERMINATION OF AWARD, RESULTING AGREEMENT:

In determining award, the City reserves the right to select the acceptable Respondent who will offer contractual terms and conditions most favorable to the City. All requirements stated in the Solicitation shall become a part of any Contract, Agreement or Purchase Order awarded as a result of the Solicitation, and any deviations from these requirements must be specifically stated and defined by the Respondent in their Response. Requests for clarification and the responses(s) shall also become a part of any Contract, Agreement or Purchase Order resulting from the Solicitation.

J. AFFIRMATIONS AND CERTIFICATIONS:

By signature on and submission of a Response, Respondent certifies they have not conspired with any other potential supplier in any manner to attempt to control competitive pricing. By signature on and submission of a Response, Respondent certifies they are duly qualified, capable and a bondable business entity not in receivership or contemplating same, and has not filed for bankruptcy. By signature on and submission of a Response, Respondent affirms that they will not discriminate against any employee or applicant as prohibited by law.

K. REQUIREMENTS FOR SUBMISSION OF RESPONSE:

1. All Responses must be submitted on the form provided by the City, and accompanied by all required attachments. Each Response shall be placed in a separate envelope and properly identified with Solicitation Number and Opening Date. Responses must be time-stamped at the

- Purchasing Office, 200 E. Kleberg 78363, PO Box 1458 78364, Kingsville, TX, on or before due date and time shown on the Solicitation form. Late Responses will not be considered.
2. If applicable, Respondent will show exact cost to deliver. Responses must specify unit price on the quantity specified, extend and show total. Unit prices shall govern, including in case of errors. Pricing will be considered firm for acceptance for a minimum of 60 days after the due date unless otherwise specified in the Solicitation. The validity period may be extended beyond that date on agreement of parties. Cash discounts will not be considered in determining award; all cash discounts offered will be taken if earned. Respondent will list and deduct all discounts not based on early payment from prices quoted.
 3. The City is exempt from all federal excise, state and local taxes unless otherwise stated. The City claims exemption from under Texas Tax Code §151.309, as amended. Texas Limited Sales Tax Exemption Certificates will be furnished upon request. Do not include taxes in Response to any Solicitation.
 4. Unless stated otherwise, any catalog, brand name or manufacturer's reference used in the Solicitation is descriptive (not restrictive), and is used to indicate type and quality desired. Responses on brands of like nature and quality will be considered. If quoting on other than referenced specifications, the Response MUST show manufacturer brand or trade name and description of product offered. Illustrations and complete descriptions of product offered should be made part of the Response. If Respondent does not identify exceptions to the specifications shown in this Invitation, Respondent will be required to furnish brand names, numbers, etc., as shown in the Solicitation.
 5. Response must show the number of days required to deliver items or provide services to the City's designated location under normal conditions. Unrealistically short or long delivery promises may cause Response to be disregarded. Failure to state delivery time obligates Respondent to complete delivery in 14 calendar days.

III. **PURCHASE ORDERS**

A. **GENERAL TERMS AND CONDITIONS**

1. **ACCEPTANCE:**

A Purchase Order is the City's commitment to make procurement and is subject to Vendor's acceptance of the City's terms and conditions

2. **ABSENCES OF PURCHASE ORDER OR AGREEMENT:**

The City is not responsible for delivery of any materials or services without a proper Purchase Order

3. **VENDOR'S OBLIGATIONS:**

The Vendor shall fully and timely provide all deliverables described in the Solicitation and in the Vendor's Offer in strict accordance with the terms, covenants, and conditions of the Agreement and all applicable Federal, State, and local laws, rules, and regulations.

4. **EFFECTIVE DATE/TERM:**

Unless otherwise specified in the Solicitation, this Agreement shall be effective as of the date the City issues and signs the Purchase Order, and shall continue in effect until all obligations are performed in accordance with the Agreement.

5. **SUBCONTRACTORS:**

If the Vendor utilizes Subcontractors in providing the goods and/or services under this Purchase Order, the Vendor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Vendor is responsible for the Vendor's own acts and omissions. The Vendor shall:

- a. Require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Agreement;
- b. Prohibit the Subcontractor from further subcontracting any portion of the Agreement without the prior written consent of the City and the Vendor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
- c. Require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Vendor in sufficient time to enable the Vendor to include same with its invoice or application for payment to the City in accordance with the terms of the Agreement;

- d. Require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Vendor, with the City being a named insured as its interest shall appear;
- e. Require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City; and
- f. Shall pay each Subcontractor its appropriate share of payments made to the Vendor not later than ten (10) calendar days after receipt of payment from the City.

6. DELAYS:

The City may delay scheduled delivery or other due dates by written notice to the Vendor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Agreement, the City and the Vendor shall negotiate an equitable adjustment for costs incurred by the Vendor in the Agreement price and execute an amendment to the Agreement. The Vendor must assert its right to an adjustment within ten (10) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution Process specified in Section Z. However, nothing in this provision shall excuse the Vendor from delaying the delivery as notified.

7. FORCE MAJEURE:

Neither party shall be liable for any default or delay in the performance of its obligations under this Agreement if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond reasonable control. In the event of default or delay in performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

8. INSURANCE REQUIREMENTS:

Unless specific insurance requirements are noted, Vendor shall maintain insurance coverage appropriate for the fulfillment of the Purchase Order. In the event the Vendor, its employees, agents or subcontractors enter premises occupied by or under the control of the City, the Vendor agrees to maintain public liability and property damage insurance in reasonable limits covering the obligations set forth in this Purchase Order, and will maintain Workers' Compensation coverage (either by insurance or if qualified pursuant to law, through a self-insurance program) covering all employees performing on premises occupied by or under control of the City. Upon request, Vendor shall provide a copy of its insurance policies to the City.

9. EXCEPTIONS TO SPECIFICATIONS:

Any deviation from the specifications must be clearly indicated in the Response to the Solicitation or promptly documented in writing at or before the time of the award. Any deviations or exceptions are subject to review by the City and may be grounds for rejection.

10. TRAVEL EXPENSES:

All travel, lodging and/or per diem expenses associated with providing the materials, equipment or services specified must be included in the original Quotation and/or the resulting Purchase Order or Agreement. All travel expenses are subject to review by the City and documentation of actual itemized expenses may be requested. No reimbursement will be made without prior authorization, or for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed.

11. HUB REQUIREMENTS:

The City complies with the requirements of the State of Texas *Local Government Code*, Chapter 252, Section 252.0215.

12. SPECIAL TOOLS AND EQUIPMENT:

If the price stated in the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Vendor to fulfill the Agreement, such special tooling and/or equipment and all process sheets associated thereto shall become the property of the City and shall be identified by the Vendor as such.

B. SERVICES

1. PLACE AND CONDITIONS OF WORK, ACCESS TO SITE:

If Services are to be performed principally on the City's premises or in public rights of way, the City shall provide the Vendor access to the sites where the Vendor is to perform the Services as required in order for the Vendor to perform in a timely and efficient manner, in accordance with and subject to applicable security laws, rules and regulations. The Vendor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of the materials, equipment, labor and facilities necessary to perform the Services and any other conditions or

states of fact which could, in any way, affect performance of the Vendor's obligations under the Agreement. The Vendor shall promptly notify the City if the actual site or service conditions differ from the expected conditions and failing to do so, hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature.

2. VENDOR TO PROVIDE ALL MATERIAL, EQUIPMENT, LABOR:

Vendor shall provide all goods and labor necessary to perform Services. All material must be new and all equipment utilized must be in good safe working condition and suitable for Services. Vendor shall employ all personnel for Services in accordance with the requirements of applicable local, state, and federal law.

3. WORKFORCE:

If Services are to be performed principally on the City's premises or on public right-of-ways:

- a. Vendor shall employ only orderly and competent workers, skilled in the performance of the Services which they will perform under the Agreement.
- b. Vendor, its employees, subcontractors and subcontractor's employees while engaged in participating in a Solicitation or while in the course and scope of delivering goods and services under City Purchase Order or Agreement may not:
 - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Agreement; or
 - ii. Use nor possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated or under the influence of alcohol or drugs while on the job.
- c. If the City or the City's representative notifies the Vendor that any work is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Vendor shall immediately remove such worker from Agreement Services and may not employ such worker again on Agreement Services without the City's prior consent.

4. COMPLIANCE WITH ALL SAFETY AND ENVIRONMENTAL REQUIREMENTS:

If Services are to be performed principally on the City's premises or on public rights of way, the Vendor, its subcontractors and their respective employees, shall comply fully with all applicable federal, state and local health, safety and environmental laws, ordinances, rules and regulations in the performance of the Services, including but not limited to those promulgated with the City and the Occupational Safety and Health Administration (OSHA). In the case of conflict, the most stringent safety requirement shall govern. The Vendor shall defend, indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liabilities of any kind or nature arising from the breach of the Vendor's obligations under this paragraph.

5. STOP WORK NOTICE:

The City may issue an immediate Stop Work Notice in the event the Vendor is observed performing in a manner that is in violation of Federal, State or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Vendor shall cease all work until notified by the City that the violation or unsafe condition has been corrected. The Vendor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

6. WARRANTY OF SERVICES:

Vendor warrants and represents that all Services to be provided to the City under the Agreement will be fully and timely performed in good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions and covenants of the Agreement and all applicable Federal, State and local laws, rules or regulations. This warranty may not be limited, excluded or disclaimed and any attempt to do so will be without force or effect. Unless otherwise specified, the warranty period shall be a minimum of one year from acceptance by the City of Services. In the event any applicable warranty is breached, the Vendor shall promptly upon receipt of demand of performance, perform the Services again in accordance with the above standard at no additional costs to the City. All costs incidental to such additional performance shall be borne solely by the Vendor. The City shall endeavor to give the Vendor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

In the event the Vendor is unable or unwilling to perform the Services in accordance with the above standards as required by the City, then in addition to any other available remedy, the City may reduce the amount of Services originally required to purchase from the Vendor under the Agreement and procure conforming Services from other sources. In such event, the Vendor shall pay the City upon demand the increased cost, if any, incurred by the city to procure such services from an alternative source.

C. COMMODITIES/EQUIPMENT

1. MATERIAL SAFETY DATA SHEETS:

Under the "Hazardous Communication Act," commonly known as the "Texas Right to Know Act," a Vendor must provide to the City WITH EACH DELIVERY Material Safety Data Sheets, which are applicable to hazardous substances as defined in the Act.

2. GOODS:

Goods furnished shall be the latest improved model in current production, as offered to commercial trade, and shall be of quality workmanship and material. The Vendor represents that all goods and equipment offered shall be new. Unless otherwise specified, used, shopworn, demonstrator, prototype or discontinued models are not acceptable.

3. PACKAGING OF DELIVERABLES:

Vendor must package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and the unit price. Unless otherwise provided in writing by the City, each shipping container shall be clearly and permanently marked with the Vendor's name and address, and the City's name, address and Purchase Order number. Vendor shall bear all costs of packaging. Deliverables must be suitably packed to secure lowest transportation cost, conform to requirements of common carriers and ensure safe delivery. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

4. WARRANTY:

The goods or equipment specified shall be warranted against defects in material or workmanship for a period of not less than twelve (12) months from date of acceptance by the City. If the manufacturer's warranty exceeds twelve (12) months, then the manufacturer's warranty shall be in effect. Vendor shall furnish a copy of the manufacturer's warranty at the time of delivery.

5. NO LIMITATION OF MANUFACTURERS' WARRANTIES:

Vendor may no limit, exclude or disclaim any warranty provided by manufacturer.

D. DELIVERY

1. DELIVERY TERMS, TRANSPORTATION CHARGES, FOB:

Deliverables shall be shipped FOB point of delivery unless otherwise specified on the Purchase Order or in the Solicitation. The Vendor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship deliverables. The place of delivery shall be specified in the Purchase Order.

2. NO SUBSTITUTIONS OR CANCELLATIONS:

Unless specifically permitted in writing by the City, no substitutions or cancellations shall be acceptable.

3. NOTICE OF DELAY IN DELIVERY:

If a delay in delivery is anticipated, Vendor shall give written notice to the City. The City has the right to extend the delivery time/service date, or to cancel the Purchase Order or Agreement. Vendor shall keep the City advised at all times of the status of the order. Default in promised delivery, service or failure to meet specifications authorizes the City to procure the goods or services from an alternate source and charge the full increase, if any, in cost and handling to defaulting Vendor. Default on delivery may result in legal action and recourse.

4. DELIVERY LOCATION, HOURS, DAYS, HOLIDAYS:

Unless otherwise specified, all deliveries must be made to City of Kingsville, Purchasing Department, 200 E. Kleberg, Kingsville, TX, between the hours of 8AM and 5PM (CST), Monday through Friday except regularly observed state and federal holidays (see City of Kingsville website for schedule). Receipt of goods or materials does not signify acceptance.

5. NO SHIPMENT UNDER RESERVATION:

Vendor is not authorized to ship deliverables under reservation and no tender of bill of lading will operate as a tender of deliverables.

6. TITLE/RISK OF LOSS:

Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables (no delivery, no sale).

7. RIGHT OF INSPECTION AND REJECTION:

The City expressly reserves all rights under law, including but not limited to, the Uniform Commercial Code, to inspect the deliverables at delivery or at a reasonable time subsequent to delivery, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Vendor's or the Vendor's subcontractors facilities, or the deliverables at the Vendor's or the Vendor's subcontractors premises, the Vendor shall furnish or shall cause to be furnished without additional charge all reasonable facilities and assistance to the City to facilitate such inspection.

8. ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING GOODS:

If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept such deliverables, the City may do so. The Vendor shall pay all claims, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If discovery that the deliverables are defective or non-conforming occurs after final payment, Vendor may be required to refund such amounts to the City.

E. PAYMENT

1. TAX EXEMPT STATUS:

The City is exempt from all federal excise, state and local taxes unless otherwise stated in this document. The City claims exemption from all sales and/or use taxes under Texas Tax Code §151.309, as amended. Texas Limited Sales Tax Exemption Certificates are furnished upon request. Vendor will not charge for such taxes. If billed, the City will not remit payment until a corrected invoice is received.

2. INVOICING REQUIREMENTS:

Unless otherwise specified, all invoices shall be submitted to City of Kingsville, Accounts Payable, PO Box 1458, Kingsville, TX 78363, and issued as required by the Purchase Order or Agreement. Each invoice must reference the unique Purchase Order number, and include the Vendor's complete name and remit to address. If applicable, transportation and delivery charges must be itemized on the each invoice. A copy of the bill of lading and the freight waybill must be submitted with the invoice if applicable. Invoices for labor must include a copy of all time sheets with labor rate and Purchase Order or Agreement number clearly identified. Invoices for labor shall also include a tabulation of hours worked at the appropriate rates and grouped by work order number, if applicable. Time billed for labor shall be limited to hours actually worked at the work site.

3. PAYMENT TERMS:

All payments will be processed in accordance with Texas Prompt Payment Act, *Texas Government Code*, Subtitle F, Chapter 2251. The City will pay Vendor within thirty days after acceptance of goods, supplies, materials, equipment or the day of performance of services was completed, or the day of receipt of a correct invoice for goods, supplies, materials, equipment or services, whichever is later. The Vendor may charge a late fee (fee shall not be greater than that permitted under the Texas Prompt Payment Act) for payments not made in accordance with this prompt payment policy; however, the policy does not apply to payments made by the City in the event: (a) there is a bona fide dispute between the City and Vendor concerning the goods, supplies, materials, equipment delivered, or the services performed, that causes the payment to be late; (b) the terms of a federal agreement, grant, regulation or statute prevents the City from making a timely payment with Federal funds; (c) there is a bona fide dispute between the Vendor and a subcontractor and its suppliers concerning goods, supplies, material or equipment delivered, or the services performed, which caused the payment to be late; or (d) the invoice is not mailed to the City in strict accordance with instructions on the Purchase Order or Agreement, or other such contractual agreement.

4. RIGHT TO AUDIT:

The Vendor agrees that the representatives of the City shall have access to, and the rights to audit, examine, or reproduce, any and all records of the Vendor related to the performance under this Agreement. The Vendor shall retain all such records for a period of four (4) years after final payment on this Agreement or until all audit and litigation matters that the City has brought to

the attention of the Vendor are resolved, whichever is longer. The Vendor agrees to refund to the City any overpayments disclosed by any such audit.

5. **FIRM PRICING:**

The price shall remain firm for the duration of the Purchase Order or Contract, or extension periods. No separate line item charges shall be permitted for either bidding or invoice purposes, which shall include equipment rental, demurrage, fuel surcharges, delivery charges, and cost associated with obtaining permits or any other extraneous charges. Vendor further certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6. **PRICE WARRANTY:**

The Vendor warrants the prices quoted are not materially higher than the Vendors current prices on orders by others for like deliverables under similar terms of purchase. In addition to any other remedy available, the City may deduct from any amounts owed to the Vendor, or otherwise recover, any amounts paid for items materially in excess of the Vendor's current prices on orders by others for like deliverables under similar terms of purchase.

7. **VENDOR OWING TAXES OR FEES TO THE CITY:**

Payment will not be made to any person, firm or in arrears in taxes or fees to the City.

IV. **TERMS, CONDITIONS AND ADDITIONAL REQUIREMENTS**

A. **VENDOR'S OBLIGATION:**

Vendor shall fully and timely provide all deliverables described in Solicitation, Vendor's Offer in strict accordance with the terms, covenants and conditions of the Agreement and all applicable federal, state and local laws, rules and regulations.

B. **DEFAULT:**

Vendor shall be in default under the Agreement if the Vendor (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, (b) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (c) makes a material misrepresentation in Vendor's Offer, or in any report or deliverable required to be submitted by Vendor to the City.

C. **ABANDONMENT OR DEFAULT:**

A Vendor who abandons or defaults the work on the Agreement and causes the City to purchase the services elsewhere may be charged the difference in service if any and may not be considered in the re-advertisement of the service and may be rejected as an irresponsible bidder and not considered in future Solicitations for the same type of service unless the scope of work is significantly modified.

D. **TERMINATION/CANCELLATION:**

1. **TERMINATION FOR CAUSE:**

In the event of default by the Vendor, the City shall have the right to terminate the Agreement for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Vendor, within such ten (10) day period cures such default, or provides evidence sufficient to prove to the City's satisfaction that such default does not, in fact, exist. In addition to any other remedies available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses incurred by the City as a result of the Vendor's default, including without limitation, cost of cover, reasonable attorneys' fees, court costs and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of default by the Vendor, the City may remove the Vendor from the City's Vendor List and any Offer submitted by the Vendor may be disqualified for up to three (3) years. All rights and remedies under the Agreement are cumulative and not exclusive of any other right or remedy provided by law.

2. **TERMINATION WITHOUT CAUSE:**

The City shall have the right to terminate the Agreement, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Vendor shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay the Vendor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

3. **NON-APPROPRIATION:**

The resulting Agreement is a commitment of the City's current revenues only. It is understood and agreed that the City shall have the right to terminate the Agreement at the end of any City fiscal year (September 30th) if the governing body of the City does not appropriate funds sufficient to purchase the estimated yearly quantities, as determined by the City's budget for the fiscal year in question. The City may effect such termination by giving the Vendor a written notice of termination at the end of its then current fiscal year.

4. CANCELLATION:

The City reserves the right to cancel the Agreement for default all or any part of the delivered portion of the deliverables if the Vendor breaches any term hereof including warranties, or becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any remedies which the City may have in law or in equity.

E. FRAUD:

Fraudulent statements by the Vendor on any Offer or in any report or deliverable required to be submitted by the Vendor to the city shall be grounds for termination of the Agreement for cause by the City and may result in legal action.

F. INDEMNITY:

VENDOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LEGAL PROCEEDINGS, CAUSES OF ACTION, CLAIMS, DEMANDS, DAMAGES, JUDGMENTS, LOSSES, LIENS, COSTS, EXPENSES, ATTORNEYS' FEES AND ANY AND ALL OTHER COSTS, FEES AND/OR CLAIMS OF ANY KIND OR DESCRIPTION ARISING OUT OF, IN CONNECTION WITH OR RESULTING FROM THE AGREEMENT OR THE GOODS OR SERVICES PROVIDED UNDER THE AGREEMENT.

IF THE VENDOR AND THE CITY ARE CONCURRENTLY NEGLIGENT, EACH PARTY'S LIABILITY SHALL BE LIMITED TO THAT PORTION OF NEGLIGENCE ATTRIBUTABLE TO IT AS DETERMINED UNDER THE APPLICABLE PROPORTIONATE RESPONSIBILITY RULES OF THE STATE OF TEXAS.

G. LIABILITY:

Any person, firm or corporation performing services pursuant to this Agreement or Purchase Order shall be liable for all damages incurred while in the performance of such services. Vendor assumes full responsibility for the work to be performed hereunder and hereby releases, relinquishes, and discharges the City, its officers, agents and employees from all claims, demands and causes of action of any nature including the cost of defense thereof, for any injury to, including death of, any person whether that person be a third party, supplier or an employee of either of the parties hereto, and any loss of or damage to property, whether the same be that of either of the parties, caused by or alleged to have been caused by, arising out of or in connection with the issuance of the Agreement or Purchase Order to the Vendor and the negligence of the Vendor, whether or not said claims, demands and causes of action in whole or in part are covered by insurance. Certificates of insurance may be required for, but not limited to, Commercial General Liability, Business Auto Liability, Workers Compensation and Professional Liability Insurance.

H. INFRINGEMENT:

Vendor represents and warrants to the City that: (a) Vendor shall provide the City good and indefeasible title to the deliverables and (b) the deliverables supplied by the Vendor in accordance with the specifications of the Agreement shall not infringe, directly or contributory, any patent, trademark, copyright, trade secret or any other intellectual property right of any kind of any third party; that no claims have been made by a person or entity with respect to the ownership or operation of the deliverables and the Vendor does not know of any basis for any such claims. Vendor shall, at its sole expense, defend, indemnify and hold the City harmless from and against all liability, damages and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (a) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverable infringes the intellectual property rights of any third party; or (b) Vendor's breach of any of the Vendor's representations or warranties stated in this Agreement. In the event of any such claim, the City shall have the right to monitor such claim or, at its option, engage its own separate counsel to act as co-counsel on the City's behalf. Further, Vendor agrees that the City's specifications regarding the deliverables shall in no way diminish Vendor's warranties or obligations under the Section, and the City makes no warranty that the products, development or delivery of such deliverables will not impact such warranties of Vendor.

I. DAMAGE TO CITY PROPERTY:

Vendor shall be responsible for any and all damage to the City's equipment and/or property, the workplace and its contents, by its work, negligence in work, its personnel and equipment. Vendor shall be responsible

and liable for the safety, injury and health of its working personnel while its employees are performing service work.

J. OVERCHARGES:

Vendor hereby assigns to the City any and all claims for overcharges associated with this Agreement which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and/or which arise under the antitrust laws of the State of Texas, *Business and Commerce Code Ann.*, Section 15.01, et seq.

K. CONFIDENTIALITY:

In order to provide the deliverables to the City, Vendor may require access to certain of the City's and/or its licensors' confidential information (including, but not limited to, inventions, employee information, trade secrets, confidential know-how, confidential business information and other information which the City or its licensors consider confidential)(collectively, "Confidential Information"). Vendor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors, and any unauthorized use, disclosure, dissemination or other release of the Confidential Information will substantially injure the City and/or its licensors. The Vendor (including its employees, subcontractors, agents or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate or otherwise use the Confidential Information without the prior written consent of the City, or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or as a result of an order of any court or other governmental authority with proper jurisdiction, provided the Vendor promptly notifies the City prior to disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Vendor agrees to use protective measures no less stringent than the Vendor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

L. CODES, PERMITS, LICENSES:

Vendor shall comply with all federal, state and local standards, codes and ordinances and the terms and conditions of the services of the electric utility, as well as other authorities that have jurisdiction pertaining to equipment and materials used and their application. None of the terms or provisions of the specification shall be construed as waiving any rules, regulations or requirements of these authorities. Vendor shall be responsible for obtaining all necessary permits, certificates and/or licenses to fulfill contractual obligations to the City.

M. ADVERTISING/PUBLICITY:

Vendor shall not advertise or otherwise publicize, without the City's prior written consent, the fact that the City has entered into the Agreement, except to the extent required by applicable law.

N. INDEPENDENT CONTRACTOR:

The Agreement shall not be construed as creating an employer/employee relationship, a partnership or joint venture. The Vendor's services shall be those of an independent contractor. The Vendor agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City. Vendor shall not be within protection or coverage of the City's Worker Compensation insurance, Health Insurance, Liability Insurance or any other insurance that the City, from time to time, may have in force.

O. LIENS:

Vendor shall defend, indemnify and hold the City harmless from and against any and all liens and encumbrances for all labor, goods and services provided under this Agreement. At the City's request, the Vendor or its subcontractors shall provide a proper release of all liens or satisfactory evidence of freedom from liens shall be delivered to the City.

P. ASSIGNMENT/DELEGATION:

The Agreement shall be binding upon and endure to the benefit of the City and the Vendor, and their respective successors and assignees, provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Vendor without the prior written consent of the City. Any attempted assignment or delegation by the Vendor shall be void unless made in conformity with this Section. The Agreement is not intended to confer any rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Agreement.

Q. INTERPRETATION:

The Agreement is intended by both parties as the final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement

may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner fair to both parties, reading no provision more strictly against one party of the other. Whenever a term defined by the Uniform Commercial Code (the "UCC"), as enacted by the State of Texas, is used in the Agreement, the UCC definition shall control unless otherwise defined in the Agreement.

R. GOVERNING LAW AND VENUE:

This Agreement is made under and shall be governed by the laws of the State of Texas, including when applicable, the UCC as adopted in Texas, VTCA, *Business & Commerce Code*, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. This Agreement is fully performable in Kingsville, TX, and the venue for any action related to this Agreement shall be Kingsville, TX. All issues arising from this Agreement shall be resolved in the courts of Kleberg County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or the ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein and does not waive the city's defense of sovereign immunity.

S. INTERLOCAL COOPERATIVE PURCHASING/PIGGYBACK CONTRACTS:

Other governmental entities may be extended the opportunity to purchase from Solicitations of the City, with the consent and agreement of the awarded Vendor(s) and the City. Such consent and agreement shall be conclusively inferred from lack of exception to this clause in Vendor's Response. However, all parties indicate their understanding and all parties hereby expressly agree that the City is not an agent of, partner to or representative of those outside agencies or entities and that the City is not obligated or liable for any action or debts that arise out of such independently negotiated piggyback procurements.

T. SURVIVABILITY OF OBLIGATIONS:

All provisions of the Agreement that impose continuing obligations on the parties, including but not limited to the warranty, indemnity and confidentiality obligations of the parties, shall survive the expiration or termination of the Agreement.

U. CLAIMS:

If a claim, demand, suit or other action is asserted against the Vendor which arises under or concerns the Agreement, or which could have a material adverse effect on the Vendor's ability to perform thereunder, the Vendor shall give written notice to the City within ten (10) calendar days after receipt of notice by the Vendor. Such notice to the City shall state the date of notification of any such claim, demand, suit or other action; the names and address of the claimant(s); the basis thereof; and the name of each person against whom such claim is asserted. Such notice shall be delivered to the Purchasing Department as set forth below and to the City Attorney at PO Box 1458, Kingsville, TX 78363.

V. NOTICES:

Unless otherwise specified, all notices, requests or other communications required or appropriate to be given under the Agreement shall be in writing and deemed delivered three (3) business days after postmarked if sent by US Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, fax, or other commercially accepted means. Notices to the Vendor shall be sent to the address specified in the Vendor's Offer or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to: City of Kingsville, Purchasing Department, PO Box 1458, Kingsville, TX 78364 and marked to the attention of the Purchasing Director.

W. GRATUITIES:

The City may, by written notice to the Vendor, cancel the Agreement without liability if it is determined by the City that gratuities were offered or give by the Vendor or any agent or representative of the Vendor to any officer or employee of the City with the intent of securing the Agreement or securing favorable treatment with respect to awarding or amending or the making of any determinations with respect to performing of the Agreement. In the event the Agreement is cancelled by the City pursuant to this Section, the City shall be entitled, in addition to any other rights and remedies, to recover the benefits or payments to the Vendor, as a result of the gratuities.

X. PERSONAL INTEREST PROHIBITED:

No officer, employee, independent consultant or elected official of the City who is involved in the development, evaluation or decision-making process of the performance of the any Solicitation shall have a financial interest, direct or indirect, in the resulting Agreement. Any willful violation of this Section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. In the event a member of the governing body or an appointed board or commission of the City belongs to a cooperative association, the City may purchase equipment or supplies for the association only if no member of the governing body, board or commission will receive

pecuniary benefit from the purchase, other than as reflected as in increase in dividends distributed generally to members of the association. Any violation of this provision with the knowledge, expressed or implied, by the Vendor shall render the Agreement voidable by the City. Nevertheless, the City may obtain the equipment or service if a conflict of interest affidavit is filed and the Council member recuses his/herself.

Y. WAIVER:

No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Vendor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default(s), whether of similar or different character.

Z. DISPUTE RESOLUTION:

If either the Vendor or the City has a claim, dispute or other matter in question for breach of duty, obligations, services rendered or any warranty that arises under this Agreement, the parties shall first attempt to resolve the matter through this dispute resolution process. The disputing party shall notify the other party in writing as soon as practicable after discovering the claim, dispute or breach. The notice shall state the nature of the dispute and list the party's specific reasons for such dispute. Within ten (10) business days of receipt of the notice, both parties shall make a good faith effort, in person or through generally accepted means, to resolve any claim, dispute, breach or other matter in question that may arise out of, or in connection with, this Agreement. If the parties fail to resolve the dispute within sixty (60) days of the date of receipt of the notice of the dispute, then the parties may submit the matter to non-binding mediation upon written consent of authorized representatives of both parties in accordance with the Arbitration Rules of the American Arbitration Association or other applicable rules governing mediation than in effect. If the parties cannot resolve the dispute through mediation, then either party shall have the right to exercise any and all remedies available under law regarding the dispute.

AA. INVALIDITY:

The invalidity, illegality or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace the stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.

BB. RIGHT TO ASSURANCES:

In the event the City, in good faith, has reason to question the intent of the Vendor to perform, the City may demand written assurances of the intent to perform. In the event no written assurance is given within the time specified, the City may treat this failure as an anticipatory repudiation of the Agreement.