



**Invitation to Bid (“ITB”)**  
**Contract for Fleet Fueling Services**

ITB 21-010

<b>EVENT</b>	<b>DATE</b>
Issuance of RFP	Tuesday, July 27, 2021
1 <sup>st</sup> Publication Date	Tuesday, July 27, 2021
2 <sup>nd</sup> Publication Date	Tuesday, August 3, 2021
ITB Question Deadline (5:00 p.m.)	Wednesday, August 11, 2021
Deadline to Request Electronic Submission (2:00p.m)	Monday, August 16, 2021
Bid Submission Deadline (10:00 a.m.)	Tuesday, August 17, 2021
Possible City Council Consideration/Award	Thursday, September 2, 2021

***INTENT***

The City of Brenham requests bids for a contract to furnish fleet fueling services at refueling stations and for delivery of fuel via bobtail to various City locations. Products to be provided are regular unleaded gasoline, medium grade unleaded gasoline, premium unleaded gasoline, and dyed and un-dyed diesel fuel as further described in the Technical Specifications of this ITB.

## SECTION I: INSTRUCTIONS TO BIDDERS

---

### 1. SCOPE

The City of Brenham requests bids for a contract to furnish fleet fueling services at refueling stations and for delivery of fuel via bobtail to various City locations. Products to be provided are **regular unleaded gasoline, medium grade unleaded gasoline, premium unleaded gasoline, and dyed and un-dyed diesel fuel** as further described in the Technical Specifications of this ITB.

### 2. QUANTITY

Quantities indicated in this bid are estimated and are not to be construed as a firm dollar obligation to the City. The amounts purchased may be greater or less than the estimated quantity. Estimated quantities are listed on the Bid Sheet for this ITB.

### 3. PRICING

Pricing shall be bid for each type and grade of fuel indicated on the Bid Sheet. Prices shall be bid as a mark-up to the Houston/Hearne Rack Price as published daily by the Oil Price Information Service (OPIS) and will include all delivery and/or freight charges for F.O.B. (Free on Board) delivery to storage tanks/generators. No initial or renewal fee shall be bid or paid for maintaining and servicing the account for the duration of the contract.

### 3. TERM OF CONTRACT

This Contract shall become effective from date of acceptance and approval by the City of Brenham. It shall remain in force and effect with firm fixed bid prices for a period of one (1) year, beginning on the date of award of contract. Upon completion of the term of the original contract and with mutual agreement of both parties, the contract may be extended for up to two (2) additional one (1) year terms (three (3) years total). The renewal will be under the same terms and conditions as the original contract. In the event a new contract cannot be executed at the anniversary date of the original term or any renewal term, the contract may be renewed month-to-month until a new contract is executed.

**4. BID DUE DATE**

Bidders shall submit **one (1) original and one (1) copy** of their bid on the ITB Submission Form provided by the City. The original bid must be clearly marked “**Bid for ITB No. 21-010**” and include an original signature, in ink, in order to be accepted. Bids must be received in the City Secretary’s Office no later than **10:00 a.m. (CST) on Tuesday, August 17, 2021.** It is the Proposer’s sole responsibility to assure that the bid is delivered in a timely fashion. Bids received after this time will be rejected and returned unopened. There will be no public opening; however, the name of each bid received will be read aloud for public record. **Any bid received after 10:00 a.m. on Tuesday, August 17, 2021, shall not be considered.**

Bids should be prepared simply, providing straightforward, concise description of the Bidder’s approach and capabilities necessary to satisfy the requirements of the ITB. Technical literature and elaborate promotional materials, if any, must be submitted separately. Emphasis in the bid should be on completeness, clarity of content and adherence to the presentation structure required by the RFP.

**Hand-deliver to:**

200 W. Vulcan Street  
Suite 203  
Brenham, TX 77833

**Mail to:**

P.O. Box 1059  
Brenham, TX 77834-1059  
ATTN: City Secretary

**Ship to (FedEx, UPS, DHL, etc.):**

200 W. Vulcan Street  
Brenham, TX 77833  
ATTN: City Secretary

The City will accept electronic bids via download into a secure electronic depository. Bids submitted by e-mail will not be accepted. If a Bidder would like to submit electronically, they must notify the City no later than **2:00 p.m. on Monday, August 16, 2021.**

Notifications for electronic submissions must be sent to Kyle Branham, Purchasing and Fleet Supervisor, P. O. Box 1059 (200 W. Vulcan St.), Brenham, Texas 77834, or e-mailed to [kbranham@cityofbrenham.org](mailto:kbranham@cityofbrenham.org). All e-mails must indicate “ITB No. 21-008 – Electronic Submission Request” in the subject line. It is the sender’s responsibility to verify receipt of email; read receipt is acceptable.

**5. FORM**

Bids must be submitted on this form only. **Bidders are required to submit one (1) Original and one (1) copy.** All bids submitted must be itemized with prices extended when practical. **Bidder must return the entire original bid document with bid or bid.**

**6. ACCEPTANCE**

The City of Brenham reserves the right to accept or reject any or all bids, to waive informalities, and to accept the offer considered most advantageous in order to obtain the **best value** for the City. Causes for rejection of a bid may include but are not limited to the bidder’s current violation of any City ordinance, the bidder’s current inability to

satisfactorily perform the work or service, or the bidder's previous failure to timely perform its obligations under a contract with the city. Bidders may be disqualified, and rejection of bids may be recommended for any of, but not limited to the following causes: 1) Failure to use the bid form furnished by the Owner; 2) Lack of signature by an authorized representative on the bid form; 3) Failure to properly complete the bid; 4) Evidence of collusion among bidders; 5) Omission of uncertified personal or company check as a bid guarantee (if bid bond required); or 6: Unauthorized alteration of bid form. Owner reserves the right to waive any minor informality or irregularity.

## **7. AWARD**

The bid may be awarded either to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the City. The bid award may be based on, but not necessarily limited to, the following factors:

- a. the purchase price, including payment discount terms;
- b. the reputation of the bidder and of the bidder's goods or services;
- c. the extent to which the goods or services meet the City's needs;
- e. the bidder's past relationship with the City;
- f. impact on the ability of the City to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- g. the total long-term cost to the City to acquire the bidder's goods or services; and
- h. any relevant criteria specifically listed in this request for bid.

## **8. ADDENDA**

No person has the authority to verbally alter these specifications. Any changes to specifications will be made in the form of an Addendum which will be made available online at [www.cityofbrenham.org/finance/purchasing](http://www.cityofbrenham.org/finance/purchasing). It shall be the responsibility of interested bidders to check the website for addenda up to the bid submission deadline.

## **9. CONTACT**

If any other information is needed concerning these specifications, please contact the following:

Kyle Branham, Purchasing and Fleet Supervisor  
City of Brenham  
200 W. Vulcan St. Brenham, TX 77833  
PO Box 1059 Brenham, TX 77834-1059  
[kbranham@cityofbrenham.org](mailto:kbranham@cityofbrenham.org)  
Phone: 979-337-7537

## SECTION II: CONTRACT TERMS AND CONDITIONS

---

### 1. GENERAL TERMS AND CONDITIONS

General Terms and Conditions for Invitations for Bid from the City of Brenham may be found in Attachment "A" of this document. Should any contradiction be found to exist between those terms and conditions and the body of this ITB, the ITB will prevail.

### 2. INDEMNITY

The Contractor agrees to indemnify and hold harmless the City of Brenham and its officers, agents, and employees from any and all claims, causes of action, and damages of every kind, for injury to or death of any person and damages to property arising out of or in connection with the work done by the Contractor, and including acts or omissions of the City of Brenham, its officers, agents or employees in connection with said Contract.

### 3. H.B. 1295 COMPLIANCE

The Awarded Vendor for the contract shall comply with the requirements of Section 2252.908 of the Texas Government Code as adopted in 2015 as House Bill 1295. The law requires that a governmental entity may not enter in certain contracts with a business entity unless the business entity submits a Disclosure of Interested Parties to the governmental entity. The law applies only to a contract that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million.

Compliance with the law requires that the awarded Vendor utilize the Texas Ethics Commission website to enter the required information on Form 1295 and print a copy of the complete form. The form must be signed and submitted to the contracting government entity

The City of Brenham, in the case of contracts formalized by Purchase Order or by other written contract, will notify the Vendor of Award by Council and request the completed Form 1295 within five (5) working days thereafter.

### 4. CHAPTER 220 COMPLIANCE

The Awarded Vendor for the contract shall comply with the requirements of Subtitle F, Title 10, Government Code Chapter 2270 and shall be required to provide conformation that the Vendor:

1. Does not boycott Israel currently; and

2. Will not boycott Israel during the term of the contract the above-named Company, business or individual with the City of Beaumont, Texas.

Pursuant to Section 2270.001, Texas Government Code:

1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and
2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly- owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.

The City of Brenham, in the case of contracts formalized by Purchase Order or by other written contract, will notify the Vendor of Award by Council and request the required confirmation within five (5) working days thereafter. Confirmation shall, by reference, be included as a part of the contract.

#### 4. **INSURANCE**

The awarded contractor shall obtain insurance as specified in Attachment "A" of this ITB and shall maintain coverage in full effect through the duration of the contract. Certificates of Insurance shall be provided to the City within five (5) working days of formal notice of award by the City.

### SECTION III: TECHNICAL SPECIFICATIONS

1. It is not the intent of these specifications to exclude any manufacturer or dealer from bidding. Specifications listed are intended as minimum requirements. Products or services offered which deviate from these specifications will be given consideration provided that such deviations shall be clearly stated. The City will be the sole judge as to whether any product or service meets the City's needs and provides Best Value.
2. Fuels to be supplied under this contract are identified below. No alcohol blends greater than 15% will be accepted.
  - 2.1 No. 2 Diesel Fuel, 15 PPM Sulfur, ULSD, ASTM Designation D975 (or most recent issue) with a minimum cetane rating of 42. Both dyed (off-road) and clear Diesel Fuels are required.
  - 2.2 Regular Unleaded Gasoline or RFG Unleaded, ASTM Designation D439 (or most recent issue) with a minimum Octane rating of 87 (R+M/2 method).
  - 2.3 Medium Grade Unleaded Gasoline or RFG Unleaded, ASTM Designation D439 (or most recent issue) with a minimum octane rating of 89 (R+M/2 method).
  - 2.4 Premium Grade Unleaded Gasoline or RFG Unleaded, ASTM Designation D439 (or most recent issue) with a minimum octane rating of 92 (R + M/2 method).
3. Vendor must furnish specification sheets on all grades and be prepared to furnish laboratory test results, if requested by the City, to show proof of octane ratings.
4. Approximate numbers of vehicles and equipment to be serviced for gasoline and diesel are:

TYPE	QUANTITY
Cars (Gasoline)	42
Trucks (Gasoline)	74
Trucks (Diesel)	37
Equipment (Diesel)	66
Small Equipment (Diesel)	33
Other	4

5. The City's larger diesel vehicles require access to high volume fuel dispensers (>20 gallons per minute) with satellite hoses.

6. Delivery of fuel for generators and above ground storage tanks are to the following locations:

Location	Tank Size/Type
Street Dept. 1502 E. Bluebell Rd.	500 Gal. Diesel Above Ground
Water Construction Dept. 1011 S. Austin St.	1,000 Gal. Diesel Above Ground
Parks Dept. 301 Jeffries St.	1000 Gal. Diesel Above Ground (Summer Months)
Parks Dept. 301 Jeffries St.	350 Gal. Unleaded Above Ground (Summer Months)
Parks Dept. 287 Lounge Rd.	350 Gal. Diesel Above Ground (Summer Months)
Maintenance Dept. 506 S. Austin St.	1,000 Gal. Diesel Above Ground
Maintenance Dept. 506 S. Austin St.	100 Gal. Unleaded Above Ground
Wastewater Plant 2005 Old Chappell Hill Rd.	500 Gal. Diesel Above Ground
Water Plant – Generator 1105 S. Austin St.	500 Gal. Diesel
Lake Somerville – Generator	2,700 Gal. Diesel Above Ground

Location	Tank Size/Type
Wastewater Plant – Generator 2005 Old Chappell Hill Rd.	250 Gal. Diesel Above Ground
Police Building – Generator 1800 Longwood Dr.	800 Gal. Diesel
Fire Station – Generator 101 N. Chappell Hill St.	220 Gal. Diesel Above Ground

### CONTRACT PERFORMANCE

1. The successful vendor shall provide all labor, materials, hardware, software, maintenance supplies, and any/all related additional items necessary to provide gasoline and diesel refueling station(s) for City fleet vehicles, and to provide delivered fuel to various City locations.
2. Fueling stations(s) must be strategically and conveniently located throughout the City and shall be open and operational 24 hours per day, seven days per week. Not all locations must be 24/7; however, the vendor shall provide at least one location acceptable to the City which is 24/7. All 24 hour point of sale areas must have security lighting at the pumping facility.
3. The successful vendor shall provide a fuel credit card for each designated employee as a method to purchase fuel. The fuel card must possess the capability to be restricted to the purchase of fuel only. Non-fuel purchases must be blocked at the time of authorization. Vendor assigned “PIN” numbers must be unique to each card.
4. Vehicle or equipment operator must be able to swipe their credit card, enter the “PIN” number and odometer reading at the fueling station.
5. The City Manager or his representatives have the authority to designate City employees to receive a credit card to purchase fuel for City vehicles or equipment.
6. The successful vendor shall provide a toll free number to report lost or stolen cards or to cancel a card. Replacement cards must be available within 24 hours.
7. Orders for delivery will be made by phone. The bidder is to indicate, in the space provided, the telephone number and name of the person to contact. Deliveries are to

be made within two (2) working days after the request is made. For the purpose of this contract, working days are from 8:00 AM through 4:00 PM, Monday through Friday, excluding City holidays.

8. If delivery is not accomplished within the time frame specified, the City reserves the right to procure the product on the open market. It will also be the City's right to bill the difference between the contract price and the open market price to the supplier.
9. The supplier will be held responsible for all spillage which may occur during transit and unloading operations. They will immediately report and clean up any spillage. Failure to do so will result in corrective action by the City and any incurred costs will be charged back to the supplier.
10. Insurance, at the coverage levels indicated in Attachment "A", is required of the vendor providing these contracted services to the City. Certificates of Insurance must be provided no later than ten (10) working days following notice of award of contract. Certificates may be mailed to:

City of Brenham  
Robin Hutchens, Purchasing Specialist  
PO Box 1059  
Brenham, TX 77834

Or emailed to: [rhutchens@cityofbrenham.org](mailto:rhutchens@cityofbrenham.org).

11. Vendor shall be responsible for insuring constant availability of fuel for all city vehicles and equipment. In times of city/state wide emergency situation, City fuel sites will become the highest priority.
12. Vendor shall provide a report with each invoice that will disclose the following:
  - Driver's name and vehicle number.
  - Date and time of transaction.
  - Odometer/hour reading at time of fill-up.
  - Total gallons per billing period by fuel type, per each department.
  - Receipts, etc.

**Sample of report must be provided with bid.**

13. During the term of this contract price changes will be governed by an index made up of the average composite posted of those companies published in the daily publication of Oil Price Information Service (OPIS). **The low bid will be determined by the margin above such average of OPIS price from the Houston/Hearne Rack Prices and will include all delivery and/or freight charges.** The vendor will also provide each day's

OPIS Reports with the billing statement or invoice. The City will return the OPIS Report to the vendor if the request is made to do so.

- 14.** Vendor shall bill the City for gasoline and diesel purchases made less any Federal fuel taxes regardless of grade of fuel. The vendor shall provide complete reporting of exempted taxes to the City.



**BID FORM**

Bid No: 21-010  
Bid Opening: 10:00 A.M. (CSDT), Tuesday, August 17, 2021

Bid Title: **CONTRACT FOR FLEET FUELING SERVICES**

Submit to: Purchasing Services  
City of Brenham  
200 W. Vulcan St.  
Brenham, TX 77833  
Or  
PO Box 1059  
Brenham, TX 77834-1059

Bid Documents: Bids must be submitted on this form only. **Bidders are required to submit one (1) original and one (1) copy. Bidder must return the entire original bid document with bid or bid.**

Bid **MUST** be signed by an authorized representative of bidder. Original signature required.

Name of Bidder  
(please print) \_\_\_\_\_

**Authorized Signature** \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone No. \_\_\_\_\_

Email: \_\_\_\_\_

City of Brenham  
 Bid Form, Page 2  
**Bid No. 21-010**

Item No.	Description	Estimated Qty/Yr	Brand/Mfg.	Mark-up
1.	No. 2 (Dyed) Ultra Low Sulfur Diesel, per specifications, Minimum Cetane Rating 42	50 gallons		\$ /gal
2.	No. 2. (Clear) Ultra Low Sulfur Diesel, per specifications, Minimum Cetane Rating 42	90,000 gallons		\$ /gal
3.	Regular Grade Unleaded Gasoline, per specifications, Minimum Octane Rating 87	80,000 gallons		\$ /gal
4.	Medium Grade Unleaded Gasoline, per specifications, Minimum Octane Rating 89	2,000 gallons		\$ /gal
5.	Premium Grade Unleaded Gasoline, per specifications, Minimum Octane Rating 92	1,200 gallons		\$ /gal

Name of Bidding Vendor \_\_\_\_\_

Information below is required and will be considered in evaluation of bids:

*Note: If this information has been submitted with previous bids, bidder may submit only information that has changed since last submission.*

1. Can your firm give same day service if needed for bobtail deliveries? \_\_\_\_\_

2. Will your firm provide emergency service after working hours? \_\_\_\_\_

3. State what type of service and/or system you have for dispensing fuel:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Specify billing frequency: \_\_\_\_\_ weekly \_\_\_\_\_ monthly \_\_\_\_\_ other

Prompt payment discount? I.e., 1% 10 days? \_\_\_\_\_

5. Contact name and phone number for ordering bobtail deliveries:

\_\_\_\_\_  
Alternate: \_\_\_\_\_

6. Number of sales locations within the City limits \_\_\_\_\_.

Address, phone number and contact name for each location:  
(use additional sheet(s) of paper as needed)

Location: \_\_\_\_\_

Address: \_\_\_\_\_

Contact: \_\_\_\_\_ Phone No.: \_\_\_\_\_

Name of bidding vendor: \_\_\_\_\_

City of Brenham  
Bid Form, Page 4  
**Bid No. 21-010**

Location: \_\_\_\_\_

Address: \_\_\_\_\_

Contact: \_\_\_\_\_ Phone No.: \_\_\_\_\_

Location: \_\_\_\_\_

Address: \_\_\_\_\_

Contact: \_\_\_\_\_ Phone No.: \_\_\_\_\_

Location: \_\_\_\_\_

Address: \_\_\_\_\_

Contact: \_\_\_\_\_ Phone No.: \_\_\_\_\_

Location: \_\_\_\_\_

Address: \_\_\_\_\_

Contact: \_\_\_\_\_ Phone No.: \_\_\_\_\_

Location: \_\_\_\_\_

Address: \_\_\_\_\_

Contact: \_\_\_\_\_ Phone No.: \_\_\_\_\_

Name of bidding vendor: \_\_\_\_\_



## EXHIBIT A

# **TERMS AND CONDITIONS FOR BIDS**

### **Definitions:**

In order to simplify the language throughout this request for bids, the following definitions shall apply:

**CITY – OWNER** - Same as City of Brenham.

**CONTRACT** - An agreement between the City and a Vendor to furnish goods or services over a designated period of time during which repeated purchases may be made of the goods or services specified.

**VENDOR** – The successful Bidder(s) of this bid request.

### **Instructions:**

The following instructions apply to all bids and become a part of terms and conditions of any bid submitted to the City of Brenham Purchasing Department, unless otherwise specified elsewhere in this bid request.

### **Form:**

Bids must be submitted on this form only. **Bidders are required to submit one (1) original and one (1) copy.** All bids submitted must be itemized with prices extended when practical. **BIDDER MUST RETURN THE ENTIRE ORIGINAL BID DOCUMENT WITH BID OR PROPOSAL.**

### **Bid Return:**

Bid must be sealed, and to ensure proper recognition upon its arrival, list the Bid Number, Bid Description and the Bid Opening Date on the outside of your envelope.

### **Late Bids:**

Bids must be received by the Purchasing Department prior to the time indicated on this form. Late bids will not be opened and will be returned to the bidder only upon written request.

### **Acceptance:**

The City of Brenham reserves the right to accept or reject any or all bids, to waive any informalities and technicalities, to accept the offer considered most advantageous **in order to obtain the best value for the City.** Causes for rejection of a bid may include but are not limited to the bidder's current violation of any City ordinance, the bidder's current inability to satisfactorily perform the work or service, or the bidder's previous failure to timely perform its obligation under a contract with the City.

Bidders may be disqualified and rejection of proposals may be recommended for any of (but not limited to) the following causes:

1. Failure to use the proposal form furnished by the Owner;
2. Lack of signature by an authorized representative on the proposal form;
3. Failure to properly complete the proposal;
4. Evidence of collusion among proposers;
5. Omission of uncertified personal or company check as a proposal guarantee (**if Bid Bond required**); or
6. Unauthorized alteration of bid form.

Owner reserves the right to waive any informality or irregularity.

All bidders are hereby notified that the City of Brenham shall consider all factors it believes to be relevant in selecting the offer that provides the best value for the City including, but not limited to the purchase price, the proximity of the bidder as it relates to bidder's ability to perform the contract for the City, the delivery date, the reputation of the bidder and the bidder's goods or services, the quality of the bidder's goods or services, the extent to which the goods or services meet the City's needs, the impact on the ability of the City to comply with laws and rules relating to contracting with historically underutilized business and non-profit organizations employing persons with disabilities, the total long-term cost of the City to acquire the bidder's goods or services, the bidder's past performance under contracts with the City, the bidder's compliance

## EXHIBIT A

with City ordinances, and any relevant criteria specifically listed in this request for bid.

The City is committed to obtaining its goods, products and services at the lowest price possible which benefits all citizens of Brenham. Therefore, in order to accomplish this objective/goal, it is not the intention of the City to exclude particular vendors or manufacturers nor to create restrictive situations in its request for bids and proposals. Any manufacturer's name, trade names, brand names, catalog numbers, technical data, etc. used in the specifications are there for the sole purpose of establishing and describing general performance, quality levels, type and dimensions and such references are not intended to be restrictive. Alternate bids on similar or comparable products and/or services of any manufacturer or vendor equal to the products and/or services described in the specifications are invited and will be given careful consideration provided the alternate will accomplish the same task. The City shall be the sole judge on whether the alternate product and/or service is similar to, equal to and in compliance with that specified. The decision of the City shall be final.

### **Award of Contract:**

The contract may be awarded either to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the City. The bid award may be based on, but not necessarily limited to, the following factors:

- a. the purchase price, including payment discount terms;
- b. the reputation of the bidder and of the bidder's goods or services;
- c. the quality of the bidder's goods or services;
- d. the extent to which the goods or services meet the City's needs;
- e. the bidder's past relationship with the City;
- f. the impact on the ability of the City to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- g. the total long-term cost of the City to acquire the bidder's goods or services; and

- h. any relevant criteria specifically listed in this request for bid.

The City prefers to award the entire contract to a single bidder; although, the City reserves the right to award a primary contract and a secondary contract in an effort to secure a back-up contractor to be used in emergency situations in the event the primary contractor is unable to respond as needed.

### **Term of Contract:**

This Contract shall become effective from date of acceptance and approval by the City of Brenham. It shall remain in force and effect with firm fixed bid prices for a period of one (1) year, beginning on the date of award of contract.

### **Extension of Contract:**

Upon completion of the term of the original contract and mutual agreement of both parties, the contract may be extended for up to two (2) additional one (1) year terms (five (5) years total). The renewal will be under the same terms and conditions as the original contract. In the event a new contract cannot be executed at the anniversary date of the original term or any renewal term, the contract may be renewed month-to-month until a new contract is executed.

### **Assignment of Contract:**

This contract cannot be transferred or assigned to another party without written consent of the City and may be subject to cancellation by the City if such consent is requested.

### **Contract Termination:**

The City may terminate this Contract at any time upon thirty (30) calendar day's written notice. Upon the Vendor's receipt of such notice, the Vendor shall cease work immediately. The Vendor shall be compensated for the services satisfactorily performed prior to the termination date.

If, through any cause, the Vendor fails to fulfill its obligations under this contract, or if the Vendor violates any of the agreements of this Contract, the City has the right to terminate this

## EXHIBIT A

Contract by giving the Vendor five (5) calendar days written notice. The Vendor will be compensated for the services satisfactorily performed before termination date. Termination of the contract for cause shall be deemed as sufficient evidence and cause to remove the Vendor's name from the bidder's list for receiving future bids.

No term or provision of this Contract shall be construed to relieve the Vendor of liability to the City for damages sustained by the City because of any breach of contract by the Vendor. The City may withhold payments to the Vendor for the purpose of setoff until the exact amount of damages due the City from the Vendor is determined and paid.

### **Reimbursements:**

There is no expressed or implied obligation for the City to reimburse responding firms for any expenses incurred in preparing bids in response to this Request for Bids and the City will not reimburse responding firms for these expenses, nor will the City of Brenham pay any subsequent costs associated with the provision of any additional information or presentation, or to procure a contract for these services.

### **Minority Owned Businesses:**

Minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, creed, sex, or national origin in consideration for an award.

### **Error-Quantity:**

Bids must be submitted on units of quantity specified. In the event of errors in extended process, the unit price shall govern. Any suggested quantity to secure better prices is welcomed. When discrepancies occur between words and figures, the words shall govern.

### **Quantities:**

Quantities indicated in the Bid are estimated based upon the best available information. The City reserves the right to increase or decrease the quantities by any amount deemed necessary to

meet its needs without any adjustments in the unit bid prices.

### **Variations:**

Any variation (deviation) from these specifications must be indicated on a separate form and be made part of the bid.

### **F.O.B. – Damage**

Bids will not be considered unless bid F.O.B. delivered to Brenham, Texas. If shipping costs are not included in the unit bid price, bidder must give exact delivery cost, which is to be prepaid or added to the invoice. The City assumes no liability of goods delivered in a damaged or unacceptable condition.

### **Firm Prices:**

Bidders must hold bid prices firm for 90 days after the bid opening date to allow the City sufficient time to award a contract. Once a Contract is awarded, the successful bidder must hold bid prices firm for the duration of the Contract. Sealed competitive bids may not be negotiated, amended or changed after the bid opening date.

### **Cooperative Agreements:**

Successful bidder agrees to extend prices and terms to all governmental entities that have entered into, or will enter into, joint purchasing interlocal cooperation agreements with the City.

### **Authorized Signature:**

Bids must show full firm name and mailing address of bidder and be manually signed by an authorized representative of the bidder. Firm name and authorized signature should appear on each page of bid where spaces are provided. Submission of a signed bid will be interpreted to mean that bidder has hereby agreed to all terms and conditions set forth in all of the sheets which make up this invitation.

### **Withdrawal-Alteration Of Bids:**

Bids cannot be altered after receiving time or opening time. No bid may be withdrawn after

## EXHIBIT A

opening time without acceptable reason in writing and with the approval of the City Council.

### **Lump Sum Bids:**

Lump sum bids will be considered only if unit prices are quoted also. However, the totals of such quoted unit prices and the lump sum bids will not be considered if the price quoted also involves prices of commodities requested on an entirely separate bid request.

### **All-Or-None Bids:**

All-or-none bids will be considered only if bidder quoted prices on all items requested. If a bidder desires the City to consider an all-or-none bid, it must be stated in the bid document. All-or-none bids will not be considered if prices quoted involved prices of items and services requested on an entirely separate bid request.

### **Payment Of Invoices:**

Invoices must be submitted by the successful bidder to the City of Brenham, Finance Department, P.O. Box 1059, Brenham, Texas 77835-1059. All invoices to be paid in full within thirty (30) days after satisfactory delivery and billing, whichever is the latter. The City will not be liable for payment of invoices received more than sixty (60) days after delivery of order, or completion of service.

### **Cash Discounts:**

Bidders may quote additional cash discount terms. If no discount is shown, prices are to be assumed net. Discount period to be started from the date of completion of entire order or date of receipt of invoice, whichever occurs last regardless of date of invoice.

### **Taxes:**

The City of Brenham is exempt from Federal Excise, State Sales and Transportation Taxes. TAX MUST NOT BE INCLUDED IN BID. The City upon request will execute Tax Exemption Certificates. The City of Brenham is statutorily exempt from State and Local Sales tax and a permit number is not required.

### **Delivery:**

Bids must show the number of consecutive calendar days required to deliver the materials, services or equipment under normal conditions. Failure to specify delivery time will be considered reason enough to cause the bid to be disregarded. Delivery time quoted will be given consideration in awarding bids. If delivery is not made within ten (10) days after number of days specified on bid, entire order may be canceled and bidder's name removed from mailing list.

All deliveries are to be made to the Central Warehouse located at 315 West Second Street, unless otherwise specified in the Bid Request or Purchase Order. Deliveries will be accepted only during normal working hours on normal working days. Unless otherwise indicated, items received must be new and in first-class condition. Types of materials normally packaged for protection and convenience in storage shall be in the proper containers.

### **Liability:**

Vendor shall be liable for all damages incurred while in performance of the work to be performed hereunder. Vendor assumes full responsibility for the work to be performed hereunder, and hereby releases, relinquishes, and discharges the City, its officers, agents, and employees, from all claims, demands, and causes of action of every kind and character including the cost of defense thereof, for any injury to, including death of, any person whether that person be a third person, vendor, or an employee of either parties hereto, and any loss of or damage to property, whether the same be that of either of the parties hereto or of third parties, caused by or alleged to be caused by, arising out of or in connection with the issuance of this order to Vendor, whether or not said claims, demands and causes of action in whole or in part are covered by insurance. Certificate of Insurance may be required for but not limited to Commercial General Liability, Commercial Auto Liability, Workers Compensation, and Professional Liability Insurance.

## EXHIBIT A

### **Material Safety Data Sheets (MSDS):**

MSDS's must be provided prior to or with receipt of order, and when revised. Containers must be properly labeled and identified in accordance with the OSHA Hazard Communications Standard. Improperly labeled containers will result in refusal of the shipment and possible change in vendors.

### **Patents, Franchises, etc.:**

The successful bidder agrees to protect the City from any claim involving patent right infringements, copyrights or sales franchises.

### **No Bids:**

If bidder is unable to quote, the bid form should be returned to the purchasing agent before opening time, and reason given for not bidding if bidder desires to bid on future purchases.

### **Addenda:**

In the event of a needed change in the published documents, it is understood that all the foregoing terms and conditions and all performance requirements will apply to any published addendum.

All published addenda shall be signed and included with your response package as acknowledgement of the addendum. Bidders are responsible for obtaining all published addenda from the City of Brenham Purchasing office. The City assumes no responsibility for the Bidders failure to obtain and/or properly submit any addendum. Failure to acknowledge and submit any addendum may be cause for the bid to be rejected. The City's decision to accept or reject any particular bid due to a failure to acknowledge and submit addenda shall be final.

### **Fiscal Funding:**

The City operates and is funded on a fiscal year basis; accordingly, the City reserves the right to terminate, without liability, any contract for which funding is not available. Renewal of a contract will be in accordance with Local Government Code 271.903 concerning non-appropriation of funds for multi-year contracts.

The City reserves the right to rescind the contract at the end of each fiscal year if it is determined that there are insufficient funds to extend the contract. The fiscal year for the City extends from October 1<sup>st</sup> of each calendar year to September 30<sup>th</sup> of the following calendar year.

### **H.B. 1295 Compliance:**

The Vendor for the Contract shall comply with the requirements of Section 2252.908 of the Texas Government Code as adopted in 2015 as House Bill 1295. The law requires that a governmental entity may not enter in certain contracts with a business entity unless the business entity submits a Disclosure of Interested Parties to the governmental entity. The law applies only to a contract that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million.

Compliance with the law requires that the Vendor utilize the Texas Ethics Commission website to enter the required information on Form 1295 and print a copy of the complete form. The form must be signed, notarized and submitted to the contracting government entity

The City, in the case of contracts formalized by Purchase Order or by other written contract, will notify the Vendor of Award by Council and request the completed Form 1295 within five (5) working days thereafter.

### **No Boycott of Israel:**

By acceptance of this Contract, Vendor hereby certifies that it is not a company identified on the Texas Comptroller's list of companies known to have contacts with, or provide supplies or services to, a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State. Vendor further certifies and verifies that neither vendor, nor any affiliate, subsidiary, or parent company of Vendor, if any, the "Vendor Companies", boycotts Israel, and Vendor agrees that Vendor and Vendor Companies will not boycott Israel during the term of this Agreement. For purposes of this Agreement, the term "boycott" shall mean and include terminating business activities or otherwise taking any action that is intended to

## EXHIBIT A

penalize, inflict economic hoard on, or limit commercial relations with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory.

### **Engaged in Business with Iran, Sudan, or Foreign Terrorist Organization:**

Pursuant to Texas Government Code Chapter 2252, Subchapter F, Vendor affirms that it is not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to a foreign terrorist organization.

### **Conflict of Interest:**

By doing business or seeking to do business with the City, Vendor acknowledges that they have been notified of the requirements of Chapter 176 of the Texas Local Government Code and that they are solely responsible for compliance.

### **Applicable Law and Venue**

This Contract shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Washington County, Texas and venue for any lawsuit, claim or dispute arising out of the contract shall be in Washington County, Texas. Further, neither party will seek to remove such litigation to the federal court system by application of conflicts of laws or any other removal process.

### **Insurance**

1. The Vendor shall procure and maintain at its sole cost and expense for the duration of the Contract insurance coverage for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, volunteers, employees or subcontractors. The Contractor's insurance coverage shall be primary insurance with respect to the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its

officials, employees or volunteers shall be considered in excess of the Contractor's insurance and shall not contribute to it. Further, the Contractor shall include the City as an additional insured under its policy. All coverage for subcontractors shall be subject to all of the requirements stated herein. Certificates of Insurance and endorsements shall be furnished to the City and approved by the City before work commences.

2. Standard Insurance Policies Required:
  - a) Commercial General Liability Policy
  - b) Automobile Liability Policy
  - c) Workers' Compensation Policy
3. General Requirements Applicable to All Policies:
  - a) General Liability and Automobile Liability insurance shall be written by a carrier with an A: VIII or better rating in accordance with the current Best Key Rating Guide.
  - b) Only Insurance Carriers licensed and admitted to do business in the State of Texas will be accepted.
  - c) Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a per occurrence basis for property damage only.
  - d) "Claims Made" policies will not be accepted.
  - e) The City of Brenham, its officials, employees and volunteers, are to be added as "Additional Insured" to the General Liability policy. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.
  - f) A Waiver of Subrogation in favor of the City with respect to Workers' Compensation Insurance must be included.
  - g) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior

## EXHIBIT A

written notice has been given to the City.

- h) Upon request, certified copies of all insurance policies shall be furnished to the City.

#### 4. Commercial General Liability

- a) Minimum Combined Single Limit of \$1,000,000.00 per occurrence for bodily injury and property damage.
- b) No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.

#### 5. Automobile Liability

- a) Minimum Combined Single limit of \$500,000.00 per occurrence for bodily injury and property damage.

#### 6. Worker's Compensation

- a) Statutory

#### 7. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent. And shall contain the following provisions and warranties:

- a) The company is licensed and admitted to do business in the State of Texas.
- b) The insurance policies provided by the insurance company are underwritten on forms that have been provided by the Texas Board of Insurance.
- c) All endorsements and insurance coverage according to requirements and instructions contained herein.
- d) The form of the notice of cancellation, termination, or change in coverage provisions to the City of Brenham.
- e) Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

### **Workers' Compensation Provisions** **(State law requires the following language in contracts on public works projects).**

#### **DEFINITIONS:**

Certificate of Coverage (certificate) – A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the Project – includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the City.

Persons providing services on the project ("subcontractor" in 406.096) – includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitations, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnished persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other services related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

## EXHIBIT A

The Contractor must provide a certificate of coverage to the City **prior** to being awarded the contract.

If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the City showing that coverage has been extended.

The Contractor shall obtain from each person providing services on a project, and provide to the City:

- a. a certificate of coverage, prior to that person beginning work on the project, so the City will have on file certificates showing coverage for all persons providing services on the project; and
- b. no later than seven calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

The Contractor shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.

The Contractor shall notify the City in writing by certified mail or personal delivery, within ten (10) calendar days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation commission, informing all persons providing services on the project that they are required to be covered and stating how a person may verify coverage and report lack of coverage.

The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

- (a) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
- (b) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on a project, for the duration of the project;
- (c) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (d) obtain from each person with whom it contracts, and provide to the Contractor:
  1. a certificate of coverage, prior to the person beginning work on the project; and
  2. a new certificate of coverage showing the extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- (e) retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;
- (f) notify the City in writing by certified mail or personal delivery, within ten (10) calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- (g) contractually require each person with whom it contracts, to perform as required by paragraphs (a) – (g), with the certificates of coverage to be provided to the person for whom they are providing services.

## EXHIBIT A

By signing the contract, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the City that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the City to declare the contract void if the contractor does not remedy the breach within ten (10) calendar days after receipt of notice of breach from the City.