



CITY OF BRENHAM, TEXAS

INVITATION TO BID

Lease of Land at Brenham Municipal Airport

ITB 23-002

Response Deadline: 10:00 A.M. (CST), Wednesday, December 7, 2022

Responses will be opened on this date and time at the location below and bids announced for public record.

Question Deadline: 10:00 AM (CST, Thursday, December 1, 2022

Submit to: Bids may be submitted by mail or delivery service, in person, or into a secure electronic depository.

**City Secretary's Office, Suite 206
City of Brenham
200 W. Vulcan St.
Brenham, Texas 77833**

or

**P.O. Box 1059
Brenham, Texas 77834-1059**

Mailed bids must be addressed to post office box.

SECTION I: INSTRUCTIONS

1. INTENT

The City of Brenham requests bids for an annual lease of land for the exclusive permitted use of livestock grazing and for planting, raising, and harvesting hay.

2. LOCATION AND QUANTITY OF LAND

For the purposes of the proposed lease, available parcels shall consist of approximately 46 acres located off Old Independence Road on the North end of the Brenham Municipal Airport Property, situated in Washington County, Texas, further described and defined in Attachment “A” of the Lease Agreement and further referred to herein as the “Land”.

3. SUBMISSION OF BIDS

Proposals shall be delivered using one of the following methods:

<u>Hand-deliver to:</u>	<u>Mail to:</u>	<u>Ship to (FedEx, UPS, DHL, etc.):</u>
200 W. Vulcan Street Suite 203 Brenham, TX 77833	P.O. Box 1059 Brenham, TX 77834-1059 ATTN: City Secretary	200 W. Vulcan Street Brenham, TX 77833 ATTN: City Secretary

The City does accept electronic proposals via download into a secure electronic depository. Proposals submitted by e-mail will not be accepted. If a Proposer would like to submit electronically, they must notify the City no later than 2:00 p.m. on Monday, December 6, 2022.

Notifications for electronic submissions must be sent to Kyle Branham, Purchasing and Public Works Project Manager, P. O. Box 1059 (200 W. Vulcan St.), Brenham, Texas 77834, or e-mailed to kbranham@cityofbrenham.org. All e-mails must indicate “ITB No. 23-002– Electronic Submission Request” in the subject line. It is the sender’s responsibility to verify receipt of email; read receipt is acceptable.

4. TERM OF CONTRACT

The Lease Agreement shall remain in effect for a term of one (1) year, and shall automatically renew annually for a term of one (1) year, unless either party gives the other party ninety (90) days written notice of its intent not to renew prior to the end of the then current one (1) year term. Original term and all renewals shall not exceed a total of five (5) years. The Term is subject to the Landlord’s right to sell or use the Land (or any portion thereof) for other purposes.

5. FORM

Bid must be submitted on the form provided on pages 15 - 16 of this ITB. 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 ITB document with 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 bid considered most advantageous in order to obtain the **best value** for the City. Lease may be awarded either for the highest responsible bidder or to the bidder whose bid provides the best value.

7. INSURANCE

The Lessee shall procure and maintain at its sole cost and expense, for the duration of the lease agreement, a commercial general liability insurance policy, minimum of \$100,000 per occurrence and \$100,000 aggregate, for injuries to persons or damages to property that may arise from or in connection with the lease agreement or the use of the property by the Lessee, his agents, representatives, volunteers, or employees. A valid Certificate of Insurance shall be furnished to the City before the Lessee commences use of the property.

8. CONTACT

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

Kyle Branham
Purchasing Manager
City of Brenham
200 W. Vulcan St.
Brenham, TX 77833

P.O. Box 1059
Brenham, TX 77834-1059

kbranham@cityofbrenham.org

Phone: 979-337-7537

9. TERMS AND CONDITIONS OF LEASE

Terms and Conditions of the Lease are as provided in the Form of Lease Agreement attached.

Form of Lease Agreement

Date: _____, 2022

THIS AGREEMENT is between the City of Brenham, a Texas Home-Rule Municipality (Landlord) and _____ (Tenant), for the lease of certain parcels of land for the purpose of planting, raising, and harvesting hay and/or grazing livestock.

Landlord's Address:

City of Brenham
Attn: Accounts Payable
P.O. Box 1059
Brenham, TX 77834-1059

Tenant's Address:

Premises: SURFACE ONLY approximately 46 acres located off Old Independence Road, on the North end of the Brenham municipal Airport Property, situated in Washington County, Texas and more fully described in Exhibit "A" attached hereto and incorporated herein for all purposes ("Land")

The Tenant will be allowed to utilize the entire 46 acres until notified by the Landlord that the Land (or portion thereof) is being sold or is needed for other use by the Landlord. Upon such notification by the Landlord, tenant shall immediately cease use of the areas to be sold or used by the Landlord.

Base Rent:

\$_____ per acre paid annually, in advance, to the City of Brenham. Lease payment shall be addressed to:

City of Brenham
Attn: Accounts Payable
P.O. Box 1059
Brenham, TX 77834-1059

Rent will be prorated for the remainder of the Term in the event the Landlord notifies the Tenant that the Land (or portion thereof) is being sold or is needed for other use by the landlord. Changes in acreage resulting in (+/-) 5% or less of the base rent will become effective at each renewal date and will not be prorated.

Term: The Lease Agreement shall remain in effect for a term of one (1) year, and shall automatically renew annually for a term of one (1) year, unless either party gives the other party ninety (90) days written notice of its intent not to renew prior to the end of the then current one (1) year term. Original term and all renewals shall not exceed a total of five (5) years. The Term is subject to the Landlord's right to sell or use the Land (or any portion thereof) for other purposes at any point in time and subject to the Landlord's sole discretion.

Commencement Date: January 1, 2023

Termination Date: December 31, 2023

Permitted Use: Exclusively for livestock grazing and for planting, raising, and harvesting hay and no other purpose, unless otherwise approved in writing by the Landlord.

Tenant's Insurance: Tenant shall procure and maintain at its sole cost and expense, for the duration of the lease agreement, a commercial general liability insurance policy, minimum of \$100,000 per occurrence and \$100,000 aggregate, for injuries to persons or damages to property that may arise from or in connection with the lease agreement or the use of the property by the Tenant, his agents, representatives, volunteers, or employees. A valid Certificate of Insurance shall be furnished to the City before the Lessee commences use of the property.

Definitions

"Injury" means (a) harm to or impairment or loss of property or its use or (b) harm to or death of a person.

"Landlord" means Landlord, the City of Brenham, and its agents, employees, invitees, licensees, or visitors.

"Rent" means Base Rent plus any other amounts of money payable by Tenant to Landlord.

"Tenant" means Tenant and its agents, tenants, employees, invitees, licensees, or visitors.

Clauses and Covenants

A. Tenant agrees to-

1. Lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date, subject to the Landlord's right to sell or use the Land (or portion thereof) for other purposes.
2. Accept the Premises in their present condition "As Is," the Premises being currently suitable for the Permitted Use.
3. Obey all laws, ordinances, orders, and rules and regulations applicable to the use, condition, and occupancy of the Premises, including the rules and regulations of the United States Department of Agriculture, the Texas Department of Agriculture, and the rules and regulations of the Federal Aviation Administration
4. Pay the Base Rent when it is due to Landlord at Landlord's Address.

5. Pay for all labor, fuel and utility services used by Tenant.
6. Pay all taxes on the crops raised on and Tenant's personal property located on the Premises.
7. Allow Landlord to retain the right of ingress and egress to said property, and allow landlord to enter the Premises to inspect the Premises and show the Premises to prospective purchasers or tenants at any time deemed reasonable by Landlord.
8. Repair any damage to the Premises, Land, or other improvements caused by Tenant.
9. Obtain prior written approval from the Landlord for the construction of any permanent and/or temporary buildings, shed, pens, corrals or any other improvements on the property. Any alteration, addition or removal of a gate and/or fence must be approved by the Purchasing and Public Works Project Manager
10. INDEMNIFY, DEFEND, AND HOLD LANDLORD HARMLESS FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS) ARISING OUT OF TENANT'S USE OF THE PREMISES. **THE INDEMNITY CONTAINED IN THIS PARAGRAPH (a) IS INDEPENDENT OF TENANT'S INSURANCE, (b) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR CLAIMS PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (c) WILL SURVIVE THE END OF THE TERM, AND (d) WILL APPLY EVEN IF AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF LANDLORD BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD.**
11. Vacate the Premises on the last day of the Term, or immediately upon the Landlord's notification to Tenant of the Landlord's sale of the Land (or portion thereof) or diversion of the Land to other use(s).
12. Pay all costs associated with livestock grazing and of planting, raising, and harvesting hay.
13. Cultivate the Premises in a timely, thorough, and farmer-like manner, employing the best methods of farming customarily practiced on similar hay crops in the area.
14. Keep any and all gates on the Premises closed and locked.
15. Enter and exit the Premises only at those places designated by Landlord.
16. Mow all open acreage at least one (1) time per year.
17. Maintain all fences to prevent livestock from entering or exiting the property.

B. Tenant agrees not to-

1. Use the Premises for any purpose other than the Permitted Use.
2. Create or allow a nuisance or permit any waste of the Premises.
3. Alter the Premises, including clearing new roads, moving or erecting any fences, or locating on the Premises any type of manufactured housing or mobile home, unless otherwise authorized in writing by the Landlord.
4. Transfer or assign this lease or sublease any portion of the Premises without Landlord's written consent. If such consent is requested the Lease Agreement is subject to cancellation by the Landlord.
5. Allow hunting of any kind, fishing, or the discharge of firearms on the Premises.
6. Litter or leave trash or debris on the Premises.
7. Allow a lien to be placed on the Premises.
8. Allow plowing, digging, or disking activities on the Premises without prior approval, in writing, from the Landlord.
9. Allow trapping of feral hogs on the Premises, unless otherwise approved in writing by the Landlord.

C. Landlord agrees to-

1. Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date, subject to the Landlord's right to sell or use the Land (or portion thereof) for other purposes at any point in time.

D. Landlord agrees not to-

1. Allow any use of the Premises inconsistent with the Permitted Use as long as Tenant is not in default, except for the Landlord's right to sell or use the Land (or portion thereof) for other purposes as provided herein.

E. Landlord and Tenant agree to the following:

1. *Alterations.* The Tenant must obtain written approval from the Landlord for the construction of any permanent and/or temporary buildings, sheds, pens, corrals, or any other improvements on the property. Any alteration, additions, or removal of a gate and/or fence must be approved by the Purchasing and Public Works Project Manager. Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at termination of this lease and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

2. *Abatement.* Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as otherwise provided, Tenant will not be entitled to abate Rent for any reason.
3. *Release of Claims/Subrogation.* TENANT RELEASES LANDLORD FROM ALL CLAIMS OR LIABILITIES FOR ANY INJURY TO TENANT OR TO TENANT'S PROPERTY LOCATED ON THE PREMISES. **THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF LANDLORD BUT WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD.**
4. *Condemnation/Substantial or Partial Taking*
 - a. If the Premises cannot be used for Permitted Use because of condemnation or purchase in lieu of condemnation, this lease will terminate.
 - b. If there is a condemnation or purchase in lieu of condemnation and this lease is not terminated; the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.
 - c. Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.
5. *Default by Landlord/Events.* A default by Landlord is the failure to comply with any provision of this lease that is not cured within thirty days after written notice.
6. *Default by Landlord/Tenant's Remedies.* Tenant's remedy for Landlord's default is termination of this lease.
7. *Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay timely Rent; (b) abandoning or vacating a substantial portion of the Premises; and (c) failing to comply within 30 days after written notice of the violation of any provision of this lease other than the defaults set for (a) and (b) above.
8. *Default by Tenant/Landlord's Remedies.* Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant and receive the Rent directly by reason of the reletting, and Tenant agrees to reimburse Landlord for any expenditures made in order to relet; (b) enter the Premises and perform Tenant's obligations; and (c) terminate this lease by written notice and sue for damages. Landlord may enter and take possession of the Premises by self-help, by picking or changing locks if necessary, and may lock out Tenant or any other person who may be farming the Premises, until the default is cured, without being liable for damages. Termination of this Lease Agreement for default shall be deemed sufficient evidence and cause to deem the Tenant ineligible to lease the Land pursuant to a future bid process, or in accordance with any other process approved by the Landlord.
9. *Default/Waiver/Mitigation.* It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this lease does not preclude pursuit of other remedies in this lease or provided by law. Landlord and Tenant have a duty to mitigate damages.

10. *Holdover.* If Tenant does not vacate the Premises following termination of this lease, Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the Term.
11. *Attorney's Fees.* If either party retains an attorney to enforce this lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and other fees and court and other costs.
12. *Venue.* Exclusive venue is Washington County, Texas.
13. *Entire Agreement.* This lease, together with the attached exhibits and riders is the entire agreement of the parties, and there are no oral representations, warranties, agreements, or promises pertaining to this lease or to any expressly mentioned exhibits and riders not incorporated in writing in this lease.
14. *Amendment of Lease.* This lease may be amended only by an instrument in writing signed by Landlord and Tenant.
15. *Limitation of Warranties.* THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.
16. *Notices.* Any notice required or permitted under this lease must be in writing. Any notice required by this lease will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular, mail, person delivery; courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.
17. *Mineral Interests:* This lease is subordinate to any present or future oil, gas, or other mineral exploration agreements and leases relating to the Land. Landlord will not be liable to Tenant for any damages for actions attributable to those agreements and will receive all consideration paid therefor.

Landlord:

Carolyn Miller, City Manager

Tenant:

Signature

Print Name



LEASE BID FORM

ITB Opening: 10:00 A.M. (CST), Wednesday, December 7, 2022
Title: Lease of Land at Brenham Municipal Airport

Submit to: Purchasing Services
City Hall
200 W. Vulcan St.
Brenham, TX 77833

PO Box 1059
Brenham, Texas 77834-1059

kbranham@cityofbrenham.org

Quote Documents: Quotes must be submitted on this form only.

Name of Bidder: _____
(please print)

Authorized Signature: _____

Address: _____

Phone No: _____

Alt. Phone No: _____

Email: _____

Lease of Land for Hay Production Only

Bid to Lease Land at \$_____ per acre according to these specifications and the Terms and Conditions of the Lease Agreement. Land to be comprised of 46 acres as further specified herein.

Total Yearly Rent \$_____.

In case of disagreement between the per acre amount and the total rent, the per acre amount shall govern.

Exceptions or Comments: (additional sheets may be added as needed)

Bidder's Name:



46 Acre Hay and Land Lease

1 inch = 439 feet



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

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 (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.

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

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

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.

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 1st of each calendar year to September 30th 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

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

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.

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.

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.