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City of Las Cruces[®]
 PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 10 Ordinance/Resolution# 09-10-306 Council District: All

For Meeting of September 21, 2009

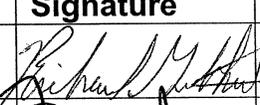
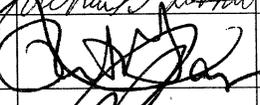
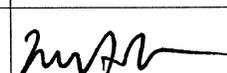
(Adoption Date)

TITLE:

A RESOLUTION AWARDING AN INDEFINITE QUANTITY, INDEFINITE COST PRICE AGREEMENT FOR VISUAL AND X-RAY INSPECTION OF PIPELINE WELDS FOR STEEL HIGH-PRESSURE GAS LINES TO AMEC EARTH AND ENVIRONMENTAL INC., OF TEMPE, AZ, AND INTEGRITY TESTING & INSPECTION INC., OF OWENSBORO, KY, FOR FIVE (5) YEARS SUBJECT TO APPROVED BUDGET APPROPRIATIONS AND ANNUAL RENEWAL.

PURPOSE OF ACTION:

Award an indefinite quantity, indefinite cost price agreement for Visual and X-Ray Inspection of Gas Pipeline Welds.

Name of Drafter: Roy Arnoldt, PE 		Department: Public Works 		Phone: 528-3168	
Department	Signature	Phone	Department	Signature	Phone
Originating Department		3333	Budget		2107
			Assistant City Manager		2271
Legal		2128	City Manager		2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Public Works Department-Engineering Services Section requested proposals for the Visual and X-Ray Inspection of Gas Pipeline Welds for steel high-pressure gas lines in June 2009. These services are required for the maintenance and construction of the metal underground piping system for gas distribution throughout the City.

This price agreement will be for a one- (1-) year base period with an option to renew for an additional four (4) one- (1-) year extensions providing that the terms and conditions remain the same. The renewable options will be exercised at the discretion of the City upon mutual, written consent. This price agreement can be used City wide with each using department being responsible for payment at the time services are required.

These inspections are associated with the maintenance, or addition to, the existing underground metal gas distribution system. These inspections will only be used during the construction phase of the pipeline work, placing these services on an as-needed basis.

Public Works recommends the award of the indefinite quantity, indefinite cost price agreement for Visual and X-Ray Inspection of Gas Pipeline Welds to AMEC Earth & Environmental Inc., of Tempe AZ, and Integrity Testing & Inspection Inc., of Owensboro, KY, to provide inspection services for steel high-pressure gas lines for the City on an as-needed basis. These services will be limited to approved City Council budgets with funding from different accounts as projects are identified.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
Various as projects are identified	Various as projects are identified	Various as projects are identified

1. Resolution No. 09-10-306
2. Purchasing Manager Request to Contract, Exhibit "A"
3. SAC evaluation summary, Exhibit "B"
4. Draft contract, Attachment "A"

COUNCIL OPTIONS:

1. Vote "Yes". This action will authorize the City of Las Cruces to enter into an indefinite quantity, indefinite cost price agreement with AMEC Earth & Environmental Inc., of Tempe, AZ, and Integrity Testing & Inspection Inc., of Owensboro, KY, to provide on-call services for Visual & X-Ray Inspection of gas pipeline welds to the City on an as-needed basis. Additionally, approval will provide the flexibility to renew the agreements with four (4) additional one-(1-) year options providing the terms and conditions remain the same.
2. Vote "No". This action will reject the proposed award and instruct staff to either rebid, rescope, or abandon the Visual and X-Ray Inspection all together. Without this service potential users will have to explore alternative means of procuring Visual and X-Ray Inspection Services for Gas Pipeline Welds.

RESOLUTION NO. 09-10-306

A RESOLUTION AWARDED AN INDEFINITE QUANTITY, INDEFINITE COST PRICE AGREEMENT FOR VISUAL AND X-RAY INSPECTION OF PIPELINE WELDS FOR STEEL HIGH-PRESSURE GAS LINES TO AMEC EARTH AND ENVIRONMENTAL INC., OF TEMPE, AZ, AND INTEGRITY TESTING & INSPECTION INC., OF OWENSBORO, KY, FOR FIVE (5) YEARS SUBJECT TO APPROVED BUDGET APPROPRIATIONS AND ANNUAL RENEWAL.

The City Council is informed that:

WHEREAS, the City of Las Cruces (City) requested proposals for Visual and X-Ray Inspection of Gas Pipeline Welds services in June 2009; and

WHEREAS, these services are required to perform specialized Visual and X-Ray Inspection of Gas Pipeline Welds on all welds on steel pipelines installed during new construction & rehabilitation projects; and

WHEREAS, this price agreement is a one- (1-) year contract with an option to renew for four (4) additional one- (1-) year options providing the terms and conditions remain the same; and

WHEREAS, the Selection Advisory Committee (SAC) evaluated two (2) proposals on July 27, 2009; and

WHEREAS, the SAC recommends award of the indefinite quantity, indefinite cost price agreement for visual and x-ray inspection of pipeline welds to AMEC Earth and Environmental Inc., of Tempe, AZ, and Integrity Testing and Inspection Inc., of Owensboro; KY.

NOW, THEREFORE, be it resolved by the governing body of the City of Las Cruces:

Resolution No. 09-10-306

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(I)

THAT the indefinite quantity, indefinite cost price agreement for Visual and X-Ray Inspection Services of Gas Pipeline Welds is hereby awarded to AMEC Earth and Environmental Inc. of Tempe, AZ, and Integrity Testing and Inspection Inc., of Owensboro, KY, for five (5) years subject to approved appropriations and annual renewal.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 2009

APPROVED:

(SEAL)

MAYOR

ATTEST:

City Clerk (SEAL)

VOTE:

Mayor Miyagishima: _____
Councilor Silva: _____
Councilor Connor: _____
Councilor Archuleta: _____
Councilor Small: _____
Councilor Jones: _____
Councilor Thomas: _____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

CITY OF LAS CRUCES

PURCHASING MANAGER'S REQUEST TO CONTRACT

For Meeting of: September 21, 2009

Resolution No.: 09-10-306

Contract Purchase For Visual and X-Ray Inspection of Pipeline Welds For Steel High-Pressure Gas Lines

The Las Cruces City Council is provided the following information concerning this request:

RFP SOLICITATION INFORMATION:

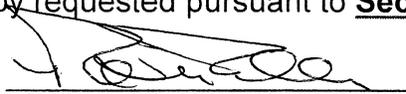
1. RFP No./ Due Date: RFP No. 09-10-306/June 23, 2009
2. Description: Visual and X-Ray Inspection of Gas Pipeline Welds P.A.
3. Using Department: Public Works
4. Number of Responses: Two (2)
5. Award Recommendation To: AMEC Earth & Environmental Inc., of Tempe, AZ,
And Integrity Testing & Inspection Inc., of Owensboro, KY.
6. Total Award Amount (including any tax and contingency): Indefinite Quantity/
Indefinite Cost
7. Contract Duration: Five (5) Years Pending Approved Budget and Annual Renewals

LOCAL PREFERENCE FACTOR

Local Preference Factor Applied Per LCMC §24-100	No		LCMC §24-100 not applicable to this solicitation
	Yes	x	Made A Difference To Awards(s)
			x

PROCUREMENT CODE COMPLIANCE:

The City of Las Cruces Procurement Code was administered in the conduct of this procurement and approval to purchase is hereby requested pursuant to **Section 24-92.**


 Purchasing Manager 1 8/31/09.
Date

CONFIRMATION OF FUND ENCUMBRANCE:

REQUISITION or PURCHASE ORDER NUMBER:	N/A – Indefinite Cost
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PHASE I - PROPOSAL EVALUATION REPORT			
RFP No. 09-10-306 Visual & X-Ray Inspection of Gas Pipeline Welds (Re-Bid)	TOTAL POINTS POSSIBLE	POINTS DISTRIBUTION	
CRITERIA		AMEC Earth & Environmental, Inc.	Integrity Testing & Inspection, Inc.
1. Technical approach to the project	800	520	500
2. Qualifications/competence of project team members to perform project.	1000	750	650
3. Capacity and capability of the firm to perform the project and to do so in a effective manner.	1000	600	675
4. Management structure and approach to the project including time-line, task breakdowns and assignments.	400	230	210
5. Performance of the firm with previous clients based upon quality of the work, control of costs, ability to meet schedules or deadlines and responsiveness to the client.	600	405	450
6. Clarity of the proposal.	200	140	135
Rating Sheets Raw Scores	4000	2645	2620
Subtract Highest Scorer		450	475
Subtract Lowest Scorer		325	285
Rating Sheet Net Score		1870	1860
Top Net Score Minus 10%		1683	1683
Qualifies for Interview or Phase II of Evaluation		Yes	Yes
PHASE I - INTERVIEW EVALUATION RESULTS		0	0
PHASE I TOTAL SCORING		1870	1860
TOP PHASE I SCORE		1870	1870
TOP PHASE I SCORE MINUS 10%		1683	1683
PROCEED TO PHASE II EVALUATION		PROCEED	PROCEED
PHASE II - EVALUATION REPORT			
DEDUCTION FOR PROJECTS IN PROGRESS			
Number of Committee Raters	8	8	8
CLC Projects In Progress by Respondent		0	0
Deduction at 10 points per project times # of raters		0	0
NET SCORE		1870	1860
LOCAL/STATE PREFERENCE			
LOCAL? (YES or NO)		Local ? (Yes or No)	Local ? (Yes or No)
		NO	NO
If "YES", Add (Phase I Total Score X .05)		0	0
NET SCORE		1870	1860

TECHNICAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this *date*, _____ 2009, by and between the City of Las Cruces, New Mexico, hereinafter called "City" and Company Name _____, of Street Address, City, Town, State, Zip Code, hereinafter called "Inspector". The contract term shall commence on date of the City's Notice to Proceed for a term of one (1) year.

1. PROJECT DESCRIPTION:

This project consists of the visual and x-ray inspection of gas pipeline welds for various City projects on as as-needed basis.

2. SCOPE OF SERVICES:

INSPECTOR shall render in a satisfactory and proper manner the SERVICES proposed in response to the City's RFP # 09-10-306 incorporated herein by reference and as set forth in Contract Exhibit A and B, attached hereto and made a part of this Agreement.

3. COMPENSATION:

The CITY shall compensate INSPECTOR for the performance of SERVICES at the rates specified in the cost proposal attached hereto as contract Exhibit C, excluding NMGR.T.

Payment will not be made by the City until services for that project have been received and accepted by the City as being in compliance with the instructions and specifications, except that for long term projects monthly billings based on percent of work completed will be acceptable.

INSPECTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business. INSPECTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this contract.

4. CHANGES AND EXTRA SERVICES:

The CITY may make changes within the scope of this Agreement. If the INSPECTOR believes that the proposed change by the City causes an increase or decrease in the cost and/or time required to perform this Agreement, the INSPECTOR shall notify the CITY of that fact and an agreed upon written change order, signed by the parties hereto will be made to modify this Agreement accordingly. INSPECTOR may initiate such notification upon identifying a condition also, which may change the SERVICES agreed to, but only after the effective date of this Agreement.

The INSPECTOR'S written response to a proposed change by the City in the work must be received within five (5) days from the date of receipt. In the event that the parties hereto cannot reach agreement on the proposed change, the issue shall be resolved pursuant to Article 17.

The CITY shall not be liable for payment of any extra services nor shall the INSPECTOR be obligated to perform any extra services unless stated in a written and executed amendment.

5. SCHEDULE:

INSPECTOR shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and INSPECTOR in Exhibit B. Following City Council acceptance of the proposal and with approval of Project Manager, project assignments will be issued on an as needed basis

6. DELAYS:

INSPECTOR shall perform its SERVICES with due diligence upon receipt of a written Notice to Proceed from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. In the event that performance of its SERVICES is delayed by causes beyond reasonable control of INSPECTOR, and without the fault or negligence of INSPECTOR, the time and total compensation for the performance of the SERVICES shall be equitably adjusted by written amendment to reflect the extent of such delay. INSPECTOR shall provide the CITY with written notice of delay, including therein a description of the delay and the steps contemplated or actually taken by INSPECTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

7. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES:

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and INSPECTOR will not disclose to any other party, directly or indirectly, without the City's prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the INSPECTOR contained shall be the sole property of the CITY and shall be delivered to the CITY when requested and at the end of each project.

8. SCOPE OF AGREEMENT:

This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof and that all such covenants, agreements, and understandings have been merged into this written agreement. No prior agreement or understanding verbal or otherwise of the parties or their agents shall be valid or enforceable unless embodied in this agreement.

9. INDEPENDENT CONTRACTOR:

INSPECTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. INSPECTOR, consistent with its status as an independent contractor, further agrees that its personnel

will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, INSPECTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall INSPECTOR'S employees be covered under any policy of the CITY.

INSPECTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) INSPECTOR is able, during the Term hereof, to perform services for other parties; and (ii) INSPECTOR may perform for its own account other professional services outside the scope of this Contract.

INSPECTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, INSPECTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, INSPECTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. INSPECTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which INSPECTOR accomplishes and performs its services. Nevertheless, INSPECTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

10. DEVOTION OF ADEQUATE TIME:

INSPECTOR will devote the necessary hours for the performance of such projects that are required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

11. INSURANCE:

General Liability:

\$1 million – Per Occurrence

\$2 million – Aggregate (The general aggregate must apply separately to each project)

Must include the following:

- a. Premises/Operations: Covers liability arising out of the day-to-day operations of the business.
- b. Products/Completed Operations: Covers liability after the job has been completed. This coverage must be maintained for 10 years after the work is completed (or length of statute/statute of repose)
- c. The City must be named as additional insured: This coverage must be as broad as the coverage provided to the insured; Coverage must be primary and non-contributory coverage before any other insurance or self-insurance. A copy of endorsement for this coverage must be attached to the Certificate of Insurance.

- d. Coverage shall remain in force for the duration of the contract;
- e. Must be Occurrence form coverage: Will cover the liability perpetually as long as coverage was in effect at time of occurrence.

Auto Liability:**\$1 million – Each Accident**

Must include the following:

- a. Covers all owned, leased, hired and non-owned autos or “any auto”
- b. The City must be named as additional insured: This coverage must be as broad as the coverage provided to the insured; Coverage must be primary and primary before any other insurance or self- insurance. A copy of endorsement for this coverage must be attached to the Certificate of Insurance.

Worker’s Compensation: Per New Mexico Statute (3 or more employees)**\$1 million – Bodily Injury: By Accident – Each Accident****\$1 million – By Disease: Policy Limit****\$1 million – By Disease: Each Employee**

This coverage required for non-construction contractor with 3 or more employees.

Exception:

Not applicable to out-of-state companies unless they are hiring in NM.

Excess Liability:

This coverage is **not required** but may be provided by the contractor for supporting other required coverages that are less than the required limits.

\$5 million Per Occurrence**\$10 million Aggregate**

Must include the following:

- a. The City must be named as additional insured: This coverage must be as broad as the coverage provided to the insured; Coverage must be primary and non- contributory coverage before any other insurance or self-insurance. A copy of endorsement for this coverage must be attached to the Certificate of Insurance.
- b. Must be Occurrence form coverage: Will cover the liability perpetually as long as coverage was in effect at time of occurrence.

Waiver of Subrogation

This must be stated on the certificate as it eliminates the right of the contractor’s insurance carrier from recovering any damages from the City that were paid by the carrier under the contractor’s general liability, commercial umbrella liability (Excess Liability), auto, or worker’s compensation coverages and employers liability insurance maintained by contract requirements.

Notification Requirement

The certificate must state that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the City. Terms such as “endeavors to” are not acceptable.

12. INDEMNITY AND LIMITATION:

INSPECTOR shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and

liability caused solely by, resulting solely from, or arising solely out of the negligent acts, errors, or omissions of INSPECTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

13. NO JOINT VENTURE OR PARTNERSHIP:

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between INSPECTOR and CITY. Except as otherwise specifically set forth herein, neither INSPECTOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

14. EXTENSIONS, CHANGES, AND AMENDMENTS:

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by both parties to this Agreement.

15. TERMINATION:

This Agreement may be terminated by either party hereto upon thirty (30) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon thirty (30) calendar days written notice to INSPECTOR.

In the event of termination, INSPECTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which INSPECTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, INSPECTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by INSPECTOR in the performance of this Agreement, whether completed or in process.

16. BREACH:

In the event INSPECTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give INSPECTOR written notice of such breach. In the event INSPECTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy INSPECTOR'S breach and recover any and all costs and expenses in so doing from INSPECTOR.

17. DISPUTE RESOLUTION:

In the event that a dispute arises between City and Contractor under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

18. ASSIGNMENT:

INSPECTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

19. RECORDS AND AUDITS:

INSPECTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the City's right to recover excessive or illegal payments.

20. APPROPRIATIONS:

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the CITY for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to the INSPECTOR. The City's decision as to whether sufficient appropriations and authorizations exist shall be accepted by INSPECTOR and shall be final.

21. APPLICABLE LAW:

INSPECTOR shall abide and be governed by all applicable state law, City ordinances, and laws regarding the INSPECTOR'S services or any work done pursuant to this Agreement.

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

22. NOTIFICATION:

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served by Registered Mail addressed as follows:

TO CITY:

City of Las Cruces
PO Box 20000
Las Cruces, NM 88004
ATTENTION: _____

With Copies to:

City Attorney
Purchasing Manager

TO CONTRACTOR:

Company Name
Address and Street
City, State and Zip
ATTENTION: _____

23. TERM:

This Contract covers projects assigned by the City to the INSPECTOR for the base period from the time of award through June 30, 2010 with the option to renew at the discretion of the City for an additional four (4) one (1) year terms.

24. RENEWAL:

This Agreement must be annually approved by the City for each successive one- (1) year period at sole option and discretion of the City and pending mutual agreement by the INSPECTOR. At the time of renewal of the Agreement, the INSPECTOR may renegotiate its pricing with the City. If this Agreement is not renewed or is terminated, the INSPECTOR shall be required to complete any projects still in progress at the rates negotiated for those projects. This agreement will not be renewed beyond the number of additional one-year periods approved under RFP# 09-10-306.

25. PROJECT ASSIGNMENTS:

The City will make work assignments on an as-needed basis. However, this Agreement does not constitute a grant to the INSPECTOR or any right to handle any specific testing or any specific number of tests; the City may, in its sole discretion, assign or reassign testing as it deems expedient. The City, when giving work assignments, will take into account the type or work the INSPECTOR is capable of providing to the City as stated in its Technical Proposal, the jobs the INSPECTOR has already performed or is currently performing for the City, the location of the proposed work as related to past work performed by the INSPECTOR, the cost to perform such service as provided in the cost proposal attached hereto as Contract Exhibit C, and whether the INSPECTOR can meet the project demands including their response time.

26. SUBCONTRACTOR(s):

The INSPECTOR shall not subcontract any portion of the services to be performed under this Agreement without the City's prior written consent.

27. CONFLICT OF INTEREST:

The INSPECTOR warrants that he/she will not undertake any testing services under this Agreement, with regard to any project as to which they will or might have an interest, direct or indirect, which would conflict in any manner or degree with the performance or service under this Agreement.

28. INSPECTOR Personnel at a Construction Site:

Neither the activities of the INSPECTOR, nor the presence of the INSPECTOR or its employees and sub consultants at a construction/project site, shall relieve the INSPECTOR of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. The INSPECTOR and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures

29. STANDARD OF CARE:

The standard of care applicable to INSPECTOR services will be the degree of skill and diligence normally employed by INSPECTOR or consultants performing the same or similar services at the time said services are performed. The INSPECTOR will re-perform any services not meeting this standard without additional compensation.

30. FORCE MAJEURE:

The INSPECTOR is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the INSPECTOR. In any such event, the INSPECTOR contract price and schedule shall be equitably adjusted

31. SPECIAL REQUIREMENTS:

- a. Verifiable evidence of the qualification, equipment necessary to perform the service, and experience of the INSPECTOR'S testing lab and its technicians may be required when the technicians arrive on site to perform testing.
- b. Drug and Alcohol testing for Pipeline Safety Regulations: The INSPECTOR shall establish and maintain separate programs for testing its employees for drug use, together with the requirements of 49 CFR Part 199, Department of Transportation Gas Pipeline Safety Regulations. No work shall begin on the project until the City has determined that the INSPECTOR program meets such requirements. Upon notification of intent to award, INSPECTOR shall submit a copy of their drug and alcohol testing program to the City Risk Management Department for approval. The Inspector shall then submit a letter of compliance from Risk Management to the Project Manager stating that the INSPECTOR does have testing programs in place and that such programs are in compliance with Department of Transportation requirements. The City, as a system operator, is responsible to ensure compliance by the Inspector with the above regulations and in recognition of that responsibility the Inspector agrees to make its drug testing program records available to a duly authorized representative of the City within reasonable time.
- c. The INSPECTOR further agrees that should the City determine that an employee of the INSPECTOR who is working on the project and has not met the requirements of the INSPECTOR programs or the above regulations, INSPECTOR will immediately prevent such employee from performing safety sensitive work until such time as the employee meets such requirements.

THE CITY OF LAS

CRUCES
Company

By: _____
Principal

By: _____
Purchasing Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

City Attorney

DRAFT

EXHIBIT B SCHEDULE

The pre-qualified Inspectors will be placed on a list with the highest rated on the top. For any given project, the City will start their selection at the top of this list at the time services are needed. In the event that the source at the top of the list is unable to respond to the request, the next Inspector on the list will be contacted. This process is based upon the City's need to obtain timely delivery of visual and x-ray services and the City's concern that a single source may not always be able to supply timely services to meet the City's demand. **A maximum response time of 48 hours** is required for all field-testing services requested by the City.

The Visual and X-Ray inspection for any given project will be notified by the City at the time services are needed. All project assignments will be a specific Purchase Order (PO) describing the assignment and will contain a not-to-exceed (NTE) estimated cost.

All Inspector Overtime shall be approved by the City prior to use. Overtime approvals shall be contained within written documents signed by both the Inspector and the City and list specific Inspectors, date(s), and hours for the work. All overtime is required by the City to be documented in writing and signed by both the Inspector and the City.