



COME AND TAKE IT

CITY OF GONZALES TEXAS

**SPECIFICATIONS/REQUIREMENTS FOR:
J.B. WELLS ARENA CONCESSION SERVICES RFP # 2020-15**

CLOSING DATE THURSDAY, NOVEMBER 19, 2020 1:00 PM (CST)

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NOTICE TO BIDDERS

The terms bid and “RFP” used in this document have the same meaning.

Sealed Request for Proposals will be received by the City of Gonzales at the office of Tim Patek, City Manager, Gonzales City Hall Building, 820 St. Joseph, Gonzales, Texas 78629 **or via email provided a digital signature is included**, until the hour **1:00 PM on the 19th day November, 2020**; at which time bids duly delivered and submitted will be considered for supplying the following:

REQUEST FOR PROPOSAL FOR CONCESSION SERVICES RFP #2020-15

Any request for proposals received after stated closing time will be returned unopened. If request for proposals are sent by mail to the City Manager, the proposer shall be responsible for actual delivery of the request for proposal to the City Manager before the advertised date and hour for opening of request for proposals. If mail is delayed by the postal service, courier service, an ISP – internet service provider or in the internal mail system of the City of Gonzales beyond the date and hour set for the request for proposal opening, request for proposals thus delayed will not be considered and will be returned unopened.

Information concerning the bid specifications may be obtained by emailing Anne Dollery, JB Wells Park Arena Operations Manager, at (830) 672-6558, and via email @ adollery@gonzales.texas.gov . Please be sure to copy the City Manager at tpatek@gonzales.texas.gov on all correspondence.

Information on the bid process/procedures may be obtained from Kristi Gilbert, Director of Administrative Services/City Secretary at (830) 672-2815 or citysecretary@gonzales.texas.gov

Until the final award by the City of Gonzales, said City reserves the right to reject any and/or all bids, to waive technicalities, to re-advertise, to proceed otherwise when the best interests of said City will be realized hereby. Bids will be submitted sealed and plainly marked with the date and time of opening.

The city of Gonzales City Hall Building is wheelchair accessible. For accommodations or sign, interpretive services needed for bid openings, please contact Kristi Gilbert, Director of Administrative Services/City Secretary at (830) 672-2815, 48 hours in advance.

CITY OF GONZALES, TEXAS

Tim Patek, City Manager

Publication Dates:

Thursday, October 15 and 22, 2020

Closing Date:

Thursday, November 19, 2020 @ 1:00 PM

PROPOSAL OF BIDDERS

All:

The following bid is made for furnishing the materials/services for the City of Gonzales, Texas.

The undersigned declares that the amount and nature of the materials/services required is understood and that this proposal is in strict accordance with the requirements of the RFP and is a part of this bid, and that there will at no time be a misunderstanding as to the intent of the specifications or conditions to be overcome or pleaded after the bids are opened.

The proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any Department of Transportation (DOT)-assisted contract or in the administration of its Disadvantaged Business Enterprise (DBE) program or the requirements 49 CFR part 26. The proposer shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT- assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The undersigned hereby proposes to furnish any supplies or equipment necessary for this request for proposal, F.O.B. Gonzales, Texas, freight pre-paid at the unit prices quoted herein after notice of bid award. The undersigned affirms that they are duly authorized to execute this contract, that this company, corporation, firm, partnership or individual has not prepared this bid in collusion with any other bidder, and that the contents of this bid as to prices, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this type of business prior to the official opening of this bid.

Texas Government Code §2270.002 forbids Texas government entities from contracting with any company that excludes or boycotts Israel or will do so during the term of a contract. Also, Texas Government Code §2252.152 prohibits Texas governments from contracting with companies who do business with Iran, Sudan, or foreign terrorist organizations. If Bidder or Bidder's company boycotts Israel or will boycott Israel during the contract, does business with, or will do business with, Iran, Sudan, a terrorist organization, or is an organization listed with the Texas Comptroller pursuant to Chapter 2252 of the Texas Government Code, you must disclose this in your bid response and provide details of such business.

In addition, the Vendor who wins a bid award must guarantee that they will not employ a subcontractor in the performance of the bid award who falls under either law. Submission of a bid proposal shall be deemed an affirmative statement that Bidder does not and will not boycott Israel, and Bidder does not and will not contract with Iran, Sudan, or any terrorist organization.

If you need to provide the city any detail regarding these new laws, please attach details as needed.

Please sign on the line below as verification that your company is not excluded from contracting with the city of Gonzales by either Texas law, **and will remain in compliance to these two laws for the term of the bid award.**



PROPOSAL OF BIDDERS

RFP# _____ CONCESSION SERVICES

Respectfully Submitted,

**PLEASE PROVIDE A COPY OF
YOUR W-9**

SIGNATURE

DATE

PRINTED NAME

TITLE

COMPANY NAME

CONTACT PERSON

MAILING ADDRESS

CITY

STATE

ZIP

PAYMENT ADDRESS

CITY

STATE

ZIP

PHONE NUMBER

FAX NUMBER

E-MAIL ADDRESS

WEB PAGE

HUB Vendor Status _____ **YES (attach certification)** _____ **NO**

HUB VENDORS: HUB Vendors (Historically Underutilized Business) are Vendors whose company is owned by either a minority or

woman. If you are classified as a HUB Vendor and have certification to prove this, please respond below and

attach a copy of your certification. If you would like to read the Texas bid statute, which references HUB

Vendors, please follow this link <http://www.statutes.legis.state.tx.us/SOTWDocs/LG/htm/LG.252.htm>

NO BIDS: If response is not received in the form of a “BID” or “No BID” bidder will be removed from bid list. Please give a specific reason as to why you are unable to bid, i.e.: we do not sell the required product/service.

NO BIDS may be faxed to: 830-672-2813

REQUEST FOR PROPOSAL FOR CONCESSION SERVICES

TIMELINE

CITY OF GONZALES

Advertise	Thursday, October 15, 2020 Thursday, October 22, 2020
Deadline for Questions	Thursday, November 5, 2020 @ 8:00 AM Questions by Email only to: adollery@gonzales.texas.gov
Deadline for Response to Questions	Thursday, November 12, 2020 @ 10:00 AM
Deadline for Proposals	Thursday, November 19, 2020 @ 1:00 PM
Proposal Award	Thursday, December 10, 2020
Expected Start of Operations	Thursday, December 31, 2020 @ 11:00 AM

GENERAL CONDITIONS

ADDENDA

It is the responsibility of the Vendor to check for addenda. Addenda will be posted to the City's website: www.gonzales.texas.gov under the Bid/RFP tab in the Government drop down directory.

ASSIGNMENT OF REQUEST FOR PROPOSAL/CONTRACT

The successful proposer may not assign their rights and duties under and award without the written consent of the City Manager. Such consent shall not relieve the assignor of liability in event of default by their assignee.

REQUEST FOR PROPOSAL CONSIDERATION / TABULATION

After request for proposals are opened and publicly read, the request for proposals will be tabulated for comparison on the basis of the request for proposal prices and quantities (lowest responsible Vendor) or by the best value method shown in the Proposal. Until final award of the Contract, the city reserves the right to reject any or all request for proposals, to waive technicalities, and to re-advertise for new request for proposals, or proposed to do the work otherwise in the best interests of the City.

The criteria for evaluating the proposals will be based upon a combination of the following:

- ☐ Quote amount..... 30%
- ☐ The background and experience of operator in providing quality service through similar concession operations 25%
- ☐ Demonstration of qualifications necessary to operate the concession building in a business-like manner20%
- ☐ The background and experience of operator in related professional experiences... 10%
- ☐ Ability to provide a menu that offers a variety of food items as suggested in sections E.2..... 10%
- ☐ Reference responses..... 5%

REQUEST FOR PROPOSALS SUBMISSION

Request for Proposals may be submitted in person, electronically or by mail.

- To submit a Request for Proposal electronically, all documents must be returned, and a **digital signature provided on the proposal to submitters form**. As an alternative to the digital signature, the request for proposal may be sent electronically and the **proposal to submitters form may be faxed to 830-672-2813**. **This form is the only page that will be accepted via fax.**
- **SUBMIT REQUEST FOR PROPOSALS VIA EMAIL TO citysecretary@gonzales.texas.gov**
- Submit request for proposals via mail to 820 St. Joseph Street, Gonzales, TX 78629 Attention: City Secretary
- Proposals must be marked on the outside of the packaging, **“RFP# 2020-15 JB Wells Concession”**. Vendors do not need to come to the opening, but are welcome, if so

desired. At the opening, the name of responding Vendor will be identified. No other information will be provided. The responding Vendors will be listed under the RFP tab of the City website within 24 hours.

- To submit a request for proposal via mail, all documents must be returned, and an original signature provided on the proposal to submitters sheet.
- Request for proposals will not be accepted in either format without a signature.
- The City is not responsible for mail service.

BRAND NAMES

If items for which request for proposals have been called for have been identified by a “brand name or equal” description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Request for proposals offering “equal” products will be considered for award if such products are clearly identified in the request for proposals and are determined by the City Manager and requesting Department to be equal in all material respects to the brand name products referenced. **Unless the proposer clearly indicates in their request for proposal that they are offering an “equal product”, their request for proposal shall be considered as offering a brand name product referenced in the Proposal Schedule.**

CANCELLATION OF REQUEST FOR PROPOSALS

Request for proposals may be cancelled with 14 days written notice with good cause.

CHANGES OR ALTERATIONS

No part of this request for proposal may be changed/alterd in any way. Vendors must submit written requests to change any specifications/conditions with their proposal. ***Changes made without submission of a written request to this request for proposal will result in disqualification.***

COMPLETING INFORMATION

Proposer must fill in all information asked for in the blanks provided under each item. Failure to comply may result in rejection of the Request for Proposal at the City’s option.

CONTRACT CLAUSE

Proposer understands and agrees that the Vendor’s request for proposal response/bid will become a legally binding contract upon acceptance in writing by the City. This contract may be superseded only if replaced with a more extensive contract that is agreed to by both parties.

DEFAULT

In case of default of the successful proposer, the city of Gonzales may procure the articles from other sources and hold the proposer responsible for any excess cost occasioned thereby.

DELIVERY

The City reserves the right to demand bond or penalty to guarantee delivery by the date indicated. If order is given and the Proposer fails to furnish the materials by the guaranteed date, the City reserves the right to cancel the order without liability on its part. All prices are to be F.O.B. Gonzales, Texas

all freight prepaid.

DELIVERY DATE

Delivery date is an important factor to the City and may be required to be a part of each request for proposal. The City of Gonzales considers delivery time to be that period elapsing from the time the individual order is placed until that order or work thereunder is received by the City at the specified delivery location. The delivery date indicates a guaranteed delivery at Gonzales, Texas. Failure of the proposer to meet guaranteed delivery dates or service performance could affect future City orders.

Whenever the Contractor encounters any difficulty which is delaying or threatens to delay timely performance (including actual or potential labor disputes), the Contractor shall immediately give notice thereof in writing to the JB Wells Park Arena Operations Manager, stating all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery or performance schedule or be construed as a waiver by the City of any rights or remedies to which it is entitled by law or pursuant to provisions herein. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery or performance schedule because of such delivery.

INDEMNIFICATION

IN CASE ANY ACTION IN COURT IS BROUGHT AGAINST THE CITY, OR ANY OFFICER OR AGENT OF THE CITY, FOR THE FAILURE, OMISSION, OR NEGLECT OF THE VENDOR TO PERFORM ANY OF THE COVENANTS, ACTS, MATTERS, OR THINGS BY THIS CONTRACT UNDERTAKEN; OR FOR INJURY OR DAMAGE CAUSED BY THE ALLEGED NEGLIGENCE OF THE VENDOR OR HIS SUBCONTRACTORS OR HIS OR THEIR AGENTS, OR IN CONNECTION WITH ANY CLAIM BASED ON LAWFUL DEMANDS OF SUBCONTRACTORS, WORKMEN, MATERIALMEN, OR SUPPLIERS THE VENDOR SHALL INDEMNIFY AND SAVE HARMLESS THE CITY AND ITS OFFICERS AND AGENTS, FROM ALL LOSSES, DAMAGES, COSTS, EXPENSES, JUDGMENTS, OR DECREES ARISING OUT OF SUCH ACTION. THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS THE CITY AND ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, PENALTIES, DAMAGES, EXPENSES AND JUDGMENTS OF ANY NATURE AND HOWEVER CAUSED, ARISING OUT OF OR RELATING TO THE CONTRACTOR AND ITS AGENTS, SERVANTS OR EMPLOYEES OPERATIONS IN THE CONCESSIONS AND/OR CATERING SERVICES PERFORMED BY CONTRACTOR UNDER THIS CONTRACT

WITHIN THE CITY, INCLUDING THOSE CLAIMS, DEMANDS, PENALTIES, DAMAGES, EXPENSES AND JUDGMENTS WHICH INVOLVE OR MAY INVOLVE THE ACTUAL OR ALLEGED JOINT NEGLIGENCE OF:

(i) THE CONTRACTOR OR ANY OF ITS EMPLOYEES, AGENTS, SERVANTS OR EMPLOYEES; AND

(ii) THE CITY, ITS OFFICERS, AGENTS, OR EMPLOYEES

IT IS THE EXPRESSED INTENTION OF BOTH THE CITY AND THE CONTRACTOR THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION IS INDEMNITY BY THE CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCES OF THE NEGLIGENCE OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES WHERE SUCH NEGLIGENCE IS A CONCURRING CAUSE OF INJURY, LOSS, DEATH OR DAMAGE. FURTHERMORE, IT IS THE EXPRESSED INTENTION OF BOTH THE CITY AND THE CONTRACTOR THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL HAVE NO APPLICATION TO ANY CLAIMS, LOSS, DAMAGE, CAUSE OF ACTION, SUIT OR LIABILITY WHERE THE INJURY, DEATH OR DAMAGE RESULTS FROM THE NEGLIGENCE OF THE CITY UNMIXED WITH THE FAULT OF THE CONTRACT OR ANY OF ITS EMPLOYEES. FOR PURPOSES OF THIS INDEMNIFICATION PROVISION, ACTS AND/OR OMISSION OF THE CONTRACTOR'S OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES SHALL BE CONSIDERED THE ACTS AND OMISSIONS OF THE CONTRACTOR.

INSURANCE

Deductibles, of any type, are the responsibility of the Vendor/contractor.

The Contractor shall secure and maintain throughout the duration of this Contract insurance of such types and in such amounts as may be necessary to protect himself/herself and the interest of the Owner against all hazards or risks of loss as hereinafter specified. The form and limits of such insurance, together with the underwriter thereof in each case, shall be acceptable to the Owner but regardless of such acceptance it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times. Failure of the Contractor to maintain adequate coverage shall not relieve him/her of any contractual responsibility or obligation.

Satisfactory certificates of insurance shall be filed with the Owner prior to starting any construction work on this Contract. The certificate shall state that 30 days advance written notice will be given to the Owner before policy covered thereby is changed or canceled.

The Contractor shall comply with all Federal, State, and local laws and ordinances relating to Social Security, Unemployment Insurance, Pensions, etc.

1. **Commercial General Liability:** \$1,000,000.00 combined single limit per occurrence for Fire Damage, Medical Expenses, Personal & Advertising Injury, General Aggregate and Products–Completed Operations Aggregate. This policy shall have no coverage removed by exclusions.
2. **Automobile Liability:** \$500,000.00 combined single limit per accident for bodily injury and property damage. Coverage should be provided as a "Code 1," any auto.
3. **Worker's Compensation and Employers' Liability:** *Statutory*. Employers Liability policy limits of \$500,000.00 for each occurrence, \$500,000.00 Aggregate - Disease.
4. **Other Insurance Provisions**

Certificates of Insurance and Endorsements effecting coverage required by this clause

shall be forwarded to: City of Gonzales
Purchasing Department: JB Wells Park Arena Operations Manager
P. O. Box 547
Gonzales, Texas 78629

Insurance Certificate must be submitted and issued with the City listed as the certificate holder.

Cancellation Policy must read as follows:

"Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will mail a 30 day written notice to the certificate holder named to the left. "

MISCELLANEOUS

Except as to any supplies or components which the specifications provide need not be new, all supplies and components to be provided under this contract shall be new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety), of current production and of the most suitable grade for the purpose intended. If at any time during the performance of this contract the Contractor believes that the furnishing of supplies or components, which are not new, is necessary or desirable, they shall notify the Purchasing Manager immediately, in writing, including the reasons therefore and proposing any consideration, which will flow to the City if authorization to use supplies or components is granted.

The City of Gonzales supports a recycling program. Recycled materials are acceptable and will be considered for award. The City desires to use recycled products when a comparable material/product is available. If your company distributes products made of recycled materials, please submit an alternate request for proposal for the items requested. All recycled products should meet the minimum standards established in the request for proposal specifications provided. State any exceptions: costs, warranties and percentage of recycle materials used in the manufacture of the material/product. The City will determine the acceptability of the materials/product request for proposal as an alternate.

The City will consider special Vendor pricing on discounts in exchange for City's willingness to participate in new product testing or promotion including ability of Vendor to bring other potential customers to city job sites to demonstrate product. The amount of product discount in exchange for these services should be clearly stated in the request for proposal document. Any promotional strategies should be discussed with the Purchasing Manager and approved by the appropriate City Official(s) before submission of the request for proposal.

Successful proposer(s) agrees to extend prices to all entities that have entered into or will enter into joint purchasing inter-local cooperation agreements with the city of Gonzales. As such, the city of Gonzales has executed an inter- local agreement with certain other governmental entities authorizing participation in a cooperative purchasing program. The successful Vendor may be asked to provide product/services, based upon the request for proposal price, to any other participant in the forum.

The City operates on a fiscal year that ends on September 30th. State law mandates that a municipality may not commit funds beyond a fiscal year; this request for proposal is subject to cancellation if funds for this commodity are not approved in the next fiscal year.

PROVISIONAL CLAUSES

The city of Gonzales will not enter into any contract where the cost is provisional upon such clauses as are known as “escalator” or “cost-plus” clauses.

REJECTION OF REQUEST FOR PROPOSALS

The City reserves the right to reject any or all request for proposals or to waive technicalities at its option when in the best interests of said City.

Request for proposals will be considered irregular if they show any omissions, alteration of form, additions, or conditions not called for, unauthorized alternate request for proposals or irregularities of any kind. However, the City reserves the right to waive any irregularities and to make the award in the best interests of the City.

The City reserves the right to reject any or all request for proposals, and all request for proposals submitted are subject to this reservation. Request for proposals may be rejected, among other reasons, for any of the following specific reasons:

- Request for proposals received after the time limit for receiving request for proposals as stated in the advertisement.
- Proposal containing any irregularities.
- Unbalanced value of any items.

Proposers may be disqualified and their request for proposals not considered, among other reasons, for any of the following specific reasons:

- Reason for believing collusion exists among the Proposers.
- Reasonable grounds for believing that any Proposer is interested in more than one Proposal for the work contemplated.
- The Proposer being interested in any litigation against the City.
- The Proposer being in arrears on any existing contract or having defaulted on a previous contract.
- Lack of competency as revealed by a financial statement, experience and equipment, questionnaires, etc.
- Uncompleted work, which in the judgment of the City will prevent or hinder the prompt completion of additional work if awarded.

REQUEST FOR NON-CONSIDERATION

Request for proposals deposited with the City cannot be withdrawn prior to the time set for opening request for proposals. Request for non-consideration of request for proposals must be made in writing to the Purchasing Manager and received by the City prior to the time set for opening request for proposals. After other request for proposals are opened and publicly read, the Proposal for which non-consideration is properly requested may be returned unopened. The Proposal may not be withdrawn after the request for proposals have been opened, and the Proposer, in submitting the same, warrants and guarantees that this request for proposal has been carefully reviewed and checked and that it is in all things true and accurate and free of mistakes and that such request for proposal will not and cannot be withdrawn because of any mistake committed by the Proposer.

SALES TAX

The total for each request for proposal submitted must include any applicable taxes. Although the City is exempt from most City, State, or Federal taxes, this is not true in all cases. It is suggested that taxes, if any, be separately identified, itemized, and stated on each request for proposal. The City cannot determine for the proposer whether or not the request for proposal is taxable to the City. The proposer through the proposer's attorney or tax consultant must make such determination. Bills submitted for taxes after the request for proposals are awarded will not be honored.

REQUEST FOR PROPOSAL SCOPE OF WORK

The scope of work shall be finalized upon the selection of the Firm. The respondent's submission shall have accurately described respondent's understanding of the objectives and scope of the requested products and services and provided an outline of respondent's process to implement the requirements of the Scope of Work and Services. It is anticipated that the scope of work will include, at a minimum, the following:

This proposal is for securing concession rights to the JB Wells Arena and Park, otherwise operated by the City of Gonzales Parks and Recreation Department. The City of Gonzales will grant rights to the successful respondent(s) to operate the concession stands for all events.

SCOPE OF SERVICES

PART A. - JB WELLS ARENA

A. SUBMITTAL REQUIREMENTS

Each concessionaire that submits a written proposal must meet the minimum requirements as detailed herein and shall include the following documents; which will be used as evaluation criteria in selecting the most qualified concessionaire.

- 1) Propose payment to the City of Gonzales based on a per month rate of operation.
- 2) A description of the type of products to be sold and the corresponding prices for each item.
- 3) Proof of Insurance, listing the City of Gonzales as additional insured.
- 4) Proof of valid Health Permits
- 5) Proposed operating & staffing schedule for the operation of the concession location.
- 6) A Resume that will include background and experience of operator proving quality service through similar operations, demonstration of qualifications necessary to operate the concession in a business-like manner and three (3) references with name of contact person and telephone number.
- 7) The City of Gonzales has the right to hire Food Trucks for events with the understanding that items for sale are different than those being sold in the concession stand.

B. SPECIAL NOTES

- 1) A representative schedule is included with this RFP. Specific schedules for events will be given to the contractor at least ten days (10) days prior to the start of the event.
- 2) Concessionaire is expected to be open and operating 1 hour before all events and 30 minutes after the completion. Failure to open the concession operation for scheduled event's will be considered an offense and default of the contract terms. Each offense will incur an additional \$50.00 fee. After five (5) offenses, the contract will be terminated.
- 3) Concessionaire may be given opportunities to sell at other City of Gonzales special events.
- 4) Site inspection may be arranged by calling Anne Dollery at (830) 672-6558 at the JB Wells Arena, 2301 CR 197, Gonzales, TX 78629 to set up an appointment to view the facility prior to submitting a proposal.

C. CONTRACT PERIOD

The term of the contract shall be for an initial term of three (3) years with three (3) additional (1) one-year options to extend the contract are allowed. Each contract period shall begin in October and run concurrently with the fiscal year of the City, ending on September 30 of the following year. Respondents understand that the initial year of the contract will begin later than October 1st due to the timing of the contract award.

D. FACILITY & HOURS

JB Wells Arena, 2301 CR 197, Gonzales, TX 78629

Hours are depending on schedule with a calendar provided 120 days in advance.

E. PRODUCT & PRICES

- 1) No Item shall be sold without permission from the City of Gonzales. All prices on items sold shall be presented to the City of Gonzales prior to opening. The City of Gonzales must approve all price changes on existing items and the addition or substitution with pricing of new items.
- 2) The following are recommended menu items: A copy of the price list shall be provided to City of Gonzales and kept on file with this contract.
 - Hot Dogs
 - Nachos
 - Popcorn
 - Pickles

- Packaged chips, candy, and other packaged snacks
 - Soft Drinks, water, coffee, hot chocolate and sport drinks
- 3) Price of food purchased after initial price scale is approved by the City of Gonzales shall not increase without written approval by the City of Gonzales.
 - 4) All signage must follow City of Gonzales Regulations and Policies.
 - 5) The following items are **prohibited** from being sold:
 - Party-Poppers, snaps, confetti, cray paper, glitter or similar type products
 - Any device that could be considered fireworks
 - Any item that is prohibited by City of Gonzales, Ordinance, State of Texas, or United States
 - Alcohol and tobacco products

F. EQUIPMENT

- 1) Contractor will be required to supply the necessary equipment for operations, including but not limited to the following:
 - Any heating materials needed for menu items
 - Extra Refrigerator/Freezers not already in building
 - Cash Register/Electronic Devices (wi-fi is currently available)
- 2) The following equipment is available on site for the exclusive use by the Contractor, however, the City of Gonzales will not be responsible for repairs or replacement of the items:
 - Griddle
 - Two small fryers
 - Equipment stand
 - Hot food serving counter
 - Drink cooler
 - Ice machine
 - Freezer
- 3) City of Gonzales will provide the following items:
 - Electrical, water, trash and sewer will be provided and paid for by the City of Gonzales.

G. CLEANING OF PREMISES

- 1) Concessionaire shall furnish all labor, services, materials, supplies and equipment necessary to maintain in a clean, orderly and inviting condition of the premises used in the

operation of the concession to the satisfaction of the City of Gonzales. This includes all premises used and occupied by the concessionaire in the operation of concessions, together with the area surrounding the buildings and facility, which are affected, by said operation and items sold by Concessionaire.

- 2) Concessionaire will be responsible for the cleaning of grease traps at least once every six (6) months.
- 3) All health and safety practices must be followed to ensure a safe, clean, and welcoming environment for customers. Any concerns with food handling and reported un-sanitary practices will be addressed immediately by the City of Gonzales.
- 4) Concessionaire shall be responsible for all trash and used grease within the concession facility and such trash/debris must be removed when operating the concessions. Trash is to be placed in trash bags and placed in appropriate trash receptacles. No trash or used grease is to be left over night in the concession facility or in bags sitting outside of facility. Arrangements must be made for any boxes or large items that do not fit in trash/recycle receptacles. Parks staff will empty trash and recycle receptacles and remove bagged trash daily.

H. EMPLOYEES

- 1) The contractor must be able to produce verification of successfully passed background checks for all employees working the concession stands, executed within the past one (1) year. Contractor agrees to maintain updated records of background check and submit copies of these records to the City of Gonzales upon request. Contractor shall remove any person that the City of Gonzales determines unacceptable by reason of criminal history or other conduct deemed by the City of Gonzales to be unsuitable to be working with or near children, or the general public.

I. LICENSES AND PERMITS

The concessionaire will be responsible for obtaining and maintaining any and all certificate and permits necessary to run a food business in the City of Gonzales at their own expense. Required permits must be obtained and properly displayed prior to opening to the public.

J. INSPECTIONS

- 1) The City of Gonzales reserves the right for its representatives to conduct inspections at reasonable times to ensure that fire, safety, and sanitation regulations, and other provisions contained in the agreement, are being adhered to by the concessionaire.

K. REPAIRS & MAINTENANCE

- 1) The City of Gonzales shall, at its cost and expense, make all ordinary and reasonable repairs required to preserve the building and concession area owned by the City of Gonzales occupied under this contract.
- 2) The concessionaire shall maintain the facilities on a day-to-day basis. If the concessionaire damages the facilities the concessionaire will be responsible for repairs.

L. SUBLEASE

- 1) The concessionaire shall not have the authority to sell, sublet, or assign this contract, or any portion thereof to any other person or persons, except upon the written approval of the City of Gonzales.

M. ACCOUNTING RECORDS & REPORTS

- 1) Concessionaire shall maintain any records necessary to verify the amount of total gross receipts for the contract period, payment of wages, etc. These records shall be available for auditing at the City of Gonzales's request. Such records shall be maintained in accordance with generally accepted accounting principles and may be specifically prescribed by the City of Gonzales.

N. MINIMUM ACCEPTABLE OFFER & PAYMENT

- 1) \$750 per month
- 2) Any amount less than the minimum acceptable quote per month will not be considered.
- 3) Concessionaire shall pay to the City of Gonzales the amount owed for the prior one-month period of operations. Payment shall be made to the City of Gonzales no later than the 15th day of each month for the prior month period. Check must be made payable to the City of Gonzales. A ten (10) dollar per day late fee will be assessed if payment is not received by the 15th of the month following the month being reported.

O. FEE REQUIREMENTS LOST KEY FEE

Keys given to the concessionaire unlock the complex gates and concession stand doors. The concessionaire will not be permitted to make copies of the keys. The concessionaire will be required to pay \$100 per key to the City of Gonzales for any lost keys.

SPECIAL CONDITIONS

THESE TERMS APPLY TO AND BECOME PART OF THE TERMS AND CONDITIONS OF BID. ANY EXCEPTION MUST BE IN WRITING.

1. The term of the contract shall be for an initial term of three (3) years. Three (3) one (1) year options to extend the contract are allowed. Each contract period, other than the initial year, shall begin October 1 and terminate September 30 the following year.
2. The City of Gonzales reserves the right to cancel this agreement upon thirty (30) days written notice.
3. Proposals submitted for less than the acceptable amount will not be considered for award.
4. **The RFP will be evaluated based on the following criteria:**
 - Quote Amount.....30%
 - The background and experience of operator in providing quality service through similar concession operations.....25%
 - Demonstration of qualifications necessary to operate the concession building in a business-like manner.....20%
 - The background and experience of operator in related professional experiences... 10%
 - Ability to provide a menu that offers a variety of food items as suggested in sections E.210%
 - Reference responses.....5%
5. Contractor shall provide all materials and equipment necessary to complete this project. All material is to be delivered by Vendor and coordinated with the City.
6. Contractor shall be required to submit a list of **three (3)** verifiable references. Please use pages in this RFP to submit references.
7. The proposal should clearly demonstrate how the firm can best satisfy the requirements of the City of Gonzales. The City of Gonzales shall reserve the right to enter into an agreement with the firm with the highest overall grade and who presents the proposal that is most advantageous to the City of Gonzales.
8. Insurance Requirement Affidavit should be submitted as part of the proposal. (Requirements are listed on page 21). This form is simply a confirmation from your insurance company that you will be able to provide the insurance requirements should you be the chosen company.
9. Insurance Certificate must be submitted and issued with the City listed as the certificate holder within 10 days of notice of award. See general terms and conditions for detailed insurance requirements.
10. By signing the proposal sheet, the representative has read and understands all, specifications involved with this project.

INSURANCE

INSURANCE REQUIREMENTS

1. The City is to be named as an additional insured on the Commercial General Liability Insurance policy. These insurance policies shall contain the appropriate additional insured endorsement signed by a person authorized by the insurer to bid coverage on its behalf.
2. Insurance is to be placed with insurers with a Best rating of no less than A. The company must also be duly authorized to transact business in the State of Texas.
3. Workers' Compensation and Employers' Liability Coverage: Statutory. The insurer shall agree to waive all rights of subrogation against the City, its officials, employees and volunteers for losses arising from the activities under this contract.
4. Certificates of Insurance and Endorsements effecting coverage required by this clause shall be forwarded to the Purchasing Manager upon award of the contract(s).
5. Insurance Certificate must be submitted and issued with the City listed as the certificate holder.
6. During the duration of any agreed contract, the contractor shall maintain, at its sole cost and expense, Professional E&O Liability insurance with a minimum policy limit of \$1,000,000. The insurance policy must name the City of Gonzales as an additional insured. A certificate of insurance evidencing such coverage shall be furnished to the City prior to the commencement of any work for the City.

THIS FORM MUST BE TURNED IN WITH YOUR BID

INSURANCE REQUIREMENT AFFIDAVIT

TO BE COMPLETED BY APPROPRIATE INSURANCE AGENT.

I, the undersigned agent, certify that the insurance requirements contained in this bid document have been reviewed by me with the Vendor identified below. If the Vendor identified below is awarded this contract by the City of Gonzales, I will be able, within ten (10) working days after being notified of such award, to furnish a valid insurance certificate to the CITY meeting all of the requirements contained in this bid.

Agent Signature

Printed Name

Name of Insurance Carrier

Address of Agency

City

State

Zip

Phone #

Fax #

Email Address

Vendor / Contractor Name

Acknowledgement

Subscribed and Sworn before me by the above named _____

On this _____ day of _____, 2020.

(seal)

Notary Public in and for the State of _____

NOTICE TO THE AGENT

If this time requirement is not met, the City has the right to declare this Vendor non-responsible and award the contract the next lowest/responsible bidder meeting the specifications. If you have any questions concerning these requirements, please contact the City of Gonzales.

REFERENCES

Please list at least three (3) references of governments, individuals or companies that have used your concession services. Included in the reference information should be customer contact information, duration of business relationship, and the status of business relationship.

1. _____
COMPANY NAME OR CONTACT PERSON

STREET ADDRESS CITY STATE ZIP

CONTACT PERSON TELEPHONE NUMBER

SERVICES USED/DURATION OF BUSINESS RELATIONSHIP/STATUS OF RELATIONSHIP

2. _____
COMPANY NAME OR CONTACT PERSON

STREET ADDRESS CITY STATE ZIP

CONTACT PERSON TELEPHONE NUMBER

SERVICES USED/DURATION OF BUSINESS RELATIONSHIP/STATUS OF RELATIONSHIP

3. _____
COMPANY NAME OR CONTACT PERSON

STREET ADDRESS CITY STATE ZIP

CONTACT PERSON TELEPHONE NUMBER

SERVICES USED/DURATION OF BUSINESS RELATIONSHIP/STATUS OF RELATIONSHIP

CONFLICT OF INTEREST QUESTIONNAIRE

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code went into effect which requires that any Vendor or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the Vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the City Secretary of the city of Gonzales not less than the seventh business day after the person becomes aware of facts that require the statement to be filed.

The conflict of Interest Questionnaire must be completed and returned with your bid if a Vendor or its agent has a conflict pursuant to Chapter 176.

It is the responsibility of every Vendor filling out and returning this bid to determine if there is a conflict meeting the parameters listed above. If so, **the City of Gonzales requires that this Questionnaire be completed and turned in with your bid.** If there is no conflict, or if the amount of the conflict is less than \$23,500, then you are not required to submit the Questionnaire with your bid. In addition to the foregoing, after the submission of a bid a Vendor must file a questionnaire if the Vendor becomes aware of facts or an event that would constitute a conflict pursuant to state law, or if the facts or event would make a statement in a previously filed questionnaire incomplete or inaccurate.

See Section 176.006, Local Government Code which reads, "A person commits an offense if the person violated Section 176.006, Local Government Code. An offense under this section is:

- (1) A Class C misdemeanor if the contract amount is less than \$1 million or if there is no contract amount for the contract;
- (2) A Class B misdemeanor if the contract amount is at least \$1 million but less than \$5 million; or
- (3) A Class A misdemeanor if the contract amount is at least \$5 million. The governing body of a local governmental entity may, at its discretion, declare a contract void if the governing body determines that a Vendor failed to file a conflict of interest questionnaire required by Section 176.006.

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐

Yes

☐

No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐

Yes

☐

No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;

or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

CERTIFICATE OF INTERESTED PARTIES

Form 1295 (Certificate of Interested Parties attached) must be submitted through the Texas Ethics Commission's website, and a notarized original form as printed from the website to the City prior to approval of the contract. More information is found at the following link:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

https://www.ethics.state.tx.us/whatsnew/FAO_Form1295.html

Once bid evaluations take place by city staff, you will be notified that an award to your company is pending and that this form is mandatory. You will need to provide this form to the city before City Council approval can be considered.

You can fill out the form online, get a certificate number, and that number goes in the upper right box.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO Interested Party. ☐

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address _____ (street) _____ (city) _____ (state) _____ (zip code) _____ (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20_____.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)

ADD ADDITIONAL PAGES AS NECESSARY

THE STATE OF TEXAS §

COUNTY OF GONZALES §

THIS CONTRACT is entered into on this ____ day of _____, _____, by and between the **CITY OF GONZALES, TEXAS**, a municipal corporation located in Gonzales County, Texas, (hereinafter referred to as “City”), acting by and through its City Manager or designee, and (“hereinafter referred to as “Contractor”) acting by and through its Director and Managing Member whose address is _____.

WITNESSETH:

WHEREAS, City desires to obtain services from Contractor for Concession Services at JB Wells Arena; and

WHEREAS, Contractor is willing to undertake the performance of such services for City in exchange for fees hereinafter specified.

NOW, THEREFORE IN CONSIDERATION of the covenants and agreements hereinafter contained and subject to the terms and conditions hereinafter stated, the parties hereto do mutually agree as follows:

I.

Independent Contractor

Contractor will perform as an independent contractor all services under this Contract in a manner that provides a safe environment. Contractor shall require all agents, sub-contractors, and employees to abide by the terms of this Contract.

II.

Scope of Services

Contractor shall perform such services as are necessary to Concession Services specifically including, but not necessarily limited to, the tasks enumerated more fully in the Scope of Work listed in Exhibit A. However, in case of conflict in the language of Exhibit A and this Contract, the terms and conditions of this Contract shall be final and binding upon both parties hereto.

III.

Payment for Services

Concessionaire shall pay to the City of Gonzales the amount owed for the prior one-month period of operations. Payment shall be made to the City of Gonzales no later than the 15th day of each month for the prior month period. Check must be made payable to the City of Gonzales. A ten (10) dollar per day late fee will be assessed if payment is not received by the 15th of the month following the month being reported.

IV.
Revisions of the Scope of Services

City reserves the right to revise or expand the scope of services as the City may deem necessary. In any event, when Contractor is directed to revise or expand the scope of services under this Section of the Contract, Contractor shall provide City a written proposal for the entire costs involved in performing such additional services. Prior to Contractor undertaking any revised or expanded services as directed by City under this Contract, City must authorize in writing the nature and scope of the services and accept the method and amount of compensation and the time involved in all phases of the Program.

It is expressly understood and agreed by Contractor that any compensation not specified in Paragraph III herein above may require Gonzales City Council approval and is subject to the current budget year limitations.

V.
Term

The term of the contract shall be for the 2021-2023 fiscal years (December 30, 2020 - September 30, 2023). Three (3) one (1) year options to extend the contract are allowed. Each contract period, other than the first year, shall begin October 1 and terminate September 30 of the following year.

VI.
Contract Termination Provision

This Contract may be terminated at any time by City for any cause by providing Contractor thirty (30) days written notice of such termination.

VII.
Ownership of Documents

All materials and documents prepared or assembled by Contractor under this Contract regarding the Program shall become the sole property of City and shall be delivered to City without restriction on future use.

VIII.
Insurance Requirements

1. The City is to be named as an additional insured on the Commercial General Liability Insurance policy. These insurance policies shall contain the appropriate additional insured endorsement signed by a person authorized by the insurer to bid coverage on its behalf.
2. Insurance is to be placed with insurers with a Best rating of no less than A. The company must also be duly authorized to transact business in the State of Texas.
3. Workers' Compensation and Employers' Liability Coverage: Statutory. The insurer shall

agree to waive all rights of subrogation against the City, its officials, employees and volunteers for losses arising from the activities under this contract.

4. Certificates of Insurance and Endorsements effecting coverage required by this clause shall be forwarded to the Purchasing Manager upon award of the contract(s).
5. Insurance Certificate must be submitted and issued with the City listed as the certificate holder.
6. During the duration of any agreed contract, the contractor shall maintain, at its sole cost and expense, Professional E&O Liability insurance with a minimum policy limit of \$1,000,000. The insurance policy must name the City of Gonzales as an additional insured. A certificate of insurance evidencing such coverage shall be furnished to the City prior to the commencement of any work for the City.

IX.

Right to Inspect Records

Contractor agrees that City shall have access to and the right to examine any directly pertinent books, documents, papers and records of Contractor involving transactions relating to this Contract. Contractor further agrees to include in subcontract(s), if any, a provision that any subcontractor agrees that City shall have access to and the right to examine any directly pertinent books, documents, papers and records of such sub-contractor involving transactions to the subcontract. The City of Gonzales reserves the right for its representatives to conduct inspections at reasonable times to ensure that fire, safety, and sanitation regulations, and other provisions contained in the agreement, are being adhered to by the concessionaire.

X.

Successors and Assigns

City and Contractor each bind themselves and their successors, executors, administrators and assigns to the other party to this contract and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Contract. Neither City nor Contractor shall assign or transfer its interest herein without the prior written consent of the other.

XI.

INDEMNIFICATION

THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS THE CITY AND ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, PENALTIES, DAMAGES, EXPENSES AND JUDGMENTS OF ANY NATURE AND HOWEVER CAUSED, ARISING OUT OF OR RELATING TO THE CONTRACTOR AND ITS AGENTS, SERVANTS OR EMPLOYEES OPERATIONS IN THE CONCESSIONS AND/OR CATERING SERVICES PERFORMED BY CONTRACTOR UNDER THIS CONTRACT WITHIN THE CITY, INCLUDING THOSE CLAIMS, DEMANDS, PENALTIES, DAMAGES, EXPENSES AND JUDGMENTS WHICH INVOLVE OR MAY INVOLVE THE ACTUAL OR ALLEGED

JOINT NEGLIGENCE OF:

(i) THE CONTRACTOR OR ANY OF ITS EMPLOYEES, AGENTS, SERVANTS OR EMPLOYEES; AND

(ii) THE CITY, ITS OFFICERS, AGENTS, OR EMPLOYEES

IT IS THE EXPRESSED INTENTION OF BOTH THE CITY AND THE CONTRACTOR THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION IS INDEMNITY BY THE CONTRACTOR TO INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCES OF THE NEGLIGENCE OF THE CITY, ITS OFFICERS, AGENTS OR EMPLOYEES WHERE SUCH NEGLIGENCE IS A CONCURRING CAUSE OF INJURY, LOSS, DEATH OR DAMAGE. FURTHERMORE, IT IS THE EXPRESSED INTENTION OF BOTH THE CITY AND THE CONTRACTOR THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION SHALL HAVE NO APPLICATION TO ANY CLAIMS, LOSS, DAMAGE, CAUSE OF ACTION, SUIT OR LIABILITY WHERE THE INJURY, DEATH OR DAMAGE RESULTS FROM THE NEGLIGENCE OF THE CITY UNMIXED WITH THE FAULT OF THE CONTRACT OR ANY OF ITS EMPLOYEES. FOR PURPOSES OF THIS INDEMNIFICATION PROVISION, ACTS AND/OR OMISSION OF THE CONTRACTOR'S OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES SHALL BE CONSIDERED THE ACTS AND OMISSIONS OF THE CONTRACTOR.

In its sole discretion, the City shall have the right to approve counsel to be retained by Contractor in fulfilling its obligation to defend and indemnify the City. Contractor shall retain approved counsel for the City within seven (7) business days after receiving written notice from the City that it is invoking its right to indemnification under this Contract. If Contractor does not retain counsel for the City within the required time, then the City shall have the right to retain counsel and the Contractor shall pay these attorneys' fees and expenses. The City retains the right to provide and pay for any or all costs of defending indemnified items, but it shall not be required to do so.

XIII.

Independent Contractor

Contractor's status shall be that of an Independent Contractor and not an agent, servant, employee or representative of City in the performance of this Contract. No term or provision of or act of Contractor or City under this Contract shall be construed as changing that status. Contractor shall be liable for the acts and omissions of its officers, agents, employees, contractors, subcontractors and the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor.

XIV. Default

If at any time during the term of this Contract, Contractor shall fail to perform in accordance with the provisions of this Contract or fail to diligently provide services in an efficient, timely and careful manner and in strict accordance with the provisions of this Contract or fail to use an adequate number or quality of personnel to complete the work or fail to perform any of its obligations under this Contract, then City shall have the right, if Contractor shall not cure any such default after thirty (30) days written notice thereof, to terminate this Contract. Any such act by City shall not be deemed a waiver of any other right or remedy of City. If after exercising any such remedy due to Contractor's nonperformance under this Contract, the cost to City to complete the work to be performed under this Contract is in excess of that part of the Contract sum which has not theretofore been paid to Contractor hereunder, Contractor shall be liable for and shall reimburse City for such excess. Contractor's liability under this provision shall be limited to the total dollar amount of this Contract.

City's remedies for Contractor's default or breach under this Contract shall be any and all remedies available in law or equity.

The terms of Sections XII entitled Indemnification, and XVII entitled Confidential Information shall survive termination of this Contract.

XV. Changes

City may, from time to time, require changes in the scope of services to be performed under this Contract. Such changes as are mutually agreed upon by and between City and Contractor shall be incorporated by written modification to this Contract.

XVI. Conflict of Interest

Contractor covenants and agrees that Contractor and its associates and employees will have no interest, and will acquire no interest, either direct or indirect, which will conflict in any manner with the performance of the services called for under this Contract. All activities and other efforts made by Contractor pursuant to this Contract will be conducted by employees, associates or subcontractors of Contractor.

XVII. Confidential Information

Contractor hereby acknowledges and agrees that its representatives may have access to or otherwise receive information during the furtherance of its obligations in accordance with this Contract, which is of a confidential, non-public or proprietary nature. Contractor shall treat any such information received in full confidence and will not disclose or appropriate such Confidential

Information for its own use or the use of any third party at any time during or subsequent to this Contract. As used herein, "Confidential Information" means all oral and written information concerning City of Gonzales, its affiliates and subsidiaries, and all oral and written information concerning City or its activities, that is of a non-public, proprietary or confidential nature including, without limitation, information pertaining to customer lists, services, methods, processes and operating procedures, together with all analyses, compilation, studies or other documents, whether prepared by Contractor or others, which contain or otherwise reflect such information. The term "Confidential Information" shall not include such materials that are or become generally available to the public other than as a result of disclosure of Contractor or are required to be disclosed by a governmental authority.

XVIII.
Mailing Address

All notices and communications under this Contract to be mailed to City shall be sent to the address of City's agent as follows, unless and until Contractor is otherwise notified:

Notices and communications to be mailed or delivered to Contractor shall be sent to the address of Contractor as follows, unless and until City is otherwise notified:

Any notices and communications required to be given in writing by one party to the other shall be considered as having been given to the addressee on the date the notice or communication is posted, faxed or personally delivered by the sending party.

XIX.
Applicable Law

The Contract is entered into subject to the Gonzales City Charter and ordinances of City, as same may be amended from time to time, and is subject to and is to be construed, governed and enforced under all applicable State of Texas and federal laws. Contractor will make any and all reports required per federal, state or local law including, but not limited to, proper reporting to the Internal Revenue Service, as required in accordance with Contractor's income. Situs of this Contract is agreed to be in Gonzales, Texas, for all purposes, including performance and execution.

XX.
Severability

If any of the terms, provisions, covenants, conditions or any other part of this Contract are for any reason held to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants, conditions or any other part of this Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

XXI.
Remedies

No right or remedy granted herein or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Contract may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Contract.

XXII.
Entire Agreement

This Contract embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporaneous agreements between the parties relating to matters herein, and except as otherwise provided herein cannot be modified without written agreement of the parties.

XXIII.
Non-Waiver

It is further agreed that one (1) or more instances of forbearance by City in the exercise of its rights herein shall in no way constitute a waiver thereof.

XXIV.
Headings

The headings of this Contract are for the convenience of reference only and shall not affect any of the terms and conditions hereof in any manner.

XXV.
Venue

The parties to this Contract agree and covenant that this Contract will be enforceable in Gonzales, Texas; and that if legal action is necessary to enforce this Contract, exclusive venue will lie in Gonzales County, Texas.

XXVI.
No Third-Party Beneficiary

For purposes of this Contract, including its intended operation and effect, the parties (City and Contractor) specifically agree and contract that: (1) the Contract only affects matters/disputes between the parties to this Contract, and is in no way intended by the parties to benefit or otherwise affect any third person or entity notwithstanding the fact that such third person or entity may be in contractual relationship with City or Contractor or both; and (2) the terms of this Contract are not

intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either City or Contractor.

IN WITNESS WHEREOF, the parties hereto have set their hands by their representatives duly authorized on the day and year first written above.

CITY OF GONZALES

By: _____
Tim Patek, City Manager

Date Signed: _____

ATTEST:

Kristi Gilbert, City Secretary

(Contractor's Name)

By: _____

Date Signed: _____

THE STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____,
20____, by _____ in his capacity as _____ of
_____, a _____ Corporation, known to me to be the person
whose name is subscribed to the foregoing instrument, and acknowledged that he
executed the same on behalf of and as the act of _____.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE _____
DAY OF____, 20_____.

Notary Public_____County, Texas

My commission expires _____