

MASTER SERVICES AGREEMENT

RFB No. WU-10-19

This Non-Exclusive Services Agreement (“Agreement”) is entered into this ____ day of _____, 2019 (but effective as of _____) by and between the City of San Angelo, a Texas home-rule municipal corporation (“City”) and _____, a _____ (“Provider” or “Primary Provider”).

RECITAL:

A. City issued a Request for Bids No. WU-10-19 Water Utilities Industrial Electrical Services (“RFB WU-10-19”), for professional industrial electrical services (“Services”) on City owned equipment, and Provider’s Proposal (“Proposal”), in response thereto, has been selected as a qualified Proposal for the provision of Services.

B. City wishes to engage the services of Provider, and Provider wishes to perform Services for City.

C. On _____, 2019, the City Council of the City of San Angelo authorized the City Manager to negotiate and execute this Agreement, under the terms and conditions set forth herein.

TERMS:

1. **RECITALS:** The recitals are true and correct and are hereby incorporated into and made a part of this Agreement. RFB WU-10-19 and Proposal (“Contract Documents”) are hereby incorporated and made a part of this Agreement and attached hereto as **Exhibit “A”**.

2. **TERM:** The term of this Agreement shall be three (3) years commencing on the effective date hereof.

3. **OPTION TO EXTEND:** City shall, at its sole discretion, have two (2) options to extend the term hereof for additional, one (1) year periods, based on a finding that the exercise of the option is in the City's best interest, subject to availability and appropriation of funds. City Council approval shall not be required as long as the total extended term does not exceed two (2) years.

4. **SCOPE OF SERVICE:**

A. Primary Provider agrees to provide Services as specifically described, and under the special terms and conditions set forth herein in **Exhibit "A"** attached hereto, which by this reference is incorporated into and made a part of this Agreement.

B. City shall have the right to outsource Services to Secondary Provider at its sole discretion, for situations which may include the following: where City determines Primary Provider cannot respond in a timely manner, cannot fulfill its contractual obligations or when the workload warrants. Neither City nor Primary Provider shall subcontract Services under this Agreement.

C. Primary Provider represents and warrants to City that: (i) it possesses all qualifications, licenses and expertise required for the performance of Services; (ii) it is not delinquent in the payment of any sums due City, including payment of permit fees, occupational licenses, etc., nor in the performance of any obligations to City; (iii) all personnel assigned to perform Services are and shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; and (iv) Services will be performed in the manner described in Contract Documents.

5. **COMPENSATION:** Provider warrants that it has reviewed City's requirements and has asked such questions and conducted such other inquiries as Provider deemed necessary in order to

determine the price Provider will charge to provide Services to be performed under this Agreement.

A. The amount of compensation payable by City to Provider shall be based on the rates and schedules described in **Exhibit “B”** hereto, which by this reference is incorporated into this Agreement.

B. Unless otherwise specifically provided in Exhibit “B”, payment shall be made within thirty (30) days after receipt of Provider’s invoice, which shall be accompanied by sufficient supporting documentation and contain sufficient detail, to allow a proper audit of expenditures, should City require one to be performed.

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

7. **AUDIT AND INSPECTION RIGHTS:**

A. City may, at reasonable times, and for a period of not less than five (5) years following the date of final payment by City to Provider under this Agreement, audit, or cause to be audited, those books and records of Provider which are related to Primary Provider’s performance under this Agreement. Provider agrees to maintain all such books and records at its principal place of business for a period of five (5) years after final payment is made under this Agreement.

B. City may, at reasonable times during the term hereof, inspect Provider's Work and perform such tests, as City deems reasonably necessary, to determine whether the goods or Services required to be provided by Provider under this Agreement conform to the terms hereof and/or the terms found in Exhibit "A" and the contract documents, if applicable. Provider shall make available to City all reasonable access and assistance to facilitate the performance of tests or inspections by City representatives.

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

9. FILING PUBLIC RECORD: Provider understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 552, Texas Government Code, and agrees to allow access by City and the public to all documents subject to disclosure under applicable law. Provider's failure or refusal to comply with the provisions of this section shall result in the immediate cancellation of this Agreement by City.

10. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS: This Agreement is expressly made subject to all applicable federal, state, county and City laws, statutes, ordinances, rules, codes and Regulations as set forth now or hereinafter adopted, enacted or amended (collectively referred to as "Regulations"), including but not limited to: Regulations specifically applicable to Services provided and Work performed under this Agreement. All of the foregoing Regulations are hereby made a part of this Agreement and incorporated herein by reference as if fully set out herein. Provider agrees that all Services provided and Work to be performed under

this Agreement shall be performed in strict compliance with such Regulations as they may be amended from time to time which may apply to Services provided and Work performed.

11. INDEMNIFICATION AND INSURANCE. See Section 28. hereunder, Special Indemnification and Insurance Rider, Exhibit “C”, which is attached hereto and incorporated herein for all purposes.

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

13. RESOLUTION OF CONTRACT DISPUTES: Provider understands and agrees that all disputes between Provider and City based upon an alleged violation of the terms of this Agreement by City shall be submitted to the City Manager for his resolution. The Provider shall make a written request for resolution of the dispute (the “Request”) to the City Manager or his designee (the “Official”) for determination of the matter in dispute. The Request shall clearly state the disputed issue and include or incorporate by specific reference all information or documents that

Provider wants the Official to consider in reaching a determination. The Official shall issue a written notice of decision upon Provider's Request within the thirty (30) days of receipt of Provider's Request. If the Official cannot issue a decision within thirty (30) days of the receipt of Provider's Request, the Official shall notify Provider the date upon which a decision shall be issued. Submission of Provider's Request for determination of the dispute is a condition precedent to Provider's ability to engage in litigation against City. If a decision is not issued by the date indicated by the Official or within ninety (90) days after the submission of Provider's written Request for determination, whichever occurs first, Provider will be deemed to have met the condition precedent required by this provision. Should the dispute be resolved through the submission of Provider's Request, the resolution of the dispute will be documented, if necessary, through a change to the Agreement in accordance with the provisions contained in the Agreement. Should the dispute fail to reach resolution through the submission of Provider's Request, the dispute may be submitted to mediation at the sole discretion of City. City agrees that it shall make an election within no later than sixty (60) days after the issuance of a determination by the Official in response to Provider's Request, final completion, abandonment or termination of the Project, whichever is later. Such mediation shall be conducted by and between the parties in accordance with the AAA Rules of Mediation for Construction Cases then in effect. Provider understands and agrees that it shall continue to perform its Work under the Agreement unless further performance has been excused by termination of Provider or stopping Work is specifically allowed under the laws of the State of Texas. Provider understands that should a settlement be reached at mediation it is subject to the approval of the City Council. If either mediation is unsuccessful or City elects not to proceed to mediation, then the dispute shall be submitted to litigation in keeping with the terms of this Agreement and the laws of the State of Texas.

14. TERMINATION RIGHTS OF CITY:

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

B. City shall have the right to terminate this Agreement, without notice to Provider, upon the occurrence of an event of default hereunder. In such event, City shall not be obligated to pay any amounts to Provider and Provider shall reimburse to City all amounts received by Provider under this Agreement.

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

16. ASSIGNMENT: This Agreement shall not be assigned by Provider, in whole or in part, without the prior written consent of City, which may be withheld or conditioned, in City's sole discretion.

17. NOTICES: All notices or other communications required under this Agreement shall be in writing and shall be given by hand-delivery or by registered or certified U.S. Mail, return

receipt requested, addressed to the other party at the address indicated herein or to such other address as a party may designate by notice given as herein provided. Notice shall be deemed given on the day on which personally delivered; or, if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

TO CITY:

City of San Angelo, Texas
Water Utilities Department
Attn: Allison Strube, Director
72 W. College Ave.
San Angelo, Texas 76903
Phone: (325) 657-4209

TO PROVIDER:

Phone: _____

18. AMENDMENTS: City or Provider may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of City and Provider, and approved by City. Such amendments shall not invalidate this Agreement, nor relieve or release City or Provider from their respective obligations under this Agreement.

19. MISCELLANEOUS PROVISIONS:

A. This Agreement shall be construed and enforced according to the laws of the State of Texas. This Agreement is governed by the laws of the State of Texas both as to interpretation and performance.

B. Title and paragraph headings are for convenient reference and are not a part of this Agreement.

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

D. Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Texas or City of San Angelo, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

E. This Agreement constitutes the sole and entire agreement between the parties hereto. No modification or amendment hereto shall be valid unless in writing and executed by properly authorized representatives of the parties hereto.

F. Venue for any cause of action arising under this contract is Tom Green County, Texas.

G. This Agreement shall, in any dispute over its meaning or application, be interpreted fairly and reasonably, and not more strongly for or against either party.

20. SUCCESSORS AND ASSIGNS: This Agreement shall be binding upon the parties hereto, their heirs, executors, legal representatives, successors, or assigns.

21. INDEPENDENT CONTRACTOR: Provider has been procured and is being engaged to provide Services to City as an independent contractor, and not as an agent or employee of City. Accordingly, Provider shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of City, nor any rights generally afforded classified or unclassified employees. Provider further understands that Texas Workers' Compensation benefits available to employees of City are not available to Provider and agrees to provide workers' compensation insurance for any employee or agent of Provider rendering services to City under this Agreement.

22. CONTINGENCY CLAUSE: Funding for this Agreement is contingent on the availability of funds and continued authorization for program activities and the Agreement is subject to amendment or termination due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) days' notice.

23. REAFFIRMATION OF REPRESENTATIONS: Provider hereby reaffirms all the representations contained in this Agreement and RFB WU-10-19.

24. DOCUMENTS OF INCORPORATION: This Agreement is expressly made subject to all exhibits hereto, to all of the exhibits, provisions, requirements, federal, state and local laws, rules and regulations as of the effective date herein, and to any and all requirements, whether federal, state or local, verbal or written, placed upon City. All the foregoing is hereby made a part of this Agreement and incorporated herein by reference as if fully set out herein.

25. ENTIRE AGREEMENT: This instrument and its exhibits constitute the sole and only agreement of the parties relating to the subject matter hereof and correctly set forth the rights, duties, and obligations of each to the other as of its date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.

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

27. INSURANCE: Provider shall, at all times during the term hereof, maintain such insurance coverage as may be required by City. All such insurance, including renewals, shall be subject to the approval of City for adequacy of protection and evidence of such coverage shall be furnished to City on Certificates of Insurance indicating such insurance to be in force and effect and

providing that it will not be canceled during the performance of the services under this Agreement without thirty (30) calendar days prior written notice to City. Completed Certificates of Insurance shall be filed with City prior to the performance of services hereunder, provided, however, that Provider shall at any time upon request file duplicate copies of the policies of such insurance with City.

28. SPECIAL INSURANCE AND INDEMNIFICATION RIDER: Please initial if applicable. Special Indemnification and Insurance Rider, Exhibit “C”, attached hereto and incorporated herein for all purposes.

[Signature Page to Follow]

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

“City”
CITY OF SAN ANGELO, a municipal corporation
of the State of Texas

By: _____
Daniel Valenzuela, City Manager

ATTEST:

Julia Antilley, City Clerk

“Provider”

By: _____
_____, _____

ATTEST:

Secretary

EXHIBIT "A"

RFB WU-10-19

AND

PROVIDER'S SUBMISSION

EXHIBIT “B”

COMPENSATION

Provider shall provide Services under this Agreement as specifically described, and under the special terms and conditions set forth in RFB WU-10-19, if applicable. Payments under this Agreement shall be in accordance with the payment schedule set out hereunder:

1.0 PAYMENT OF COMPENSATION

Provider shall submit to City a quarterly invoice (on the fifteenth day of September, December, March, and June) which indicates work completed and hours of Services rendered by Provider. The invoice shall describe the amount of Services provided since the effective date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges thereon. If City disputes any of Provider’s fees, City shall give written notice to Provider within thirty (30) days of receipt of an invoice of any disputed fees set forth therein.

2.0 REIMBURSEMENT FOR EXPENSES

Provider shall not be reimbursed for any expenses unless authorized in writing by City.

EXHIBIT “C”

SPECIAL INSURANCE AND INDEMNIFICATION RIDER

1. INDEMNIFICATION

1.1 GENERAL INDEMNIFICATION. Provider agrees to indemnify, defend, and hold City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees free and harmless from and against any and all claims, demands, proceedings, suits, judgments, costs, penalties, fines, damages, losses, attorneys’ fees and expenses asserted by any person or persons, including agents or employees of Provider or City, by reason of death or injury to persons, or loss or damage to property, resulting from or arising out of, the violation of any law or regulation or in any manner attributable to any act of commission, omission, negligence or fault of Provider, its agents or employees, or the joint negligence of Provider and any other entity, as a consequence of its execution or performance of this Agreement or sustained in or upon the premises, or as a result of anything claimed to be done or admitted to be done by Provider hereunder. This indemnification shall survive the term of this Agreement as long as any liability could be asserted. Nothing herein shall require Provider to indemnify, defend, or hold harmless any indemnified party for the indemnified party’s own gross negligence or willful misconduct.

1.2 PROSPECTIVE APPLICATION. Any and all indemnity provided for in this Agreement shall survive the expiration of this Agreement and the discharge of all

other obligations owed by the parties to each other hereunder and shall apply prospectively not only during the term of this Agreement but thereafter so long as any liability (including but not limited to, liability for closure and post closure costs) could be asserted in regard to any acts or omissions of Provider in performing under this Agreement.

1.3 RETROACTIVE APPLICATION. The indemnity provided for in this Agreement shall extend not only to claims and assessments occurring during the term of this Agreement but retroactively to claims and assessments which may have occurred during the term of previous agreements between City and Provider.

2. INSURANCE

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

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

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

2.1.3 Waiver of Subrogation. Provider shall require its insurance carrier(s), with respect to all insurance policies, to waive all rights of subrogation

against City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees.

2.1.4 Certificates of Insurance. At or before the time of execution of this Agreement, Provider shall furnish City's Risk Manager with certificates of insurance as evidence that all the policies required herein are in full force and effect and provide the required coverage and limits of insurance. All certificates of insurance shall clearly state that all applicable requirements have been satisfied. The certificates shall provide that any company issuing an insurance policy shall provide to City not less than thirty (30) days' advance notice in writing of cancellation, non-renewal, or material change in the policy of insurance. In addition, Provider and insurance company shall immediately provide written notice to City's Risk Manager upon receipt of notice of cancellation of any insurance policy, or of a decision to terminate or alter any insurance policy. Copies of required endorsements will be attached to the certificates to confirm the required endorsements are in effect. Certificates of insurance and notices of cancellations, terminations, or alterations shall be furnished to City's Risk Manager at City Hall, 72 W. College Ave., San Angelo, Texas 76903.

2.1.5 Provider's Liability. The procurement of such policy of insurance shall not be construed to be a limitation upon Provider's liability or as a full performance on its part of the indemnification provisions of this Agreement. Provider's obligations are, notwithstanding any policy of insurance, for the full and total amount of any damage, injury or loss

caused by or attributable to its activities conducted at or upon the premises. Failure of Provider to maintain adequate coverage shall not relieve Provider of any contractual responsibility or obligation.

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

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

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

\$1,000,000.00 General Aggregate

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

3.2 Business Automobile Liability. This policy shall be written in comprehensive form and shall protect Provider and the additional insureds against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles and shall cover operation on and off the premises of all motor vehicles licensed for highway use, whether they are owned, non-owned or hired. Coverage shall be as follows:

\$ 500,000.00	Each Accident Limit
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3.3 Workers' Compensation and Employer's Liability. If Provider hires any employees, Provider shall maintain Workers' Compensation and Employer's Liability insurance, which shall protect Provider against all claims under applicable state workers' compensation laws and employer's liability. The insured shall also be protected against claim for injury, disease or death of employees which for any reason, may not fall within the provisions of a workers' compensation law. Coverage shall not be less than:

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

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN CITY OF SAN ANGELO, TEXAS**

AND _____

RFB WU-10-19

APPROVED AS TO CONTENT:

Nolan A. Sosa, Purchasing Manager

APPROVED AS TO CONTENT:

Allison Strube, Director of Water Utilities

APPROVED AS TO FORM AND
CORRECTNESS:

Dan T. Saluri, Deputy City Attorney

APPROVED AS TO INSURANCE
REQUIREMENTS:

Charles Hagen, Risk Manager