



# *Request for Proposals (“RFP”)* *Water Meter Replacement Project*

RFP NO. 25-008

EVENT	DATE
1 <sup>st</sup> Publication Date	Thursday, August 21, 2025
2 <sup>nd</sup> Publication Date	Thursday, August 28, 2025
Pre-Proposal Meeting (Optional) (2:00 p.m.)	Wednesday, September 3, 2025
RFP Question Deadline (5:00 p.m.)	Thursday, September 4, 2025
Proposal Submission Deadline (10:00 a.m.)	Thursday, September 11, 2025
Possible City Council Consideration/Award	Thursday, October 2, 2025

## ***INTENT***

The City of Brenham (hereinafter referred to as “City”) is seeking a qualified contractor to remove and install approximately 1,379 iPerl ¾ inch water meters and approximately 1,310 iPerl 1 inch water meters for a total of approximately 2,689 water meters all requiring smart point activation. The various locations for the meter replacements are spread throughout the City of Brenham, Texas and specific location addresses will be provided to the successful Proposer.

All proposals must be submitted on the form provided by the City and further must be properly executed in the space(s) provided. The proposal should also include Proposer’s qualifications and previous related work experience.

**\*Non-mandatory** Pre-proposal meeting is scheduled to discuss the City's requirements under this RFP. While attendance is at the discretion of the Proposer, Proposers who do not attend will be deemed to have attended and to have received the information provided at that time. The pre-proposal meeting will be held on **Wednesday, September 3, 2025, at 2:00 P.M., City of Brenham, City Hall, Public Utilities Conference Room. 200 W. Vulcan St. , Brenham, Texas.**

## ***RECEIPT AND OPENING OF PROPOSALS***

Proposers shall submit **one (1) original and two (2) copies** of the Proposal on the form provided by the City. The original Proposal must be clearly marked “**Proposal for RFP No. 25-008** and include an original signature, in ink, in order to be accepted. Proposals must be received in the Purchasing Services office no later than **10:00 a.m. (CST) on Thursday, September 11, 2025**. It is the Proposer’s sole responsibility to assure that the Proposal is delivered in a timely fashion. Proposals received after this time will be rejected and returned unopened. All proposals will be opened and read aloud at the City of Brenham City Hall, 2nd Floor Conference Room, 200 W. Vulcan Street, Brenham, Texas 77833. **Any proposal received after 10:00 a.m. on Thursday, September 11, 2025, shall not be considered.**

To the extent allowed by applicable law, and subject to the ruling of any administrative agency or court having jurisdiction, the City intends that trade secrets and confidential information contained in the proposals and clearly identified as “Confidential” in **bolded font** will not be open for public inspection at any time, even after a contract has been awarded and executed, whether or not the proposer wins the contract.

Proposals should be prepared simply, providing straightforward, concise description of the Proposer’s approach and capabilities necessary to satisfy the requirements of the RFP. Technical literature and elaborate promotional materials, if any, must be submitted separately. Emphasis in the proposal should be on completeness, clarity of content and adherence to the presentation structure required by the RFP. Proposers are encouraged to suggest creative and economical means to provide the services requested in the RFP.

Proposals shall be delivered using one of the following methods:

**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

## ***CHANGES, QUESTIONS, AND INQUIRIES***

Any and all questions regarding this RFP must be submitted in writing and addressed 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](mailto:kbranham@cityofbrenham.org). All e-mails must indicate “RFP No. 25-008” in the subject line. It is the sender’s responsibility to verify receipt of email; read receipt is acceptable. The deadline for submittal of questions regarding this RFP is **5:00 p.m. (CST) on Thursday, September 4, 2025**.

No person has the authority to verbally alter the terms of this RFP. Any changes to this RFP will be made in the form of an Addendum which will be made available online at [www.cityofbrenham.org](http://www.cityofbrenham.org). It shall be the responsibility of interested Proposers to check the website for addenda up to the proposal submission deadline. The complete RFP and all addendums will be posted on the City’s website.

## ***METHOD OF AWARD***

This RFP does not commit the City of Brenham to award a contract. No other party, including any proposer, is intended to be granted any rights hereunder. Proposals which, in the sole discretion of the City of Brenham, do not meet minimum qualification requirements will not be reviewed. This RFP and the process it describes are proprietary to the City of Brenham and are for the sole and exclusive benefit of the City of Brenham. Any response to this RFP will become the property of the City of Brenham and subject to the Texas Public Information Act. The City of Brenham is not liable for any costs associated with the development, preparation, transmittal or presentation of any proposal or material submitted in response to this RFP.

Pursuant to Chapter 2269, subchapter D of the Texas Government Code and other applicable law, the City will receive competitive sealed proposals for the removal and replacement of approximately 2,496 iPerl water meters, all requiring smart point activation.

Proposals will be evaluated by the City in accordance with Chapter 2269, subchapter D of the Texas Government Code, in addition to Section 2269.055, Texas Government Code. The City will consider the completeness of a proposal and how well the proposal meets the needs of the City.

Within forty-five (45) days after opening the Proposals, the City will score and rank each proposal to select the Proposal that offers the best value to the City based on the following criteria: Overall cost, proposer qualifications, guarantee workmanship, timeline.

Overall Cost	50%
Proposer qualifications	30%
Guarantee Workmanship	10%
Timeline	10%
<b>Total</b>	<b>100%</b>

**Overall Cost:** Lowest and best price for goods and/or service, as specified, will be considered in evaluating this bid.

**Proposer Qualifications:** Consideration will be given to the experience, performance records, and abilities of all persons performing the work, length of time the company has been in operation, providing similar services; past performance history, and references. To be considered a responsible bidder, the bidder shall have the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will ensure good faith performance.

**Guarantee Workmanship:** Any workmanship warranty give for a Specified period contractors work would be free from defects after installation.

**Timeline:** Projected start date, anticipated time of project completion.

The City will then attempt to negotiate a contract with the selected offeror. The City may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the City is unable to negotiate a contract with the selected offeror, the City may end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

By submission of a proposal, the selected proposer agrees to be legally bound if the City of Brenham accepts the proposal.

The City of Brenham reserves the right to make an award without further discussion of the proposals. The selected Proposer will be expected to enter into an Agreement with the City. The Agreement shall incorporate the City's standard contract terms and conditions, attached hereto as Attachment "B" to this RFP.

### ***PROPOSAL GUARANTY REQUIREMENTS; PERFORMANCE AND PAYMENT BOND REQUIREMENTS***

Proposal amounts in excess of \$50,000, shall be required to submit a Proposal Guaranty in the amount of five percent (5%) of the total proposal amount payable to the City of Brenham, in the form of a proposal bond, cashier's check, or certified check (if a bond, from a surety company authorized to do business in Texas) as a guarantee that the Proposer will enter into a contract and provide required insurance within ten (10) business days after receiving a Notice of Intent to Award, will provide to City all submittals required by this contract within ten (10) business days from Notice of Intent to Award. The Proposal Guaranty of the successful Proposer will be retained until such Proposer has executed the contract and furnished the required contract submittals, whereupon the Proposal Guaranty will be returned. If the successful Proposer fails to execute and deliver the contract and furnish the required contract submittals within fifteen (15) calendar days after the Notice of Award, City may void the Notice of Award and the Proposal Guaranty of that Proposer will be forfeited. The Proposal Guaranty of other proposers whom City believes to have a reasonable chance of receiving the award may be retained by City until the earlier of the seventh (7th) day after the effective date of the contract or the 90th day after the proposal opening, whereupon the Proposal Guaranty furnished by such proposers will be returned. Proposal Guaranty with Proposals which are not competitive will be returned within seven (7) days after the proposal opening.

Further, in accordance with Texas Government Code Chapter 2253, as amended, the successful proposer will provide to the City a properly executed Performance Bond if the contract is in excess of \$100,000, and a properly executed Payment bond if the contract is in excess of \$50,000. When the successful Proposer delivers the executed contract to the City, it must be accompanied by the required Performance and Payment Bonds.

The Performance and Payment Bonds shall be on the forms provided, each in the amount of 100% of the contract price from a Surety Company authorized to do business in the State of Texas and that is named on the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the

Treasury. The Bonds must bear the impressed seal of the surety company and the name of the Proposer and be signed by the Proposer and an authorized representative of the surety company. Powers of attorney must be attached to the Proposal Guaranty.

## ***CONTRACT TERMS AND CONDITIONS***

### **1. GENERAL TERMS AND CONDITIONS**

General Terms and Conditions for Invitations for proposals from the City of Brenham may be found in Exhibit “A” of this document. Should any contradiction be found to exist between those terms and conditions and the body of this RFP, the RFP 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 Brenham, 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 RFP 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.

## ***SCOPE***

The selected Respondent to the Request for Proposals (RFP) shall be responsible for labor to complete the scope of work below along with any materials needed to repair or fix customer-owned or City-owned property due to damage caused by contractor during performance of the scope of work set out herein below. Numbers represented below are an approximation at the time of RFP.

Scope of work shall include the following:

- Remove approximately 1,379 old iPerl ¾" water meters and install approximately 1,379 new iPerl ¾" water meters. Meters shall be supplied by the City of Brenham.
- Remove approximately 1,310 old iPerl 1" water meters and install approximately 1,310 new iPerl 1" water meters. Meters shall be supplied by the City of Brenham.
- Repair or replace anything damaged during the removal/installation process to include meter, gaskets, curb stop, meter box, smart point-pit radio module and cable (City will supply all materials as described here).
- Return customer property to like condition as existed before the meter change out. Contractor to supply any materials needed for customer-owned property repairs.
- Contractor to remove any and all trash and debris from work site before leaving.
- Contractor crew(s)/staff to follow all City and contractor safety and company policies.
- Return all City-owned property, rights-of-way, streets, sidewalks, etc. to like condition as existed before the meter change out.
- Complete all necessary paperwork and/or data entry for meter change out.
- Deactivate all old iPerl meters.
- Program all new iPerl meters with City program.
- Notify the City dispatcher of contractor work location for each crew/person daily, during location changes, and if contractor damages City-owned utilities or other property.
- Working hours shall be Monday through Friday from 7am to 5pm.
- Notify the City Project Manager of any customer issues even if they were taken care of by the contractor to the customer's satisfaction.
- Notify the City Project Manager of the work schedule and any work schedule changes.
- Hang door hangers (supplied by contractor and approved by City) 2 days in advance notifying customers of the upcoming water outage, expected duration, and flush water as needed if cloudy.
- Contractor staff to wear identification showing the company name and supply contact information should a customer request it.
- Contractor to supply City Project Manager with a contact for emergencies and day-to-day operations for personnel in charge of contractor crew(s)/staff.
- Meters that are removed/replaced from service shall be returned to our Central Warehouse for storage and completion of Sensus RMA.
- Excel Database shall be kept with removed meter location, size, and serial number.

**\*Non-mandatory** Pre-proposal meeting/ facility visit is scheduled to discuss the City's requirements under this RFP. While attendance is at the discretion of the Proposer, Proposers who do not attend will be deemed to have attended and to have received the information provided at that time. The pre-proposal meeting will be held on **Wednesday, September 3, 2025 at 2:00 P.M., City Hall, Public Utilities Conference Room 200 W. Vulcan, Brenham, Texas.**



## **PROPOSAL SUBMISSION AUTHORIZATION**

- An authorized representative must sign proposals, with the Proposer's address, telephone and email information provided. Unsigned proposals may not be considered.
- If the proposal is made by an individual, the name, mailing address and signature of the individual must be shown.
- If the proposal is made by a firm or partnership, the name and mailing address of the firm or partnership and the signature of at least one of the general partners must be shown.
- If the proposal is made by a corporation, the name and mailing address of the corporation and the signature and title of the person who signs on behalf of the corporation must be shown.
- The CITY reserves the right to request documentation showing the authority of the individual signing the proposal to execute contracts on behalf of anyone, or any corporation, other than himself/herself. Refusal to provide such information upon request may cause the proposal to be rejected as non-responsive.

The undersigned certifies that the information provided above is a true representation of its company's qualifications and agrees to comply with these assurances following award of the RFP and during the performance of the water meter replacement project contract, once executed.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_



## **NON-COLLUSION CERTIFICATE**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The undersigned, being duly sworn, deposes and says that the person, firm, association, co-partnership or corporation herein named, has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competition in the preparation and submission of a proposal to the City of Brenham for consideration in the award of a contract on the improvement described as follows:

**RFP NO. 25-008 – Water Meter Replacement Project**

\_\_\_\_\_  
(Name of Firm)

By: \_\_\_\_\_  
(Authorized Signature)

Title: \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
Notary Public

NOTARY SEAL:



## *Water Meter Replacement Project* Proposal Form

**RFP No: 25-008**

**Proposal Opening: 10:00 A.M. (CST), Thursday, September 11, 2025.**

Submit to: Purchasing Service Office  
Attention: Kyle Branham  
City of Brenham  
200 W. Vulcan St., Suite 203  
Brenham, TX 77833

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

Proposal Documents: Proposals must be submitted on this form only. **Proposers are required to submit one (1) original and two (2) copies.** All proposals submitted must be itemized with prices extended when practical. **Proposers must return the entire original proposal document with proposal.**

Proposal **MUST** be signed by an authorized representative of Proposer. Original signature required.

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Description	Section Price	Notes
All costs associated with 3/4" water meter removal.	\$	
All costs associated with 3/4" meter install.	\$	
All costs associated with 1" water meter removal	\$	
All costs associated with 1" water meter install	\$	
TOTAL	\$	

\*All proposals submitted must be itemized with prices extended when practical.

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

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

Name of Proposer: \_\_\_\_\_  
 (Please print)

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

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

Phone No: \_\_\_\_\_

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

<u>Acknowledgement of Addenda(s) (if any):</u>	
Addendum No. 1 _____	Addendum No. 3 _____
Addendum No. 2 _____	Addendum No. 4 _____

**AGREEMENT FOR  
CITY OF BRENHAM WATER METER REPLACEMENT PROJECT**

**THE STATE OF TEXAS                   §  
  §  
COUNTY OF WASHINGTON       §**

This "AGREEMENT FOR CITY OF BRENHAM WATER METER REPLACEMENT PROJECT," hereinafter referred to as "Agreement," made and entered into this \_\_\_\_ day of \_\_\_\_\_ A.D., 2025, by and between \_\_\_\_\_ a \_\_\_\_\_ [corporation, limited liability company, partnership, etc.], of the County of \_\_\_\_\_ and State of \_\_\_\_\_, acting through, hereinafter referred to as "Contractor" and the City of Brenham, a home rule municipal corporation, organized and existing under the laws of the State of Texas, acting through its Mayor or other duly authorized designee Texas, hereinafter referred to as "City."

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by City and Contractor, Contractor hereby agrees to commence and complete performance of the work specified below: The Contractor shall furnish all supervision, labor, materials (excluding the water meters), and equipment to perform removal of old water meters, installation of new meters and smart point activation for approximately 2,496 water meters as further described in the Request for Proposal 25-008 (the "Scope of Work" or "Work"), in accordance with the conditions and prices stated in the Contractor's Proposal and the Request for Proposal ("RFP") documents set forth in Exhibit A, attached hereto and incorporated herein for all pertinent purposes, and in accordance with this Agreement, and in accordance with the specifications, descriptions of work, and scope of work therefore (all collectively referred to herein as "the Contract Documents"), all of which are attached hereto and made a part hereof and collectively evidence and constitute the entire Agreement.

Contractor agrees to perform the work and City agrees to pay Contractor the total lump sum of \_\_\_\_\_ ("Contract Price") for completed and accepted work as set forth and adjusted in accordance with the terms of this Agreement.

City and Contractor hereby agree to the following additional terms and conditions:

**1. Prior to Performance of Work**

(a) *Examination of Contract and Site.* Contractor specifically represents that it has carefully examined the plans, the geotechnical report, if any, and the site of the Work and is thoroughly familiar with the nature and location of the Work, the confirmation of the ground and soil, the nature of any structures, the character quality, and quantity of the material to be utilized, the character of equipment and facilities for and during the prosecution of the Work, the time needed to

complete the Work, Contractor's ability to meet all deadlines and schedules required by this Agreement, the general and local conditions, and all other matters that in any way affect the Work under this Agreement, having had the opportunity to conduct any and all additional inquiry, tests and investigation that Contractor deems necessary and proper.

(b) *Continuing Obligation.* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents to check and verify pertinent figures shown thereon compare accurately to all applicable field measurements. Contractor shall promptly report in writing to City's representative any conflict, error, ambiguity or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from City's Representative before proceeding with any Work affected thereby. Contractor shall be liable to City for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents of which Contractor knew or reasonably should have known.

(c) City will not be responsible for additional expenses incurred by Contractor to perform extra work necessitated by conditions which were discoverable by Contractor prior to beginning Work and which Contractor failed to include in its Proposal.

## **2. Construction Responsibilities**

(a) *Commencement and Completion Dates.* Contractor hereby agrees to commence work on or after the date established for the start of work as set forth in the notice to proceed and complete all work within the time stated in this Agreement. The notice to proceed shall be given to the Contractor in writing by the City. The work required by this Agreement shall be completed within the dates of **TBD** and Completion by **TBD**.

(b) *Specifications.* Contractor shall perform the work described in the Contract Documents the Contract in a competent and efficient manner in accordance with the procedures, specifications and standards contained in the Contract Documents and all regulations, ordinances or specifications applicable to the Work, such specifications, standards, regulations and ordinances being expressly incorporated herein by reference and being made a part of this Agreement as though written herein. In the performance of all Work, Contractor warrants and represents that it and its subcontractors shall comply with all applicable statutes, ordinances, rules and regulations, including but not limited to those administered by the U.S. Occupational Safety and Health Administration, the U.S. Environmental Protection Agency, the Texas Railroad Commission, and any Federal or State agencies exercising concurrent or similar jurisdiction; and Contractor shall indemnify and hold harmless City from any and all claims or demands of a penal nature or civil penalties which may arise from violation of such statutes, ordinances, rules and regulations by Contractor or any subcontractor employed by it. As required by the Texas Health & Safety Code, Title 9, Subtitle A, Chapter 756, Subchapter C, Contractor is required to comply with the trench safety standards of the Occupational Safety and Health Administration, 29 C.F.R. 1926, Subpart P, Excavations, in effect during the period of performance of the Work. Contractor agrees to comply with any special shoring requirements, if

any, required for the Work. City agrees to furnish to Contractor a copy of any geotechnical information that was obtained by the City for use by the Contractor in the design of the trench safety system, if any.

(c) *Unforeseen Conditions.* Contractor must notify City in writing as soon as reasonably possible, but no later than three (3) calendar days, if unforeseen conditions are encountered at the site which are unknown physical conditions of an unusual nature, that differ materially from those normally encountered in the type of work being performed under this Agreement. If it is determined by City that such conditions differ materially and cause an increase or decrease in the cost of or time required for performance of any part of the Work, City's representative will determine whether or not an equitable adjustment in the price or time for performance will be made, taking into consideration Section 1 and other applicable provisions of this Agreement. If it is determined that such conditions are not materially different from those indicated in the Contract Documents, the price and time period will not be adjusted.

(d) *Protection of Lines.* Notwithstanding any other provision of this Agreement, Contractor is solely responsible for the location and protection of any and all public utility lines and utility customer service lines in the work area. **Contractor shall indemnify or reimburse such expenses or costs (including fines that may be levied against City) that may result from unauthorized or accidental damage to all public lines and utility customer service lines in the work area.** City reserves the right to repair any damage Contractor causes to such utilities at Contractor's expense. If a public line and/or customer service line is damaged by Contractor, Contractor shall give verbal notice within one (1) hour and written notice within twenty-four (24) hours to City's representative.

(e) *Good and Workmanlike Manner.* All work shall be performed in a good and workmanlike manner and to the satisfaction of the City or its representative. City shall decide all questions which arise as to the quality and acceptability of materials furnished, work performed, and the interpretation of specifications.

(f) *Facilitate Inspection.* Contractor shall furnish City or City's representative with every reasonable facility for ascertaining whether or not the work performed was in accordance with the specifications applicable thereto. Any work done or materials used without suitable inspection by City may be ordered removed and replaced at Contractor's expense. Upon failure of the Contractor to allow for inspection, to test materials furnished, to satisfactorily repair, remove or replace, if so directed, rejected, unauthorized or condemned work or materials, or to follow any other request or order of City or City's representative, City shall notify the Contractor of such failure and may suspend inspections of such work until such failure is remedied. If such failure is not remedied to the satisfaction of City, City shall have no obligation under this Agreement to approve or accept the Work.

(g) *Means and Methods of Construction.* Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. Contractor shall be responsible to see that the completed Work complies accurately with the Contract Documents. City may reject any of the Work for which, in the judgment of the City, the Work was not performed in accordance with City specifications.

(h) *Work Stoppage.* The City shall have the right to order the Work of the Contractor wholly or partially stopped:

- (1) if any of the materials furnished or the work being done is not in strict accordance with this Agreement;
- (2) until any objectionable person or material is removed from the premises; or
- (3) if any portion of the work is being performed so as to create a hazardous condition.

Such stoppage or suspension shall neither invalidate any of Contractor's performance obligations under this Agreement, including the time of performance and deadlines therefore, nor will extra charges be allowed the Contractor by reason of such stoppage or suspension.

(i) *Permits and Licenses.* The Contractor shall secure and pay for all necessary permits and licenses, governmental fees, and inspections necessary for the proper execution and completion of the Work. During this Agreement term and/or period during which the Contractor is working, it shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the Work.

(j) *Royalties and Licensing Fees.* The Contractor shall pay all royalties and licensing fees. The Contractor shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of patents, materials and methods used in the project. It shall defend all suits or claims for infringement of any patent rights.

(k) *Safety Precautions.* Safety precautions at each Work site are a part of the work techniques and processes for which the Contractor shall be solely responsible. The Contractor is solely responsible for handling and use of hazardous materials or waste, and informing employees of any such hazardous materials or waste. The Contractor shall provide copies of all hazardous materials and waste data sheets to the City Manager and the Chief of the Brenham Fire Department.

(l) *Warn of Hazards.* The Contractor has the sole obligation to protect or warn any individual of potential hazards created by the performance of the work set forth herein. The Contractor shall, at its own expense, take such precautionary measures for the protection of persons, property, and the work as may be necessary.



(m) *Failure of Safety Devices.* The Contractor shall be held responsible for all damages to property, personal injuries and/or death due to failure of safety devices of any type or nature that may be required to protect or warn any individual of potential hazards created by the performance of the work set forth herein; and when any property damage is incurred, the damaged portion shall immediately be replaced or compensated for by the Contractor at its own cost and expense.

(N) **INDEMNITY FOR SAFETY FAILURE. THE CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY FROM ANY LIABILITY CAUSED BY THE CONTRACTOR'S FAILURE TO COMPLY WITH APPLICABLE FEDERAL, STATE, OR LOCAL REGULATIONS THAT RELATE TO OR CONCERN THE MAINTENANCE OF A SAFE AND PROTECTED WORKING ENVIRONMENT AND THE SAFE USE AND OPERATION OF MACHINERY AND EQUIPMENT IN THAT WORKING ENVIRONMENT NO MATTER WHERE FAULT OR RESPONSIBILITY LIES. SUCH INDEMNITY SHALL INDEMNIFY AND PROTECT THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE, WHETHER THAT NEGLIGENCE IS THE SOLE OR CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGES.**

### **3. Insurance and Indemnification**

(a) *Insurance.* Contractor shall provide for insurance and workers compensation coverage in accordance with the requirements applicable to contractors as provided for in Attachments "A" and "B" attached hereto, the provisions of which are expressly incorporated herein by reference.

(B) **INDEMNIFICATION. CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS, CITY, ITS OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CLAIMS, DAMAGES, LOSSES, AND EXPENSES OF ANY CHARACTER, NAME AND DESCRIPTION, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES, ARISING OUT OF OR RESULTING FROM THE OPERATIONS OF CONTRACTOR, ITS AGENTS, EMPLOYEES OR SUBCONTRACTORS; OR ON ACCOUNT OF ANY NEGLIGENT ACT OF FAULT OF CONTRACTOR, ITS AGENTS, EMPLOYEES OR SUBCONTRACTORS IN PERFORMANCE OF THE WORK, INCLUDING, BUT NOT LIMITED TO, ANY SUCH CLAIM, DAMAGE, LOSS OR EXPENSE ATTRIBUTABLE TO BODILY OR PERSONAL INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY INCLUDING THE LOSS OF USE RESULTING THEREFROM, AND SHALL PAY ANY JUDGMENT, WITH COSTS, WHICH MAY BE OBTAINED AGAINST THE CITY GROWING OUT OF SUCH INJURY OR DAMAGE. NOTHING HEREIN SHALL WAIVE ANY GOVERNMENTAL**

**IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

**4. Acceptance and Payment**

(a) *Assurance of Payment.* Upon proper completion of the Work in accordance with this Agreement and the Contract Documents, City agrees to accept the Work and pay Contractor from available current funds in accordance with the terms and pricing set forth in the proposal and the Contract Documents.

(b) *Retainage, Final Payments.* As security for the faithful completion of the Work, Contractor and City agree that City shall retain ten percent (10%) of the total dollar amount of the contract price until after final approval or acceptance of the Work by City. City shall thereafter pay Contractor the retainage within thirty (30) days after Contractor has furnished to the City: 1) satisfactory evidence that all indebtedness connected with the Work and all sums of money due for labor, materials, apparatus, fixtures or machinery furnished for and used in performance of the Work have been paid or otherwise satisfied; and 2) written consent of all sureties for final payment.

(b) *Encumbrances.* Contractor shall promptly pay all workmen and materialmen and shall not allow liens to be placed on City property. If, after the completion of the Work, any claim, lien, charge or encumbrance is made, or found to exist, against City property, or land dedicated to the City, to which they are affixed, Contractor shall upon notice by City promptly cause such claim, lien, charge or encumbrance to be satisfied and released or promptly post a bond with City in the amount of such claim, lien, charge or encumbrance, in favor of the City, to insure payment of such claim, lien, charge or encumbrance.

(c) *Payments to Contractor.*

(1) Contractor shall provide an invoice to the City within thirty (30) days after the City accepts the completed Work pursuant to this Contract. The City shall pay Contractor within thirty (30) days after receipt of the invoice, in accordance with Chapter 2251, Texas Government Code, following acceptance of the Work completed in accordance with this Contract.

(2) Any amount due the City under Liquidated Damages shall be deducted from the final payment due the Contractor.

(3) Each payment to the Contractor by the City shall be made subject to submission by the Contractor of all written certifications required of it and its subcontractors.

(4) The City may withhold from any payment due the Contractor whatever is deemed necessary to

protect the City, and if so elects, may also withhold any amounts due from the Contractor to any subcontractors or material dealers, for work performed or material furnished by them. The foregoing provisions shall be construed solely for the benefit of the City and will not require the City to determine or adjust any claims or disputes between the Contractor and its subcontractors or material dealers, or to withhold any moneys for their protection unless the City elects to do so. The failure or refusal of the City to withhold any moneys from the Contractor shall in no way impair the obligations of any surety or sureties under any bond or bonds furnished under this Agreement.

- (d) *Work Rejection.* All work deemed not in conformity with this Agreement as determined by City, in its sole discretion, may be subject to rejection by City. City may reject any work found or determined by it to be defective or not in accordance with this Agreement. City may reject said work or any portion thereof regardless of the stage of its completion or the time or place of discovery of such errors. Further, City may reject said work regardless of whether City has previously accepted the Work through oversight or otherwise. Neither observations by City nor inspections, tests, certificates or approvals made by City shall relieve Contractor from its obligation to perform the work in accordance with the requirements of this Agreement and related documents.
- (e) *Remedial Work.* If the Work or any part thereof is rejected by City, it shall be deemed by City as not in conformity with the Agreement and related documents. Any remedial action required, as set forth herein, shall be at the Contractor's expense, as follows:
  - (1) Contractor may be required, at City's option, after notice from City, to remedy such work so that it shall be in full compliance with this Agreement. All rejected work or materials shall be immediately replaced in order to conform with this Agreement.
  - (2) If City deems it expedient to correct work damaged or not done in accordance with this Agreement, an equitable deduction from the agreed sum shall be made by City at City's sole discretion.
- (f) *Changes to work or price.*
  - (1) No changes shall be made, nor will bills for changes, alterations, modifications, deviations, and extra orders be recognized or paid except upon the written order from authorized personnel of the City. The City may make changes in the scope of work required to be performed by the Contractor under the Agreement without relieving or releasing the Contractor from any of its obligations under the Agreement or any guarantee given by it pursuant to the Agreement provisions, and without affecting the validity of any guaranty bonds, and without relieving or releasing the surety or sureties of said bonds. All such work shall be executed under the terms of the original Agreement unless it is expressly provided otherwise.
  - (2) Except for the purpose of affording protection against any emergency endangering health,

life, limb or property, the Contractor shall make no change in the materials used or in the specified manner of performing the Work or supply additional labor, services or materials beyond that actually required for the execution of the Agreement, unless in pursuance of a written order from the City authorizing the Contractor to proceed with the change. No claim for an adjustment of the Contract Price will be valid unless so ordered.

(3) If applicable unit prices are contained in the Agreement, the City may order the Contractor to proceed with desired unit prices specified in the Agreement; provided that in case of a unit price contract the net value of all changes does not increase the original total amount of the Agreement by more than twenty-five percent (25%) or decrease the original total amount by than twenty-five percent (25%) without the consent of the Contractor.

(4) Each change order shall include in its final form:

- a) A detailed description of the change in the work.
- b) The Contractor's proposal (if any) or a confirmed copy thereof.
- c) A definite statement as to the resulting change in the contract price and/or time.
- d) The statement that all work involved in the change shall be performed in accordance with Contract Documents and requirements except as modified by the change order.
- e) The procedures as outlined in this section for a unit price contract also apply in any lump sum contract.

(g) *Claims for Extra Cost*

(1) If the Contractor claims that any instructions by drawings or otherwise involve extra cost or extension of time, the Contractor shall, within ten (10) days after the receipt of such instructions, and in any event before proceeding to execute the work, submit its protest thereto in writing to the City stating clearly and in detail the basis of its objections. No such claim will be considered unless so made.

(2) Claims for additional compensation for extra work, due to alleged errors in ground elevations, contour lines, or bench marks, will not be recognized unless accompanied by certified survey data, made prior to the time the original ground was disturbed, clearly showing that errors exist which resulted, or would result, in handling more material, or performing more work, than would be reasonably estimated from the drawings and maps issued.

(3) Any discrepancies which may be discovered between actual conditions and those represented by the drawings and maps shall be reported at once to the City and work shall not proceed except at the Contractor's risk, until written instructions have been received by him from the City.

(4) If, on the basis of the available evidence, the City determines that an adjustment

of the Contract Price and/or time is justifiable, a change order shall be executed.

## **5. Warranties, Remedies and Damages**

(a) *Defects Appearing After Acceptance.* Neither the final payment nor any acceptance nor any provision of this Agreement shall relieve Contractor of any responsibility for faulty workmanship or materials. At the option of City, Contractor shall remedy any defects thereto and pay for any damage to other work resulting therefrom, which may appear after final acceptance of the work.

(b) ***Warranty.*** Upon final acceptance of the work by City, Contractor warrants for a period of one (1) year as follows:

**(1) The Contractor warrants to the City that all materials provided to the City under this Agreement shall be new unless otherwise approved by the City and that all Work will be of a good quality, free from faults and defects, and in conformance with this Agreement and related Contract Documents.**

**(2) All Work not conforming to these requirements, including but not limited to substitutions not properly approved and authorized, may be considered defective.**

**(3) This warranty is in addition to any rights or warranties expressed or implied by law and consumer protection claims arising from misrepresentations by Contractor.**

(c) *Contractor to Correct.* If within one (1) year after the final acceptance of the Work by City or within such longer period as may be prescribed by law or the terms of any applicable special warranty, if any of the work is found or determined by City to be defective, including obvious defects and subsidence, or otherwise not in accordance with this Agreement, Contractor shall correct it promptly.

(d) *Not Exclusive Remedy.* After receipt of written notice from City to begin corrective work, Contractor shall promptly begin the corrective work. The obligation shall survive the termination of this Agreement. The guarantee shall not constitute the exclusive remedy of the City, nor shall other remedies be limited to either the warranty or guarantee period.

(e) *City may Correct.* If within ten (10) days after City has notified Contractor of a defect, failure, or abnormality in the work, Contractor has not started to make the necessary corrections or adjustments, City is hereby authorized to make the corrections or adjustments, or to order the work done by a third party. The cost of the work shall be paid by Contractor.

(f) *Contractor to Pay Costs.* The cost of all materials, parts, labor, transportation,

supervision, special instruments, and supplies required for the replacement or repair of parts and for correction of defects, shall be paid by the Contractor.

(g) *Liquidated Damages.* The Contractor acknowledges and agrees that the time for the final completion of the work described herein is a reasonable time, taking into consideration all conditions and usual conditions prevailing in this locality. The amount of liquidated damages for the Contractor's failure to meet the deadline for final completion are fixed and agreed upon by the Contractor because of the impracticality and extreme difficulty in fixing and ascertaining actual damages that the City in such event sustain. The amounts to be charged are agreed to be damages the City would sustain and shall be retained by the City from current periodic estimates for payment and from final payment. If the Contractor should neglect, fail, or refuse to finally complete the work within the time specified in this Agreement, or any proper extension thereof granted by the City, then the Contractor does hereby agree as part of the consideration for the awarding of this Agreement, that City may withhold permanently from the Contractor's total compensation the sum of Two Hundred and Fifty Dollars (\$250.00) for each and every calendar day that the Contractor shall be in default after the time for finally completing the work, not as a penalty, but as liquidated damages for the breach of this Agreement.

## **6. Proposal, Performance, and Payment Bonds**

(a) Contractor shall furnish performance and payment bonds, as required by Texas Government Code, Chapter 2253, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one (1) year after the date when final payment becomes due or until completion of the correction period specified herein, whichever is later, except as provided otherwise by laws or regulations or by the Contract Documents.

(b) All bonds shall be in the form prescribed as set forth in Exhibit "D," attached hereto and incorporated herein for all purposes, except as provided otherwise by laws or regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Bureau of the Fiscal Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.

(c) If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements herein, Contractor shall promptly notify City and shall, within twenty (20) days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements herein.

(d) Each bond shall be accompanied by a valid Power-of-Attorney (issued by the surety company and attached, signed and sealed with the corporate embossed seal, to the bond) authorizing the attorney in fact who signs the bond to commit the company to the terms of the bond, and stating any limit in the amount for which the attorney can issue a single bond.

(e) The process of requiring and accepting bonds and making claims thereunder shall be conducted in compliance with Tex. Gov't Code, Chapter 2253. IF FOR ANY REASON A STATUTORY PAYMENT OR PERFORMANCE BOND IS NOT HONORED BY THE SURETY, THE CONTRACTOR SHALL FULLY INDEMNIFY AND HOLD THE OWNER HARMLESS OF AND FROM ANY COSTS, LOSSES, OBLIGATIONS OR LIABILITIES THE CITY INCURS AS A RESULT.

## **7. Termination**

(a) *Termination for Cause.* Without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law the City, upon giving the Contractor five (5) days prior written notice, shall be entitled to terminate this Agreement in its entirety at any time for the following:

- (1) If the Contractor becomes insolvent, commits any act of bankruptcy, makes a general assignment for the benefit of creditors, or becomes the subject of any proceeding commenced under any statute or law for the relief of debtors; or
- (2) If a receiver trustee or liquidator of any of the property or income of the Contractor shall be appointed; or
- (3) If the Contractor shall fail to prosecute the Work or any part thereof with diligence necessary to its progress and completion as prescribed by the time schedules; or
- (4) If the Contractor shall fail to remedy any default within ten (10) days after written notice thereof from City; or
- (5) If the Contractor commits a default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

(b) *Termination for Convenience.* The performance of the Work may be terminated at any time in whole or, from time to time, in part, by the City for its convenience. Any such termination shall be effected by delivery to the Contractor of a written notice (notice of termination) specifying the extent to which performance of the work is terminated, and the date upon which termination becomes effective.



(c) *Payment on Termination For Convenience.* In the event of termination for convenience, the Contractor shall only be paid its reimbursable costs incurred prior to the effective date of the termination notice and shall not be entitled to receive any further fixed fee payments hereunder and shall be further subject to any claim the City may have against the Contractor under other provisions of this Agreement or as a matter of law, including the refund of any overpayment of reimbursable costs and/or fixed fee.

(d) *Right To Complete.* If this Agreement is terminated, the City shall have the right but shall not be obligated to complete the work itself or by others; and to this end, the City shall be entitled to take possession of and use such equipment and materials as may be on the job site, and to exercise all rights, options, and privileges of the Contractor under its subcontracts, purchase orders, or otherwise; and the Contractor shall promptly assign such rights, options, and privileges to City. If the City elects to complete the work itself or by others, pursuant to the foregoing, then the Contractor will reimburse City for all costs incurred by the City (including, without limitation, applicable, general, and administrative expenses, and field overhead, and the cost of necessary equipment, materials, and field labor) in correcting work by the Contractor which fails to meet agreement requirements.

(e) *Close Out.* After receipt of a notice of termination, whether for cause or convenience unless otherwise directed by City, the Contractor shall, in good faith and to the best of its ability, do all things necessary in the light of such notice to assure the efficient and proper closeout of the terminated work (including the protection of City's property). Among other things, the Contractor shall, except as otherwise directed or approved by City, do the following:

- (1) Stop the work on the date and to the extent specified in the notice of termination;
- (2) Place no further orders or subcontracts for services, equipment, or materials, except as may be necessary for completion of such portion of the work as is not terminated;
- (3) Terminate all orders and subcontracts to the extent that they relate to the performance of the work terminated by the notice of termination;
- (4) Assign to City, in the manner and to the extent directed by it, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated; in which case, City shall have the right to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (5) With the approval of City, settle all outstanding liabilities and all claims arising out of such termination, orders, and subcontracts;

(6) Deliver to City, when directed by City, all documents and all property, which if the work had been completed, Contractor would have been required to account for or deliver to City and transfer title to such property to City to the extent not already transferred; and/or

(7) In the event of such termination, there shall be an equitable reduction of the fixed fee to reflect the reduction in the work. Costs incurred after the effective date of the notice of termination shall not be treated as reimbursable costs unless they relate to carrying out the non-terminated portion or taking closeout measures approved by the City.

(f) *Breach of Contract.* The City shall have the right to declare the Contractor in breach of this Agreement for cause when the City determines that this Agreement is not being performed according to terms, provisions and conditions of this Agreement. Such breach shall not in any way invalidate, abrogate or terminate the Contractor's obligations under this Agreement.

(g) *Completion of Work.* Wherein the Contractor has abandoned the project or the City has terminated the Agreement for cause, then the City at its option may provide for completion of the Work in the following manner:

- (1) The City may employ such force of workers and use of instruments, machinery, equipment, tools, materials, and supplies as said the City may deem necessary to complete the Work and charge the expense of such labor, machinery, equipment, tools, materials, and supplies to said the Contractor, and the expense so charged shall be deducted and paid by the City out of such monies as may be due or that may thereafter at any time become due to the Contractor.
- (2) Should the cost to complete the work exceed this Agreement price and the Contractor fails to pay the amount due to the City within the time designated hereinabove, and there remains any machinery, equipment, tools, materials, or supplies on the site of the work, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the Contractor at its respective address designated in this Agreement; provided, however, that actual written notice given in any manner shall satisfy this condition. After mailing, or otherwise giving such notice, such property shall be held at the risk of the Contractor subject only to the duty of City to exercise ordinary care to protect such property. After fifteen (15) days from the date of said notice, City may sell such machinery, equipment, tools, materials, or supplies and apply the net sum derived from such sale to the credit of the Contractor. Such sale may be made at either public or private sale, with or without notice, as City may elect. City shall release any machinery, equipment, tools, materials, or supplies which remain on the job site and belong to persons other than the Contractor to their proper owners.

- (3) In the event the account shows that the cost to complete the work is less than that which would have been the cost to City had the work been completed by the Contractor under the terms of this Agreement, or when the Contractor shall pay the balance shown to be due by them to the City, then all machinery, equipment, tools, materials, or supplies left on the site of the work shall be turned over to the Contractor.

(h) *Damages.* Without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law or equity, the City upon giving the Contractor five (5) days prior written notice shall be entitled to damages for breach of contract, upon but not limited to the following occurrences:

- (1) If the Contractor shall fail to remedy any default after written notice thereof from City, as City shall direct; or
- (2) If the Contractor shall fail for any reason, other than the failure by City, to make payments called upon when due; or
- (3) If the Contractor commits a default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

## **8. General Provisions**

(a) *Agreement Controlling.* The provisions of this Agreement shall control over any conflicting provision of any contract between City and Contractor as to the performance of the Work.

(b) *Venue.* The parties herein agree that this Agreement shall be enforceable in Washington County, Texas, and if legal action is necessary in connection therewith, exclusive venue shall lie in Washington County, Texas.

(c) *Successor and Assigns.* This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

(d) *Independent Status.* It is mutually understood and agreed by and between City and Contractor that Contractor is an independent contractor and shall not be deemed to be or considered an employee of the City of Brenham, Texas, for the purposes of income tax, withholding, social security taxes, vacation or sick leave benefits, worker's compensation, or any other. City shall not have supervision and control of Contractor or any employee of Contractor.

(d) *Tax Exemption.* This Agreement is entered into by an organization which qualifies for exempt revisions pursuant to the Texas Tax Code, Sections 151.301, 151.307 and 151.309. The Contractor must divide the price for materials that will be incorporated into the capital

improvement project and the price for skill and labor into separated contracts. Therefore, it is the Contractor's responsibility to obtain a sales tax permit, resale certificate, and exemption certificate which shall enable the Contractor to buy the materials to be incorporated into the completed capital project and then resale the aforementioned materials for the City without paying the tax on the materials at the time of purchase.

(e) *Amendment.* No amendments to this Agreement shall be effective and binding until it is reduced to writing and signed by duly authorized representatives of both parties.

(f) *Litigation Costs.* In the event of litigation arising out of this Agreement, the prevailing party shall be entitled to attorney's fees, court costs and other litigation costs.

(g) *Texas Law.* This Agreement has been made under and shall be governed by the laws of the State of Texas, without regard to any conflicts of law provisions.

(h) *Authority to Enter Contract.* Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations or other legal entity.

(i) *Waiver.* Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of the City party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

(j) *Headings.* The article and paragraph headings are used in this Agreement for convenience and reference purposes only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement and shall have no meaning or effect upon its interpretation.

(k) *Invalidity.* If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

(l) *Written Notice.* Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to any officer of the corporation for whom it is intended or if it is delivered or sent certified mail to the last business address as listed herein. Each party will have the right to change its business address by at least ten (10) days written notice to the other parties in writing of such change.

(m) *Entire Agreement.* It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the City, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

(n) *Required Certification and Verification.* "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.

Contractor hereby certifies that (1) it does not boycott Israel, and (2) shall not boycott Israel during the term of the Professional Services Agreement.

Pursuant to Texas Government Code Chapter 2252, Subchapter F, Contractor 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.

If this Agreement has a value of \$100,000 or more, and if Contractor has more than 10 full-time employees, Contractor's signature herein below shall constitute written verification that the Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of this Agreement.

If this Agreement has a value of \$100,000 or more, and if Contractor has more than 10 full-time employees, Contractor's signature herein below shall constitute written verification that Contractor: (a) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (b) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

IN WITNESS WHEREOF, the parties of these presents have executed this agreement in the year and day first above written.

**CITY OF BRENHAM, TEXAS:**

**ATTEST:**

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Hon. Atwood C. Kenjura, Mayor  
City of Brenham, Texas

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Jeana Bellinger, TRMC, CMC, City Secretary  
City of Brenham, Texas

**CONTRACTOR:**

**ATTEST:**

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By:  
Title:

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By:  
Title:

## **TERMS AND CONDITIONS FOR PROPOSALS**

### **Definitions:**

In order to simplify the language throughout this request for proposals, 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 Proposer(s) of this proposal request.

### **Instructions:**

The following instructions apply to all proposals 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:**

Proposals must be submitted on this form only. **Proposers are required to submit one (1) original and one (1) copy.** All proposals submitted must be itemized with prices extended when practical. **PROPOSER 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 Proposal:**

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

### **Acceptance:**

The City of Brenham reserves the right to accept or reject any or all proposals, 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 proposer's current violation of any City ordinance, the proposer's current inability to satisfactorily perform the work or service, or the proposer's previous failure to timely perform its obligation under a contract with the City.

Proposers 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 proposers 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 proposer as it relates to proposer's ability to perform the contract for the City, the delivery date, the reputation of the proposer and the proposer's goods or services, the quality of the proposer'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 proposer's goods or services, the proposer's past performance under contracts with



## Attachment "A"

the City, the proposer'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 proposals 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 to the proposer 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 proposer and of the proposer's goods or services;
- c. the quality of the proposer's goods or services;
- d. the extent to which the goods or services meet the City's needs;
- e. the proposer'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 proposer'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 proposer; 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.

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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 proposer's list for receiving future proposals.

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 proposals in response to this Request for Proposals 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 proposals 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:**

Proposals 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/Conflicts:**

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

In the case of any conflict between these Terms and Conditions and the Contract between the City and the successful Proposer, the provisions of the Contract shall control.

### **F.O.B. – Damage**

Proposals will not be considered unless proposals include F.O.B. delivered to Brenham, Texas. If shipping costs are not included in the unit bid price, proposer 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:**

Proposers 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 proposer must hold proposal prices firm for the duration of the Contract. Sealed competitive proposals may be negotiated, amended or changed after the proposal opening date.

### **Cooperative Agreements:**

Successful proposer 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:**

Proposals must show full firm name and mailing address of proposer and be manually signed by an authorized representative of the proposer. Firm name and authorized signature should appear on

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each page of bid where spaces are provided. Submission of a signed bid will be interpreted to mean that proposer has hereby agreed to all terms and conditions set forth in all of the sheets which make up this invitation.

### **Withdrawal-Alteration Of Proposals:**

Proposals 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 Proposals:**

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

### **All-Or-None Proposals:**

All-or-none proposals will be considered only if proposer quoted prices on all items requested. If a proposer desires the City to consider an all-or-none bid, it must be stated in the bid document. All-or-none proposals 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 proposer 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:**

Proposers 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:**

Proposals 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 proposals. If delivery is not made within ten (10) days after number of days specified on bid, entire order may be canceled and proposer'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,

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

### **No Proposals:**

If proposer is unable to quote, the bid form should be returned to the purchasing agent before opening time, and reason given for not bidding if proposer 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. Proposers are responsible for obtaining all published addenda from the City of Brenham Purchasing office. The City assumes no responsibility for the Proposers 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

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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 harm 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

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- 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.
  - 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.
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.

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**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:



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- (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.