



CITY OF WESLACO

**REQUEST FOR PROPOSAL (RFP) FOR
MUNICIPAL AUDIT SERVICES**

RFP No.: 2014-15-33

Proposal Due Date: September 9, 2015

Proposal Due Time: 3:00 p.m.

Publish Dates: August 26, 2015 and September 2, 2015
Advance News Journal - Legal Publications
Proof of Publication Required

NAME OF PROPOSER: _____

**NOTICE OF REQUEST FOR PROPOSALS
CITY OF WESLACO**

NOTICE IS HEREBY GIVEN that the City of Weslaco, Texas, will receive written sealed proposals only, for MUNICIPAL AUDIT SERVICES, as stated in the RFP documents.

The City shall receive proposals from qualified professional certified public accounting firms specializing in governmental agency audit services for the City of Weslaco as outlined in the Specifications section of the RFP.

Sealed proposals addressed to Homer Rhodes, Purchasing Agent, will be accepted at the Weslaco City Hall Purchasing Office, 255 S. Kansas, Weslaco, Texas 78596, until **3:00 p.m.** on **September 9, 2015**. At 3:00 p.m. the name of all Vendors submitting a Proposal will be read publicly but no contents of the Proposals will be disclosed. **Please mark envelope, “Sealed Proposal – Municipal Audit Services, Proposal No. 2014-15-33.”**

Potential respondents are advised that the proposal documents can be downloaded from the City of Weslaco web page address: www.weslacotx.gov, and may also be secured at the Weslaco City Hall Purchasing Office, 255 S. Kansas, Weslaco, Texas 78596, or by calling 956/447-2240. Be advised that if your company is contemplating on submitting a proposal for this project you must contact the Purchasing Office, so that any changes/additions via addendum form can be forwarded to your company. (Please include your company name, address, telephone and fax as well as contact person).

The City of Weslaco reserves the right to accept or reject any and all proposals and to waive any formalities in the proposing or to accept the proposal to be the best and most advantageous to the City and to hold proposals for a period of forty-five (45) days from the date of the proposal opening without taking action for the purpose of reviewing the proposals and investigation of respondents qualifications prior to proposal award. Proposals submitted past the aforementioned date and time will not be accepted.

City of Weslaco
/s/Homer Rhodes,
Purchasing Agent

The City of Weslaco will not entertain RFP’s received by any electronic means.

VENDOR'S NOTICE OF INTENT TO SUBMIT A PROPOSAL

If you intend to submit a proposal for **Municipal Audit Services** with the City of Weslaco as outlined in the specifications, please indicate your intention by signing, dating, and returning this form to the address below prior to **September 8, 2015**, so that you may receive any addendums to the specifications should the need arise.

**Homer Rhodes
Purchasing Agent
City of Weslaco
Finance Department
255 S. Kansas
Weslaco, Texas 78596
Phone : (956) 447-2240
Fax: (956) 969-8452
hrhodes@weslacotx.gov**

Name: _____ Signature: _____
(print)

Title: _____ Company/Agency: _____

Mailing
Address: _____ City/State/Zip: _____

Phone: _____ Fax: _____

Email:

Proposal No.: 2014-15-33

INSTRUCTIONS TO PROPOSERS

SECTION 1: PROPOSER'S REVIEW

Proposers are expected to examine all related documents of the Request for Proposal. Failure to do so will be at the proposer's risk.

Any questions concerning the Request For Proposal process should be referred to the City of Weslaco Purchasing Agent at (956) 447-2240 at least 72 hours prior to RFP due time. Changes in the RFP which might arise out of such referral will then be forwarded to all RFP holders of record prior to the time set for RFP receipt.

SECTION 2: SUBMISSION OF REQUEST FOR PROPOSAL

The City of Weslaco is an Affirmative Action/Equal Opportunity Employer. Prospective suppliers shall be cognizant of the requirement for compliance with Executive Order 11246, entitled "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in regulations of the U.S. Department of Labor (41 CFR part 60).

Proposers are encouraged to describe in detail their services as related to this section and any additional offerings related to the offering but not specified in this request for proposal.

ONE (1) COMPLETE ORIGINAL AND ONE (1) COMPLETE DUPLICATE COPY of the entire proposal shall be delivered by the time and to the place stipulated in the Notice of Request for Proposal. It is the proposer's sole responsibility to see that their proposal is received at the place, date and time specified. Any proposal received after the scheduled closing time for receipt of proposals may be returned to the proposer as unacceptable. Oral, facsimile, telegraph, or telephone or other electronic modifications will not be considered.

Altering the Proposal language or any document or form may render your proposal nonresponsive.

A duly authorized representative of the proposing firm shall sign the proposal document. Unsigned offers may be rejected.

Signed copies of all Addenda and/or bulletins issued to prospective providers should be enclosed with the Proposal. Failure of the proposer to enclose said addenda or bulletins will be considered grounds for rejection of the RFP.

SECTION 3: AWARD OF CONTRACT

Any or all Request for Proposal Responses received in response to a RFP may be rejected by the governing body or its authorized representative if such governing body or its authorized

representative determines that any such proposer is not responsive or responsible or if the public interest would be served by such a rejection.

The City of Weslaco reserves the right to waive any irregularities and/or informalities in the submitted Proposal Forms. Should the City elect to waive a right it will not constitute an automatic waiver of that right in the future nor will it impact any other right or remedy. Should the successful proposer fail to deliver the materials or perform the services in accordance with the stipulated schedule, including any extensions authorized by the City of Weslaco, the City may declare the successful proposer in default of contract and recover all damages, costs and fees (including Attorney's fees) allowable by law. In the case of default by the successful Proposer, the City of Weslaco may procure the service(s) from another source and hold the defaulting Proposer responsible for an excess cost occasioned thereby, debar the defaulting proposer for not less than one year or pursue other applicable legal remedies. The successful vendor may not assign their rights and duties under this award without written consent of the City. Such consent shall not relieve the assignor of liability in event of default of their assignee.

The City will notify you in writing if you have been awarded the contract.

The City is required to comply with Chapter 552, Texas Government Code, known as the Public Information Act. This Act establishes a state mandate in favor of disclosure of public records. As such, the information submitted to the City may ultimately be subject to disclosure as a public record.

SECTION 4: QUESTIONS/INFORMATION

Questions concerning any aspects of the Proposal process should be addressed to: Homer Rhodes, Purchasing Agent at 956/968-3181, hrhodes@weslacotx.gov.

SECTION 5: GENERAL OVERVIEW

The City of Weslaco desires to contract with a qualified professional certified public accounting firm to provide stipulated government agency auditing services for the City of Weslaco.

The vendor will perform the services listed in the Specifications Section in cooperation with the Director of Finance or designated accounting/financial personnel from the City of Weslaco. The scope of the work services may encompass other related but undefined work associated with this project.

SECTION 6: ASSISTANCE AVAILABLE TO AUDITORS

The audit report for the year ending September 30, 2014 was performed by Garcia & Pena, of Weslaco, Texas and is available for review on the City's website: www.weslacotx.gov.

The City’s Finance Director or her designee will address questions pertaining to accounting and internal control procedures. The City’s assistance shall be limited to “pulling” of records-receipts, checks, and invoices for audit sampling. There must be at least thirty-six (36) hours notice provided to staff to compile these records before the audit firm will need them. A separate workspace for three to five people will be made available for the audit staff in close proximity to the accounting records and staff.

SECTION 6: SPECIFICATIONS OF THE REQUEST FOR PROPOSAL (RFP)

The primary specifications of this RFP shall be as follows:

A. General Information

The City of Weslaco, Texas, is soliciting requests for proposals (RFP) from qualified firms of certified public accountants to audit its financial statements. The term of the audit contract will be for three (3) years, with an optional renewal for one (1) two-year term, not to exceed a maximum contract period of five (5) years. The selection of auditors will consist of an evaluation and comparison of each firm’s past performance, appropriate references, prior experience in other municipalities and expertise related to the City’s requirements.

The City of Weslaco has one (1) blended component unit, the Weslaco Economic Development Corporation (WEDC). Please indicate audit fees for the WEDC as a separate item. The City has one (1) fiduciary fund, the Firemen’s Relief and Retirement Fund, which is presented as a pension fund. This fund obtains its own independent audit and will not be included in the scope of services requested.

B. Description of the Municipality

The City of Weslaco has approximately 257 full-time employees and 38 part-time or seasonal employees with an estimated payroll of \$12,273,056. The total City budget for 2014-2015 is \$45.2 million and the City currently has 25 funds. The City owns its own water and wastewater utility services. The City will process approximately 4,422 accounts payable checks and 7,778 payroll checks (checks and ACH transactions) in 2014-2015. The City is a home rule City using a modified accrual basis of accounting. More detailed information about the City and its finances can be found in prior CAFR’s and budgets as listed on our website at www.weslacotx.gov.

C. Fund Structure

As of August 2015, the City’s fund structure is as follows:

Fund Type/Account Group	Number of Individual Funds	Number with Legally Adopted Annual Budgets
General fund	1	1
Special revenue funds	4	3

Debt service funds	3	3
Capital project funds	6	0
Enterprise funds	4	4
Internal service funds	1	0
Agency funds	0	0
Pension trust funds	1	0
General fixed asset account group	1	0
General long-term debt account group	1	0

D. Scope of Work to be performed

The audit of the financial statements of the City’s governmental activities, business-type activities, each major fund, and the aggregate remaining fund information, which collectively comprise the City’s basic financial statements, is to be performed in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and/or as prescribed for financial audits of state and local governmental entities by the:

- General Accounting Office (GAO) (Yellow Book);
- Provisions of the Single Audit Act Amendments of 1996;
- Office of Management and Budget (OMB) Circular A-133;
- Government Accounting Standards Board (GASB);
- Securities and Exchange Commission (SEC); and
- Any other state or federal standard setting agencies.

The City also desires the auditor to express an opinion on the fair presentation of the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund of their basic financial statements, including the respective changes in financial position and cash flows, where applicable, in conformity with accounting principles generally accepted in the United States of America.

The auditor is not required to audit the supporting schedules contained in the annual financial report. However, the auditor is to provide an “in-relation-to” opinion on the supporting schedules based on the limited auditing procedures applied during the audit of the basic financial statements. The auditor is not required to audit the management’s discussion and analysis, introductory or statistical sections of the report.

In accordance with *Government Auditing Standards*, a separate report will be required considering internal controls over financial reporting. In accordance with the United States Office of Management and Budget Circular A-133, a report on compliance with the requirements of major federal programs and on internal control over compliance is required.

The City has received the Government Finance Officers Association of the United States and Canada's Certificate of Achievement for Excellence in Financial Reporting for previous fiscal years and wishes to continue submission for this certification. The auditor may be required to prepare significant portions of the Comprehensive Annual Financial Report (CAFR) for the convenience of the City. If auditor preparation of significant portions of the CAFR would be considered a finding or material weakness, please note that in the proposal documents.

The audit reports must be submitted no later than March 15th of each year.

The Proposal shall include:

1. Request for Proposal form, Disclosure of Principals form, Affidavit of Non-collusion form, Statement of Experience/Reference form, and a Conflict of Interest Questionnaire (Form CIQ) (as required for all vendors doing business with the City). All of these forms are included with this RFP.

2. Commitment

A transmittal letter is required, from a principal, regarding your organization's commitment to the project.

3. Independence

The firm should provide an affirmative statement that it is independent of the City, as defined by generally accepted auditing standards/the U.S. General Accounting Office's *Government Auditing Standards*.

The firm should also list the firm's or proposed contractor's professional relationships involving the City or any of their agencies or component units/agencies, component units or oversight unit for the past five (5) years, together with a statement explaining why such relationships do not constitute a conflict of interest relative to performing the proposed audit.

4. License to Practice in the State of Texas

An affirmative statement should be included that the firm and all assigned key professional staff are properly licensed to practice in the State of Texas throughout the agreement term.

5. Firm Qualifications and Experience

The proposer should state the size of the firm, the size of the firm's governmental audit staff, the location of the office from which the work on this engagement is to be performed and the number and nature of the professional staff to be employed in this engagement on a full-time basis and the number and nature of the staff to be so employed on a part-time basis.

The proposer will indicate whether they have a local office in the Weslaco or Rio Grande Valley area, and their auditing experience within the State of Texas, with particular emphasis on Texas municipalities.

The firm is also required to submit a copy of the report on its most recent external quality control review, with a statement whether that quality control review included a review of specific governmental engagements.

6. Partner, Supervisory and Staff Qualifications and Experience

Identify the principal supervisory and management staff, including engagement partners, managers, and other supervisors and specialists, who would be assigned to the engagement. Indicate whether each such person is registered or licensed to practice as a certified public accountant in Texas. Provide information on government auditing experience of each person, in particular with regard to municipalities, including information on relevant continuing professional education for the past three (3) years and membership in professional organizations relevant to the performance of this audit.

Provide as much information as possible regarding the number, qualifications, experience and training, including relevant continuing professional education, of the specific staff to be assigned to this engagement. Indicate how the quality of the staff over the term of the agreement will be assured.

The proposer should identify the extent to which staff to be assigned to the audit reflect the City's commitment to Affirmative Action.

Engagement partners, managers, other supervisory staff and specialists may be changed if those personnel leave the firm, are promoted or are assigned to another office. These personnel may also be changed for other reasons with the express prior written permission of the City of Weslaco. However, in either case, the City of Weslaco retains the right to approve or reject replacements.

Consultants and firm specialists mentioned in response to this request for proposal can only be changed with the express prior written permission of the City of Weslaco, which retains the right to approve or reject replacements.

Other audit personnel may be changed at the discretion of the proposer provided that replacements have substantially the same or better qualifications or experience.

7. Presentation

The proposer is asked to consider the possibility of three fee rate structures under the following scenario: The City has traditionally provided ad hoc reports and trial

balances from our integrated financial accounting system which closely resemble financial statements ultimately found in CAFR documents. Using these reports, the audit team prepares financial statements and the notes thereto. City staff typically prepares the Letter of Transmittal, Management’s Discussion and Analysis (MD&A) and the statistical section. The accounting firm then assembles the CAFR document.

Please provide separate pricing (by year) as follows:

Report Type:	2014	2015	2016
Comprehensive Annual Financial Report			
Single Audit			
Additional Bookkeeping Service Hourly Rate			

8. Fee Rate Structures

The proposer should indicate all fee rate structures. The structure should include the standard hourly rates for all staff that will be working on the audit or other bookkeeping services, including partners, managers, supervisors, and all other staff.

9. Engagements with Other Government Agencies

For the firm’s office that will be assigned responsibility for the audit, list the most significant engagements (maximum - 5) performed in the last five years that are similar to the engagement described in this request for proposal.

These engagements should be ranked on the basis of total staff hours. Indicate the scope of work, date, engagement partners, total hours, and the names and telephone numbers of the principal client contacts.

10. Engagement Letter

When a firm has been selected by the City to perform the above services, that firm will be asked to submit a letter of engagement that includes the scope of work and fees.

SECTION 7: PROPOSAL, AGREEMENT AND DISPOSITION

The contents of the proposal and any clarifications thereto submitted by the successful proposer and accepted by the City of Weslaco shall become part of the contractual obligation and incorporated by reference into any ensuing Agreement.

1. All proposals shall become the property of the City of Weslaco and shall not be returned.
2. The City is required to comply with Chapter 552, Texas Government Code, known as the Public Information Act. This Act establishes a state mandate in favor of disclosure of public records. As such, the information submitted to the City may ultimately be subject to disclosure as a public record, after the formal process has been completed.

Tentative Schedule for Proposal process:

Receive Proposals	September 9, 2015
Review and Selection Process	September 10-14, 2015
Recommendation/City Commission Award	No Later than Sep. 15, 2015

SECTION 8: EVALUATION

The City of Weslaco reserves the right to meet with proposers to discuss their proposal. Expenses incurred as a result of said meetings shall be the proposers' responsibility.

Proposal evaluation shall be based on specified factors but other factors shall be considered.

1. Ability to meet project criteria.
2. Qualifications of Proposer; i.e., experience in the field of government financial accounting and audit services, with particular emphasis on municipalities, and the proposer's demonstrated ability to perform the work.

SECTION 9: NEGOTIATION(S)

City staff will present a Professional Services Contract Agreement to the Weslaco City Commission. The selected auditing firm will execute the professional services contract prepared by the City of Weslaco. The City may, at its option, determine that a contract form provided by the vendor, subject to modification is acceptable in lieu of a City-prepared document.

The recommendation of award to the Weslaco City Commission shall be based upon the offer which represents the most responsive and advantageous overall proposal for the City.

SECTION 10: STATUS OF SUCCESSFUL PROPOSER

Successful proposer shall have the status of an "Independent Contractor" as defined by IRS regulations, and shall not be entitled to any or all rights, privileges, benefits and emoluments of either an officer or employee of the City of Weslaco.

SECTION 11: HOLD HARMLESS/INSURANCE REQUIREMENTS

The successful proposer is directed to Sections 9-10 within the contract located at the end of this RFP for specific indemnification, liability and insurance requirements.

SECTION 12: FUNDING OUT CLAUSE

In the event the City of Weslaco fails to obligate requisite funds for any specified fiscal year during the contract period which would necessitate cancellation of the resultant agreement, the successful proposer shall agree to hold the City of Weslaco free from any charge other than work completed or the pro-rated portion of the authorized work.

**CITY OF WESLACO, TEXAS
REQUEST FOR PROPOSAL
MUNICIPAL AUDIT SERVICES**

Firm Name: _____

Signature: _____ Date: _____

[An authorized representative of the proposing firm shall sign this document in the space(s) provided. An unsigned proposal may be disqualified]

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

IS PROPOSER A CORPORATION? YES NO FEDERAL TAX ID # _____

TELEPHONE NUMBER: _____

FAX NUMBER: _____

OTHER LICENSES: _____

CLOSING TIME: ONE (1) COMPLETE ORIGINAL AND ONE (1) COMPLETE DUPLICATE COPY OF REQUEST FOR PROPOSAL MUST BE DELIVERED IN A SEALED ENVELOPE TO THE PURCHASING OFFICE, 255 S. KANSAS AVE., WESLACO, TX 78596, BY RFP CLOSING TIME (3:00 P.M.) ON SEPTEMBER 9, 2015, AND BE PLAINLY MARKED ON THE OUTSIDE:

RFP FOR MUNICIPAL AUDIT SERVICES

The proposer declares that they have carefully examined the specifications, the forms of this Request for Proposal, and have read and understood the "Instructions to Proposers" published with this Request for Proposal and incorporated herein by reference; and agrees that if this proposal is accepted, they will contract with the City of Weslaco, at their own cost and expense, to do all the work and/or furnish all material and/or services necessary to completely perform said contract in the manner and time prescribed and in accordance with and subject to all applicable auditing and accounting regulations, and laws of the State of Texas and that they will take in full payment therefore, the agreed upon fee schedule price(s) subject to negotiated agreement in Appendix A.

DISCLOSURE OF PRINCIPALS
PRINT OR TYPE

COMPANY NAME: _____

ADDRESS: _____

CITY, STATE, & ZIP CODE: _____

Date Business Started Operations: _____

Principal Address of Company: _____

NAMES OF OFFICERS, MEMBERS, OR OWNERS OF CONCERN, PARTNERSHIP ETC.:

NAME: _____ OFFICIAL CAPACITY: _____

STREET: _____ CITY: _____ STATE: _____ ZIP: _____

NAME: _____ OFFICIAL CAPACITY: _____

STREET: _____ CITY: _____ STATE: _____ ZIP: _____

NAME: _____ OFFICIAL CAPACITY: _____

STREET: _____ CITY: _____ STATE: _____ ZIP: _____

NAME: _____ OFFICIAL CAPACITY: _____

STREET: _____ CITY: _____ STATE: _____ ZIP: _____

NAME: _____ OFFICIAL CAPACITY: _____

STREET: _____ CITY: _____ STATE: _____ ZIP: _____

NAME: _____ OFFICIAL CAPACITY: _____

STREET: _____ CITY: _____ STATE: _____ ZIP: _____

SIGNATURE OF PROPOSER: _____ DATE: _____

AFFIDAVIT OF NON-COLLUSION

STATE OF _____)

) SS

COUNTY OF _____)

I, _____ (Name of party signing this affidavit and the Proposal Form), _____ (Title), being duly sworn do depose and say: That _____ (Name of person, firm, association, or corporation) has not, either directly or indirectly, entered into agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this contract.

Signature

Title

Sworn before me this ____ day of _____, 20____

Signature

Title

This form must be notarized and returned with the RFP. Failure to notarize this form may be cause for disqualification from consideration for this contract.

STATEMENT OF EXPERIENCE/REFERENCES

List references to whom your firm has provided similar projects, in particular, other municipalities. The City of Weslaco may contact these references, to affirm the quality of *similar services*. Please list any further references on another sheet of paper.

Name of Agency: _____

Contact Person: _____ Telephone #: _____

Address: _____

Description of Project: _____

Amount of Contract: \$ _____

Name of Agency: _____

Contact Person: _____ Telephone #: _____

Address: _____

Description of Project: _____

Amount of Contract: \$ _____

Name of Agency: _____

Contact Person: _____ Telephone #: _____

Address: _____

Description of Project: _____

Amount of Contract: \$ _____

**City of Weslaco, Texas
Professional Services Contract Agreement
For Municipal Audit Services**

THIS AGREEMENT is made this ____ day of _____, 20__, by and between the City of Weslaco, a municipal corporation existing under and by virtue of the laws of the State of Texas (“City”), and _____, (“Auditor”) having a business address at _____.

RECITALS

WHEREAS, the City desires to engage the Auditor in the performance of providing Municipal Audit Services. Auditor’s Services are more fully described in Auditor’s Proposals/Scope of Services/Fee Estimate dated _____, attached hereto and incorporated herein by reference. (Hereinafter referenced to as “Project”)

WHEREAS, Auditor is a qualified, independent professional firm of certified public accountants, who is not employed by the City, bears responsibility for their own taxes and expenses, and is not subject to the City's direction and control.

WHEREAS, Auditor is in good standing in the State of Texas, the Texas State Board of Public Accountancy, and all auditing and accounting regulatory agencies, and as such, is qualified to perform the Proposal under the terms and conditions set forth herein.

WHEREAS, Auditor desires to perform the Project under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of these recitals and the promises set forth in this Agreement, the parties agree as follows:

1. **Term.** This Agreement shall become effective upon contract execution and will continue in effect until the Project is completed unless earlier terminated as provided herein. Auditor will audit the City’s financial statements for the fiscal years ending September 30, 2015, 2016, and 2017, with the option of auditing their financial statements for each of the two (2) subsequent fiscal years but not later than September 30, 2019.
2. **Time Devoted to Work.**
 - 2.1 In performing the services contemplated under this Agreement, the services and the hours Auditor is to work on any given day will be on a mutually agreed upon basis, except for attendance at scheduled meetings, and City will rely upon Auditor to put in such number of hours as is reasonably necessary to fulfill the spirit and purpose of this Agreement.
 - 2.2 City understands that Auditor is engaged in the same or similar activities for others and that City may not be Auditor’s sole client or customer. However, Auditor represents and neither warrants that it is under no obligation or restriction, nor will it assume any such obligation or restriction, that would in any way interfere or be inconsistent with the services to be performed under this Agreement.

3. **Program Services**

- 3.1 Auditor will supply all equipment, tools, materials and supplies necessary to perform the services under this Agreement, the full scope of which are set forth in the Project.
- 3.2 Auditor will have the right to control or direct the manner and the order in which it provides the services contemplated under this Agreement.
- 3.3 Auditor represents and warrants that Auditor is engaged in an independent calling and has complied and will continue to comply with all local, state and federal laws regarding business permits and licenses that may be required to carry out the independent calling and to perform the services to be performed under this Agreement.

4. **No Unfair Employment Practices or Illegal Harassment**

- 4.1 In connection with the performance of work under this Agreement, Auditor agrees not to discriminate against any employee or applicant because of race, creed, color, national origin, sex, sexual orientation or age. Such agreement shall include, but not be limited to, the following: recruitment or recruitment advertising, rates or pay or other forms of compensation, and selection.
- 4.2 Any violation of these provisions by Auditor shall constitute a material breach of contract.

5. **Payment for Project Services**

- 5.1 As full consideration for the Services to be performed by Auditor, City agrees to pay Auditor as set forth in accordance with the Fee Schedule set forth in the proposal and not to exceed fees of _____ Dollars (\$_____) for services and reimbursables. The City will not hire or directly compensate the Auditor's employees, assistants or subcontractors, if any.
- 5.2 It is expressly understood and agreed that all work done by Auditor shall be subject to review as to its result by the City at the City's discretion. Payment of any invoice shall not be taken to mean that the City is satisfied with Auditor's services to the date of payment and shall not forfeit City's right to require the correction of any service deficiencies.

6. **Status of Auditor**

- 6.1 It is the intent of the parties that Auditor shall be considered an independent contractor and that Auditor, and anyone else for whom it is legally liable, shall not be considered employees, servants or agents of the City for any purpose. Furthermore, this Agreement shall not be construed to be a partnership or joint venture.
- 6.2 Neither Auditor nor any of its employees or contractors shall be eligible to participate in City's industrial insurance, unemployment, disability, medical, dental, life or other insurance programs, or any other benefit or program that is sponsored, financed or provided by City for its employees.
- 6.3 Auditor agrees that it shall be Auditor's exclusive responsibility to pay all federal, state, or local payroll, social security, disability, industrial insurance, self-employment insurance,

income and other taxes and assessments related to this Agreement. Neither FICA (Social Security), FUTA (Federal Employment), nor local, state or federal income taxes will be withheld from payments to Auditor. Auditor shall at Auditor's expense pay and be fully liable and responsible for, and indemnify and hold harmless City from, any assessments, fines or penalties relating to Auditor's failure to uphold any of these responsibilities.

7. **City Ownership of Proprietary Information.** All reports, drawings, plans, specifications, and other documents prepared by Auditor as products of service under this Agreement shall be the exclusive property of the City and all such materials shall be remitted to the City by Auditor in a timely manner upon completion, termination or cancellation of this Agreement. Auditor shall not use, willingly allow or cause to have such materials used for any purpose other than performance of Auditor's obligations under this Agreement without the prior written consent of the City.
8. **Public Records.** Auditor understands that City is subject to the provisions of Texas Government Code, Chapter 552. As such, the City may have the duty to disclose the Auditor's reports or recommendations unless a particular record is made confidential by law or a common law balancing of interests.
9. **Insurance.**
 - 9.1 The Auditor shall take out and keep in force during the period of the Contract, at its own expense, a General Liability Insurance Policy with a Minimum Limit of \$1,000,000 Combined Single Limit (BI/PD) to protect it from claims for damages and personal injury, including death, which may arise from operation under this Contract, whether such operations be by Auditor or by any subcontractor or anyone directly or indirectly employed by either of them. There shall be no exclusions of coverage for premises-operations, products-completed operations, blanket contractual, broad form property, independent contractors, personal injury, explosion and underground collapse hazard. Auditor shall maintain auto liability insurance of \$1,000,000 liability insurance including owned, non-owned and hired vehicles coverage requirements.

The Auditor shall file a Certificate of Insurance followed by an Additional Insured Endorsement to the Policy, naming the City of Weslaco as an additional insured as it relates to the specific project or program. The insurance shall be subject to approval for adequacy of protection prior to commencing work. The Auditor shall pay for and maintain such insurance at his sole cost and expense. The Auditor shall reimburse the City for any premiums paid in behalf of the Auditor by deducting said amount from compensation due the Contractor.
 - 9.2 Auditor assumes the risk of damage to its own supplies and equipment.
10. **Indemnification.** Auditor shall indemnify, defend and hold harmless the City from any and all costs, liabilities, damages, reasonable attorneys' fees, or expenses of any kind that arise out of, or are in any way related to, the negligence or misconduct, or acts or omissions, of Auditor while performing or failing to perform Auditor's duties under this Agreement.
11. **Termination.**

- 11.1 Unless otherwise provided in this Agreement, this Agreement may only be terminated by either party upon ten (10) days written notice specifying the reason for termination. Such notice shall be delivered in accordance with paragraph 13.
- 11.2 If either party terminates the Agreement for breach of contract, the notice must specify which contractual provisions were breached and how they were breached. If the City terminates the Auditor for breach of contract, the City will pay Auditor all reasonable charges for work performed prior to the time City gives notice and for demobilization by Auditor through the tenth (10th) day after the City has given notice minus any amount the Auditor may owe the City in damages.
- 11.3 Notwithstanding the preceding paragraph, the City may immediately terminate the Agreement, and Auditor waives any and all claim(s) for damages, upon the Auditor's receipt of notice under the following conditions:
- (a) If funding is not obtained, continued, or budgeted at levels sufficient to allow for purchase of the services contemplated under this Agreement;
 - (b) If any federal, state or local law, including by not limited to, statutes, regulations, ordinances and resolutions, is interpreted by a third party judicial, legislative or administrative authority in such a way that the services contemplated under this Agreement are no longer authorized for purchase or appropriate for City financial participation;
 - (c) If Auditor fails to comply with any local, state or federal law regarding business permits and licenses required to perform the services to be performed under this Agreement;
 - (d) If it is found that any quid pro quo or gratuities were offered or given by the Auditor to any officer or employee of the City with a view towards securing favorable treatment with respect to awarding, extending, amending or making any determination with respect to the performance of this Agreement.
- 11.4 The indemnity and conflict resolution obligations of this Agreement shall survive the termination of this Agreement and shall be binding upon the parties' and the parties' legal representatives, heirs, successors and assigns.

12. **General Provisions.**

- 12.1 Drafting Presumption. The parties acknowledge that this Agreement has been agreed to by both parties, that both parties have consulted or have had the opportunity to consult with attorneys with respect to the terms, and that no presumption shall be created against the City as the drafter of the Agreement.
- 12.2 Governing Law. The laws of the State of Texas shall govern this Agreement without regard to conflicts of law principles.
- 12.3 Jurisdiction: Venue. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement must be brought against either of the parties in the courts of the State of Texas, County of Hidalgo. Each of the parties consents to the jurisdiction of the court (and of the appropriate appellate court) in any such action or proceeding and waives any objection to venue laid therein.

12. **Due Authorization.** Each party represents that all required authorizations have been obtained to execute this grant and for the compliance with each and every term hereof. Each person signing this agreement warrants and represents to the other party that he or she has actual authority to execute this agreement on behalf of the party for whom he or she is signing.
13. **Notice.** Except as otherwise specified, all notices under this Agreement shall be in writing.

Notice to Auditor shall be addressed to:

Notice to City shall be addressed to:
 Attn: Director of Finance
 City of Weslaco
 255 S. Kansas Ave.
 Weslaco, TX 78596

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement as of the date first above written.

AUDITOR:

Signature

Print Name of Signer

CITY OF WESLACO:

255 S. Kansas Ave.
 Weslaco, TX 78596

By: David Suarez
 Mayor

APPROVED AS TO FORM:

By: Francisco J. Garza
 City Attorney