



Joel Villarreal, Mayor

**Rey Ramirez,
Ben De Leon,
Rogerio Olivarez,
Alberto Escobedo,**

**Mayor Pro-Temp, Commissioner Place 2
Commissioner – Place 1
Commissioner – Place 3
Commissioner – Place 4**

Noe Castillo, Interim City Manager

Elisa Y. Beas, Public Utility Director

Leonel Cantu, Finance Director

Bid, Form of Agreement, Bonds and Specifications for

LAS BRISAS SUBDIVISION WATER LINE IMPROVEMENTS

PROJECT NO. 2020-04_WL

**DATED: December 14, 2022
Rio Grande City, TX**

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BID NOTICE

Solicitation Type and Name: Las Brisas Subdivision Water Line Improvements

Solicitation Number: 2020-04_WL

Summary of Work: The work consists of the installation of 965 linear feet of waterline & associated apparatuses in the Las Brisas Subdivision. Work will also consist of capping existing water line and installing a fire hydrant. Temporary traffic control measures will be needed to allow for local pedestrian and vehicular traffic access along the roadway.

Bid Opening: Sealed bids addressed to Mr. Noe Castillo, Interim City Manager, will be received until **Friday, February 3, 2023 at 2:00 p.m., Central Standard Time (CST)**. At that time received bids shall be publicly opened in a meeting held in Rio Grande City, City Hall, City Hall Meeting Room. Late bids shall not be accepted.

Pre-Submittal Conference: Rio Grande City, City Hall, City Hall Meeting Room, 5332 US-83, Rio Grande City, TX 78582 on **Tuesday, January 24, 2023 at 2:00 p.m., Central Standard Time (CST)**.

To view this solicitation, please follow the following link:

<https://bit.ly/3UWMcFZ>

and submit a bid response. **Please also be sure to continually check this website for updates such as addenda.**

A Bidder's Bond from a reliable surety company licensed to operate in the State of Texas or certified Cashier's Check, (Bid Security) payable without recourse to Rio Grande City, for the amount of not less than five percent (5%) of the total bid shall be submitted via a sealed envelope as a guaranty that if awarded the contract, the bidder will enter into a contract with Rio Grande City. The Bidder's bid security shall be submitted before the above-mentioned electronic bid opening date and time. Failure to submit the bid security shall be grounds for disqualification.

Original Bid Security shall be delivered in a sealed envelope and clearly marked as follows: BID SECURITY FOR PROJECT NO. 2020-04 WL LAS BRISAS SUBDIVISION WATER LINE IMPROVEMENTS.

Hand-deliver Bid Security or if using Land Courier (i.e., FedEx, UPS):

Angela Solis, City Secretary
City of Rio Grande City
5332 E. US Highway 83
Rio Grande City, Texas 78582

Mail Bid Security:

Angela Solis, City Secretary
City of Rio Grande City
5332 E. US Highway 83
Rio Grande City, Texas 78582

Rio Grande City reserves the right to refuse and reject any or all Bids and to waive any or all formalities or technicalities, or to accept the Bid considered the best value to the City, and to hold the bids for a period of ninety (**90**) days without taking action.

ACKNOWLEDGEMENT FORM

Please submit this page upon receipt.

Solicitation Type and Name: 2022 Las Brisas Subdivision Water Line Improvements.

Solicitation Number: 2020-04_WL

For any clarifications, please contact Joe Flores at Halff Associates at jflores@halff.com .

Please e-mail this page upon receipt of the bid notice.

Check one:

Yes, I will be able to send a bid; obtained bid package (w/ updated addenda) from website.

No, I will not be able to send a bid for the following reason: _____

If you are unable to send your bid, kindly indicate your reason for “No bid” above and

return this form via email to: jflores@halff.com . This will ensure you remain active on our vendor list.

Date: _____

Company: _____

Name: _____

Address: _____

City: State: Zip Code: _____

Phone: Fax: _____

E-mail: _____

INFORMATION TO BIDDERS

1. SUBMITTAL OF BID

Submittal of a bid in response to this solicitation constitutes an offer by the Bidder, and if accepted by Rio Grande City, a contract. Bids which do not comply with these specifications may be rejected at the option of the City. Bids must be received by Rio Grande City on or before the submittal deadline.

The City may consider non-responsive any bid not prepared and submitted in accordance with the provisions herein and may waive any formalities and/or technicalities or reject any and all bids.

2. BID SECURITY (BID BONDS/CASHIER'S CHECK)

The bidder is specifically advised that the bid must be accompanied by a bid security in the form of a certified cashier's check or a bid bond from a reliable surety company licensed to operate in the State of Texas totaling five percent (5%) of the greatest amount bid, as a guaranty that if awarded the bid, the successful contractor will enter into a contract with Rio Grande City. The bid securities will be returned promptly after the successful contractor has entered into a contract with Rio Grande City. If no award has been made within sixty (60) days after opening of bids, bid securities will be returned accordingly.

Original Bid security must be submitted in a sealed envelope marked in the upper left-hand corner with the name of Bidder and Title of Project.

Hand-deliver Bid Security or if using Land Courier (i.e., FedEx, UPS):

Angela Solis, City Secretary
City of Rio Grande City
5332 E. US Highway 83
Rio Grande City, Texas 78582

Mail Bid Security:

Angela Solis, City Secretary
City of Rio Grande City
5332 E. US Highway 83
Rio Grande City, Texas 78582

3. PAYMENT AND PERFORMANCE BONDS

The successful contractor shall furnish a Payment Bond and Performance Bond in the amount of 100% of the contract sum, within ten (10) working days from letter of award of contract and upon the forms which are attached hereto. The Payment and Performance Bonds shall be from an approved surety company authorized to do business in the State of Texas (and acceptable according to the latest list of companies holding certificates of authority from the United States Department of the Treasury) and acceptable to Owner.

- 4.1 A Payment Bond is required if the Contract Sum is \$25,000 or over. The payment bond is to be for the Contract Sum and is payable to Owner solely for the protection and use of payment bond beneficiaries.

If the total contract sum is between \$25,000 and less than \$50,000, the successful contractor has the option to enter into a single payment contract with Rio Grande City in lieu of a Payment Bond, provided that no money shall be paid to the contractor until completion of the work by the contractor and acceptance of same by Rio Grande City.

INFORMATION TO BIDDERS continued:

- 4.2 A Performance Bond is required if the Contract Sum is \$50,000 or over. The performance bond is to be for the Contract Sum and is solely for the protection of Owner to guarantee the faithful performance of the Work in accordance with the Contract Documents. The performance bond shall be effective through Contractor's warranty period.

On all contracts that will equal to or exceed \$50,000.00, the performance bond and the payment bond must be provided from a surety.

4. BID FORMS

Bidders are advised that all bidders shall submit their bid utilizing only the forms that make up this bid package. Bids submitted utilizing other forms and/or formats will not be considered. If additional documents are required to be submitted as part of this solicitation.

5. PREPARATION OF BID

Bids **MUST** give full firm name and address of bidder and be manually or electronically signed. Failure to do so will disqualify your bid. Person signing bid must show title or AUTHORITY TO BIND HIS/HER FIRM IN A CONTRACT. Firm name and authorized signature must appear on each page that calls for this information. The legal status of the Bidder whether corporation, partnership, or individual, shall also be stated in the bid. A corporation shall execute the bid by its duly authorized officers in accordance with its corporate by-laws and shall also list the state in which it is incorporated. A partnership Bidder shall give full names and addresses of all partners. All partners shall execute the bid. Partnership and Individual Bidder shall state in the names and addresses of all persons with a vested interest therein. The place of residence of each Bidder, or the office address in the case of a firm or company with county and state and telephone number, shall be given after the signature.

6. ALTERATIONS/AMENDMENTS

Bids CANNOT be altered or amended after opening time. No bid may be withdrawn after opening time without acceptable reason in writing and only after approval by Rio Grande City.

7. SUBSTITUTIONS

No substitutions or cancellations shall be permitted without written approval by Rio Grande City and will only be considered for evaluation after bid has been awarded.

8. SALES TAX

Rio Grande City is exempt from all Federal Excise Tax and the State of Texas Limited Sales Excise and Use Tax. STATE SALES TAX MUST NOT BE INCLUDED IN BID.

9. NO BID RESPONSE

If unable to submit a bid, no further action is required by bidder. However, all bidders are encouraged to examine their selected categories and revise if necessary.

10. COSTS FOR PREPARATION OF BID

Rio Grande City shall not be held liable for any costs incurred by any bidder for work performed in the preparation of and production of a bid or for any work performed prior to execution of contract

INFORMATION TO BIDDERS continued:

11. FIRM PRICES

Unit prices for all items bid must be firm on bid opening date and continue to remain firm for the duration of the contract term. Bidders must make allowances for any and all peripheral costs associated with the Work. These allowances must be reflected in the unit prices bid per Work rendered. Bids having statements subject to unlimited price increase and/or addressing unknown charges above and beyond the unit prices quoted to Rio Grande City will not be considered and shall be looked upon as non-responsive. Bids submitted on the basis of “prices in effect at time of shipment, or with the potential of added costs based on market fluctuations and/or trends shall not be considered and shall be looked upon as non-responsive.

12. METHOD OF AWARD

Bidders are advised that Rio Grande City will award a Construction Contract based on “Lowest Responsive Responsible Bidder” meeting the requirements of the specifications. Rio Grande City may elect to award to the bidder who, in the opinion of Rio Grande City, is providing the best value for the City, as described in Local Government Code 252.043. All items will be evaluated and awarded individually or in any combination thereof. Rio Grande City’s decision shall be final.

13. CONTRACT TERMINATION CLAUSE

The parties agree that Rio Grande City reserves the right to terminate this contract in whole or in part, at any time, if in the opinion of Rio Grande City, the successful contractor’s performance is not acceptable, if the City is being repeatedly overcharged, improperly charged, or in the event that no funds are appropriated for this specific purpose, or if the City wishes, without cause, to discontinue/cancel this contract. If the City determines at the City’s sole discretion, that termination is in the City’s best interests, the City shall give written notice to the vendor/bidder/contractor of its intention to terminate, and the contract shall terminate after the expiration of thirty (30) days from the date of the written notice. After the expiration of the thirty (30) days and the termination of this contract, the City shall be relieved of any and all obligations and/or responsibilities arising from this contract including but not limited to the payment of any damages and/or penalties. Contractor shall be paid for products and/or services rendered and accepted in accordance with the contract for work performed up to the time of termination. In the event that funds are not made available from one budget year to the next, this contract will automatically become null and void without any penalty to Rio Grande City.

14. TIME ALLOWED FOR ACTION TAKEN

The City may hold the bids received for up to 30 days after bid submittal deadline without taking action. Bidders shall be required to hold their bids firm for the same period of time.

15. RIGHT TO WAIVE

Rio Grande City reserves the right to waive or take exception to any part of these specifications when in the best interest of Rio Grande City.

16. RIGHT TO REJECT/AWARD

Rio Grande City reserves the right to refuse and reject any or all Bids, to waive any or all formalities or technicalities, and to make such awards of contract as may be deemed to be the best and most advantageous to Rio Grande City.

INFORMATION TO BIDDERS continued:

17. PAST PERFORMANCE

Bidders are advised that past performance, as it relates to product and/or service on Purchase/Service/Supply Contracts previously held with the City, shall be a factor in the evaluation and award of this Contract. Bidders that have not complied with their obligation(s) to Rio Grande City on previous projects will not be considered for award of this project. The City's position on this matter shall be final.

18. INTERPRETATIONS

Any questions concerning the conditions and/or specifications with regards to this solicitation for bids shall be directed to the designated individuals as outlined in the Invitation to Bid. Such interpretations, which may affect the eventual outcome of this Invitation to Bid, shall be furnished in writing to all prospective Bidders via Addendum. No interpretation shall be considered binding unless provided in writing by Rio Grande City in accordance with paragraph entitled "Addenda".

19. ADDENDA

Bidder shall carefully examine the solicitation documents, pricing forms, plans, specifications, visit the project site, and fully inform themselves as to all conditions and matters which can in any way affect the work or cost thereof. Should the bidder find discrepancies in, or omissions from pricing forms, solicitation documents, or other documents, or should bidder be in doubt as to their meaning, **bidder should request clarification by submitting an email to Joe Flores at jflores@halff.com prior to submitting any bid.** Explanations, interpretations, and supplemental instructions shall be in the form of written Addenda which shall become a part of the solicitation and contract documents. Said Addenda shall be posted on the following webpage:

<https://bit.ly/3UWMcFZ>

The Contractor shall continually check this website for updates such as addenda. All Addenda issued in respect to this project shall be considered official changes to the original solicitation documents. Verbal statements in response to inquiries and/or requests for explanations shall not be authoritative nor binding. It shall be the Bidder's responsibility to ensure that they have received all Addenda in respect to this project. Furthermore, bidders are advised that they must recognize, comply with, and attach a signed copy of each Addendum which shall be made part of their Bid Submittal. Bidder's signature on Addenda shall be interpreted as the respondent's "recognition and compliance to" official changes as outlined by Rio Grande City and as such are made part of the original solicitation documents. Failure of any bidder to receive any such addendum or interpretation shall not relieve such Contractor/Bidder from its terms and requirements.

20. OMISSIONS

At the time of the submittal deadline, each bidder will be presumed to have read and to be thoroughly familiar with the requirements of the solicitation. The failure or omission of any bidder to examine any form, instrument, or contract document shall in no way relieve any bidder from any obligation in respect to their bid.

21. MATHEMATICAL ERRORS

In the event that mathematical errors exist in any bid, unit prices/rates -v- totals, unit prices/rates will govern.

INFORMATION TO BIDDERS continued:

22. PUBLIC INFORMATION

All information, documentation, and other materials submitted in response to this solicitation are considered non-confidential and/or non-proprietary and are subject to public disclosure under the Texas

Public Information Act (Texas Government Code, Chapter 552.001, et seq.) after the solicitation is completed. Any information deemed to be confidential by the bidder, including trade secrets, should be clearly noted on the pages where confidential information is contained.

23. STATUTORY REQUIREMENTS

It shall be the responsibility of the successful Bidder to comply with all applicable State & Federal laws, Executive Orders and Municipal Ordinances, and the Rules and Regulations of all authorities having jurisdiction over the work to be performed hereunder and such shall apply to the contract throughout, and that they will be deemed to be included in the contract as though written out in full in the contract documents. (To include issues related to health, environmental, and safety to name a few.)

24. ANTI-LOBBYING PROVISION

During the period between bid submission date and the contract award, bidders, including their agents and representatives, shall not directly discuss or promote, verbal or written, their bid with any member of the City Commission, Bridge Board members directly or indirectly through others, seek to influence any City Council member, City staff, or City's Contractor(s) regarding any matters pertaining to this solicitation, except as herein provided. If a representative of any Bidder violates the foregoing prohibition by contacting any of the above listed parties with whom contact is not authorized, such contact may result in the Bidder being disqualified from the procurement process. Any oral communications are considered unofficial and non-binding with regard to this solicitation. Violation of this provision may result in the rejection of the bidder's bid, except in the course of City-sponsored inquiries, briefings, interviews, or presentations.

25. ANTI-COLLUSION STATEMENT

The respondent shall submit a Non-Collusion affidavit affirming that the bidder has not in any way directly or indirectly, colluded, conspired, or agreed with any other person, firm, corporation, respondent or potential respondent to the amount of this bid or the terms or conditions of this bid. Paid or agreed to pay any other person, firm, corporation respondent or potential respondent any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the submitted bid or the bid of any other respondent.

26. CONFLICT OF INTEREST

CHAPTER 176 OF THE TEXAS LOCAL GOVERNMENT CODE

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the records administrator of Rio Grande City not later than the seventh (7th) business day after the date the person becomes aware of facts that require the statement be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person violates an offense under this section is a Class C misdemeanor.

For more information or to obtain Questionnaire CIQ go to the Texas Ethics Commission web page at www.ethics.state.tx.us/forms/CIQ.pdf.

INFORMATION TO BIDDERS continued:

IF YOU HAVE ANY QUESTIONS ABOUT COMPLIANCE, PLEASE CONSULT YOUR OWN LEGAL COUNSEL. COMPLIANCE IS THE INDIVIDUAL RESPONSIBILITY OF EACH PERSON OR AGENT OF A PERSON WHO IS SUBJECT TO THE FILING REQUIREMENT. AN OFFENSE UNDER CHAPTER 176 IS A CLASS “C” MISDEMEANOR.

27. HOUSE BILL (HB) 1295 (Certificate of Interested Parties – Form 1295)

Please be advised that in 2015, the Texas Legislature adopted House Bill 1295 (H.B. 1295). For contracts entered into on or after January 1, 2016, Texas Government Code Chapter §2252.908 (H.B. 1295) provides that a Texas governmental entity or state agency may not enter into a contract that either (1) requires an action or vote by the governing body of the entity or agency or (2) has a value of at least \$1 million, unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The Texas Ethics Commission (Commission) has adopted a certificate of interested parties form (Form 1295) and adopted rules requiring the business entity to file Form 1295 electronically with the Commission. Information from the Commission regarding the requirements, including rules and filing information, are available on the Commission’s website at the following links:

<https://www.ethics.state.tx.us/tec/1295-Info.htm>

https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html

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

As a business entity under this law, it is your firm’s responsibility to comply with all disclosure laws including Chapter 2252. Rio Grande City, as the governmental entity, must ensure compliance of the same.

Note: You will be required to register and create an account. Once registered, you will receive an email containing a password setup link. Click on the link to set your password. After you have established an account, you will use your email address, password, and user type (Business Entity) to log in to the filing application to enter the required information on Form 1295. Print a copy of the completed form which includes a unique certification of filing number assigned by the application. An authorized agent of the business entity must sign the form affirming under the penalty of perjury that the completed form is true and correct. The completed, printed, and signed Form 1295 bearing the unique certification of filing number must be submitted at the time the signed contract is submitted to Rio Grande City. Failure to comply may result in contract revocation and award to the next compliant contractor/vendor.

28. NON-APPROPRIATION CLAUSE

In the event that no funds are appropriated for this specific work, Rio Grande City reserves the right to cancel/terminate this contract. Rio Grande City shall be relieved of any and all responsibilities and/or obligations, without penalty(ies) of any sort. The vendor shall be notified in written form of Rio Grande City’s intent to cancel/terminate said contract due to non-appropriated funds.

29. NON-DISCRIMINATION/DRUG FREE

The successful Respondent will comply with all federal and state requirements concerning fair employment and will not discriminate by reason of race, color, age, religion, sex, national origin or physical handicap. The successful Respondent shall provide evidence in form and substance, to Rio Grande City of maintaining a drug free working environment.

INFORMATION TO BIDDERS continued:

30. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES (MWBE)

Rio Grande City encourages the hiring and participation by MWBEs in the performance of the contract.

31. INSURANCE REQUIREMENTS

During execution of Contracts, the successful Prime Contractor shall provide a Certificate of Insurance made to Rio Grande City, 5332 US-83, Rio Grande City, TX 78582 and should reference the project number and project Name. The prime contractor shall ensure that any and all subcontractors and/or lower-tier subcontractors comply with the insurance requirements as depicted herein. Such coverage(s) shall be acquired and maintained, for the duration of the contract period. (See Section 27 Insurance Requirements of the General Conditions of Contract for additional information.)

32. PROTEST PROCEDURES

A. DEFINITIONS

As used in this section – “Day” means a business day, unless otherwise specified.

“Filed” means the complete receipt of any document by an agency before its close of business.

33. PROTEST PROCEDURES continued:

Documents received after close of business are considered filed as of the next business day. Unless otherwise stated, Rio Grande City’s close of business is presumed to be 5:00 p.m., local Central time.

“Interested party for the purpose of filing a protest” means an actual or prospective bidder/offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

“Protest” means a written objection by an interested party to any of the following:

- (1) A solicitation or other request by an agency for offers for a contract for the procurement of construction, commodities and/or services.
- (2) An award or proposed award of the contract.

B. RIGHT TO PROTEST:

A interested party has the right to formally contest a solicitation and/or contract award.

C. ADMINISTRATION:

Protests shall be administered by the City Secretary’s Office, in conjunction with the City Manager’s and City Attorney’s Office.

D. PROCEDURES:

Formal protest procedures for construction, purchase of goods, and services in excess of \$50,000 or in excess of \$25,000 for professional services are as follows:

E. PROTEST OF SOLICITATION

- (1) Any prospective bidder proposer may file a protest with the Office of the City Secretary regarding the solicitation process. This includes all protests relating to advertising of notices, deadlines, bid openings, and all other related solicitation procedures under the Texas Local Government Code, as well as any protests

INFORMATION TO BIDDERS continued:

relating to alleged improprieties or ambiguities in the specifications or contract documents.

- (2) To begin a protest, the proposer must first file a written "Notice of Intent to File a Protest" with the City Secretary within three (3) days after the request for proposals, request for sealed bids or request for statement of qualifications is published in a newspaper of general circulation. The proposer may file the Notice with the City by personal delivery, facsimile, electronic mail or U.S. mail, return receipt requested. A "Notice of Intent to File a Protest" is considered filed when received by the City Secretary.
- (3) Within five (5) days after the Notice of Intent to File a Protest is filed; the proposer must file a "Written Protest" that conforms with Section (C) below with the Office of the City Secretary. A written notice is considered filed when received by the Office of the City Secretary.
- (4) A proposer need not file a bid, statement of qualifications or proposal in order to protest a solicitation.

34. PROTEST PROCEDURES continued:

F. PROTEST OF AWARD

- (1) A proposer may file a protest in connection with the recommended award of a contract with the Director of Purchasing and Contracting. Such protest may only be made by an actual proposer for the contract, and (2) who claims to be the rightful awardee. The grounds for such protest are limited to: (1) errors made in computing the score or ranking of proposer(s) (this does not include the formula used for assigning points or the relative weight of the evaluation criteria); (2) disagreement with City Staff award recommendations; or (3) the City's failure to follow procedures established in the bid, the City's Purchasing Policy or applicable federal and state laws or regulations. Protests not based on these criteria shall not be considered.
- (2) To begin a protest, the proposer must first file a written "Notice of Intent to File a Protest" with the Director of Purchasing and Contracting within two (2) days after receipt by the proposer of the notice of the City Manager's recommendation for award of contract, on in the case of Construction Contracts, within two (2) days after receipt by the bidder of the notice of the City's determination of non-responsiveness, non-responsibility or non-compliance. The proposer may file the Notice with the City by personal delivery, facsimile, electronic mail or U.S. mail, return receipt requested. A Notice of Intent to File a Protest is considered filed when received by the Director of Purchasing and Contracting.
- (3) Within five (5) days after the notice of intent to protest was filed, the proposer must file a "written protest" that conforms with Section (C) below with the Director of Purchasing and Contracting. A written notice is considered filed when received by the Director of Purchasing and Contracting.

G. SPECIFIC FACTS OF PROTEST

The written protest shall:

- (1) Include the name of the business being represented, name of protestor and/or contact person, title of the protestor/contact person, business address, telephone, and facsimile number(s);

INFORMATION TO BIDDERS continued:

- (2) Identify the contracting activity and the project number of the solicitation, if any, and if a contract has been awarded, the contract number, if applicable;
- (3) State with particularity the specific facts and grounds upon which the protest is based
- (4) Include supporting exhibits, affidavits, documents or other evidence to substantiate the protest;
- (5) Specify the relief or corrective action requested; and
- (6) Be accompanied by the required filing fee as provided in the Section (H.)

The above shall form the basis for the review of the protest and no facts, grounds, documentation, or evidence not contained in the protester’s submission to the Director of Purchasing and Contracting at the time the protest is filed shall be permitted in the consideration of the protest.

35. PROTEST PROCEDURES continued:

H. FILING FEE

- (1) The written protest must be accompanied by a filing fee in the form of a money order or cashier’s check payable to Rio Grande City in an amount of:
 - i. in the case of a Protest of Solicitation, as indicated on the chart below; or
 - ii. in the case of a Protest of Award, based on the lowest responsive and responsible bid received by the City as indicated on the chart below

| ESTIMATED CONTRACT AMOUNT | SUGGESTED FILING FEE |
|---------------------------|----------------------|
| ABOVE \$5 MIL | \$5,000.00 |
| BETWEEN \$2 MIL & \$5 MIL | \$3,000.00 |
| BETWEEN \$501K & \$2 MIL | \$2,000.00 |
| BETWEEN \$251K & \$500K | \$1,000.00 |
| BETWEEN \$25K & \$250K | \$500.00 |

(OR AS MAY BE UPDATED FROM TIME TO TIME)

- (2) The purpose of the filing fee is to cover the City’s cost for determining a protest.
- (3) If a protest is upheld by the Director of Purchasing and Contracting the filing fee shall be refunded to the protestor less any costs assessed for determining the protest. If the protest is denied, the filing fee shall be forfeited to the City.

I. STAY OF PROCUREMENT DURING PROTEST

Upon receipt of a protest filed pursuant to the requirements of this policy, the City, in its discretion, may elect not to proceed further with the solicitation or with the award of the contract until the protest is resolved by the Director of Purchasing and Contracting.

J. COSTS

All costs accruing from a protest shall be assumed by the protestor.

K. PROTEST DETERMINATION

The Director of Purchasing and Contracting shall review all information relevant to the protest and shall render a decision on the protest, with the advice of the City Manager and

INFORMATION TO BIDDERS continued:

the City Attorney, in a prompt manner but not longer than thirty (30) days after the protest was received. The decision shall contain the action taken and the reason(s) for such action. The decision shall be mailed via certified mail, return receipt requested, to the protestor at the address set forth in the protest. The decision rendered shall be final and no further action shall be considered or taken with respect to the protest, except as provided in Section (H).

36. PROTEST PROCEDURES continued:

M. COMPLIANCE WITH FILING REQUIREMENTS

The procedures and time limits set forth in this Policy are mandatory and are the proposer's sole and exclusive remedy in the event of protest. Failure to comply with these procedures shall constitute a waiver of any right to further pursue the protest, including the filing of legal proceedings seeking administrative or judicial relief.

37. REQUEST FOR TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION

Bidder must submit fully completed and executed IRS Form W-9 as part of their bid submittal. Refer to www.irs.gov/FormW9 for current revision, instructions, and the latest information.

END OF SECTION

**THIS PAGE MUST BE COMPLETED, SIGNED
AND MADE PART OF YOUR BID SUBMITTAL TO
HAVE A COMPLETE QUALIFIED BID
QUALIFIED BID**

**BID FORM
PROJECT NO. 2020-04_WL
LAS BRISAS SUBDIVISION WATER LINE IMPROVEMENTS**

TO: OWNER

The undersigned, as bidder, declares that the only person or parties interested in this bid as principals are those named herein and that this bid is made without collusion with any other person, firm or corporation; the bidder has carefully examined the Bid Notice, Information to Bidders, Form of Agreement, General and Supplemental General Conditions, Special Provisions, Technical specifications and the plans thereon referred to and has carefully examined the locations, conditions, and classes of materials of the proposed work; and Bidder agrees that if awarded the Contract, bidder shall provide all the necessary labor, machinery, tools, apparatus, and other items incidental to construction, and will do all the work and furnish all the materials called for in the contract and specifications in the manner prescribed therein and according to the requirements of the Engineer/Architect as therein set forth.

It is understood that the following quantities of work to be done at unit prices are approximate only and are intended principally to serve as a guide in evaluating bids.

It is further agreed that the quantities of work to be done at unit price and materials to be furnished, may be increased or diminished as may be considered necessary, in the opinion of the Engineer/Architect, to complete the work fully as planned and contemplated, and that all quantities of the work, whether increased or decreased, are to be performed at the unit prices set forth below except as provided for in the specifications.

It is further agreed that lump sum prices may be increased to cover additional work ordered by the Engineer/Architect, but not shown on the plans or required by the specifications, in accordance with the provisions of the General Conditions. Similarly, they may be decreased to cover deletion of work so ordered.

The undersigned agrees, unless hereinafter stated otherwise to furnish all materials as shown and specified in the Plans and Specifications.

A bid security in the amount of five percent (5%) of the Total Bid must be submitted in compliance with the Information to Bidders.

It is understood that in the event the successful bidder fails to enter into the Form of Agreement and/or furnish an acceptable Payment and Performance Bond, each in the amount of one hundred percent (100 %) of the Contract Sum, within ten (10) working days of the Letter of Award, the successful bidder shall forfeit the bid security and the bid security shall become the property of Rio Grande City, TX.

It is understood that the City may consider non-responsive any bid not prepared and submitted in accordance with the provisions herein and may waive any formalities and/or technicalities, or reject any and all bids.

**THIS PAGE MUST BE COMPLETED, SIGNED
AND MADE PART OF YOUR BID SUBMITTAL
TO HAVE A COMPLETE QUALIFIED BID**

BID FORM Continued:

The following table describes the bid items and quantities reflected on the official bid form. Refer to the Information to Bidders (Pages 5-14) for instructions on how to submit sealed bids. (BIDDERS ARE ASKED TO CHECK THEIR BID AMOUNT SUBMITTALS IN AN EFFORT TO AVOID DISCREPANCIES).

BID ITEM DESCRIPTION AND QUANTITIES ARE APPROXIMATE ONLY:

| BASE BID | | | | | |
|--|--|------------|-------------|------------------|-----------------|
| BID ITEM | DESCRIPTION | QTY | UNIT | UNIT COST | SUBTOTAL |
| Demolition | | | | | |
| 1 | Curb & Gutter (Removal & Disposal) | 30 | LF | | |
| 2 | Sidewalk (3' width) (Removal & Disposal) | 35 | LF | | |
| 3 | Sidewalk (4' width) (Removal & Disposal) | 10 | LF | | |
| 4 | Concrete flatwork (4" thickness) (Removal & Disposal) | 45 | SF | | |
| 5 | Asphalt (Removal & Disposal) | 900 | LF | | |
| Reconstruction | | | | | |
| 5 | Curb & Gutter | 30 | LF | | |
| 6 | Sidewalk (3' width) | 35 | LF | | |
| 7 | Sidewalk (4' width) | 10 | LF | | |
| 8 | Concrete flatwork (4" thickness) | 45 | SF | | |
| Utility Improvements | | | | | |
| 8 | Furnish & Install 8" PVC Waterline (C-900)(DR-18) | 965 | LF | | |
| 9 | 1 - 8" Mechanical Joint Wye | 4 | EA | | |
| 10 | 1 - 8" Mechanical Joint 45 Degree Elbow | 1 | EA | | |
| 11 | 1 - 8" Mechanical Joint PVC Tee | 1 | EA | | |
| 12 | 1 - 8" Mechanical Joint PVC Cap | 1 | EA | | |
| 13 | Furnish & Install 8" Gate Valve and Box | 3 | EA | | |
| 14 | Furnish & Install 5' fire hydrant (as per City of Rio Grande City Fire Hydrant Installation regulations) | 1 | EA | | |
| 15 | 1- Double service connection | 8 | EA | | |
| BASE BID TOTAL | | | | | |
| # of calendar days required to complete Base Bid (60 max) | | | | | Calendar days |

Base Bid Total in words:

Bidder hereby agrees to commence work under this contract within ten (10) working days after Notice to Proceed is issued by the City.

Bidder hereby agrees to complete the base bid work within _____calendar days [**Number of days to complete work shall not exceed sixty (60) calendar days.**]

Receipt is acknowledged of the following addenda:

No. _____ Dated _____

No. _____ Dated _____

No. _____ Dated _____

No. _____ Dated _____

No. _____ Dated _____

No. _____ Dated _____

DATE: _____

Respectfully submitted,

BY: _____
(Signature)

(Type or Print Name of Authorized Signer)

(Title)

(Legal Company Name)

(Address)

(Phone Number)

(Fax Number)

(E-Mail)

(Seal - If bidder is a Corporation)

SUPPLEMENT NO. 1 TO BID FORM: NON-RESIDENT BIDDER

NON-RESIDENT BIDDER: Non-resident bidder is a bidder whose principal place of business is not in the State of Texas but excludes a contractor whose ultimate parent company or majority owner has its principal place of business in the State of Texas.

Nonresident Bidder: Yes _____ No _____

If yes, does your state have a preference law?

Yes _____ No _____

Percent (%) of preference _____

(Date)

(Authorized Signature)

(Type or Print Name)

(Title)

(Company)

(Address)

(Phone Number)

(Fax Number)

SUPPLEMENT NO. 2 TO BID FORM: BOND INFORMATION

(Form to be Executed & Submitted with Bid)

On all contracts that will equal to or exceed \$50,000.00, the Performance Bond and the Payment Bond must be provided from a surety.

MAIN COMPANY

AGENT'S NAME: _____
PLEASE TYPE/PRINT NAME

COMPANY NAME: _____

ADDRESS: _____

**MAIN OFFICE
TELEPHONE NO.:** _____

LOCAL COMPANY

AGENT'S NAME: _____
PLEASE TYPE/PRINT NAME

COMPANY NAME: _____

ADDRESS: _____

**LOCAL MAIN OFFICE
TELEPHONE NO.:** _____

PROJECT NO.: _____

PROJECT NAME: _____

CONTRACTOR: _____
SIGNATURE

PLEASE TYPE/PRINT NAME

COMPANY NAME

SUPPLEMENT NO. 3 TO BID FORM: NON-COLLUSION AFFIDAVIT

STATE OF _____

COUNTY OF _____

_____, of lawful age, being first duly sworn, on oath says, that (s)he is the agent authorized by the bidder to submit the attached bid. Affiant further states that the respondent/bidder has not been a party to any collusion among bidders in restraint of freedom of competition by agreement to purpose at a fixed price or to refrain from proposing; or with any state official, city employee, Board Trustee, or benefit consultant as to quantity, quality, or price in the prospective contract, or any other terms of said prospective contact; or in any discussions or actions between bidders, city employee, Board Trustee, or benefit consultant concerning exchange of money or other things of value for special consideration in the letting of this contract.

Signature

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public
State of _____

My Commission Expires: _____

SUPPLEMENT NO. 4 TO BID FORM: CONFLICT OF INTEREST QUESTIONNAIRE (FORM CIQ) continued:

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

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

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

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

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

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

(2) the vendor:

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

- (i) a contract between the local governmental entity and vendor has been executed;
- or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

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

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

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

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

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

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

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

**END OF SECTION
SPECIAL PROVISIONS**

IN ALL CASES WHERE THESE SPECIAL PROVISIONS CONFLICT WITH THE TECHNICAL SPECIFICATION SECTIONS, GENERAL CONDITIONS OF THE AGREEMENT, SUPPLEMENTARY GENERAL CONDITIONS, CONTRACT CONDITIONS, OR ANY OTHER DOCUMENT CONTAINED HEREIN, THESE SPECIAL PROVISIONS SHALL GOVERN.

1. It is the intent of this contract to cover all the work to be performed subsidiary to all the items included in the bid and such prices shall be balanced individually and shall include furnishing all materials, superintendency, supervision, construction surveying and layout, permit fees, administrative costs, quality control and all incidentals for completing the assigned work in accordance with the plans and specifications all complete in place.
2. Definitions:
 - a. OWNER – shall be Rio Grande City
 - b. CITY – shall be Rio Grande City
 - c. ENGINEER – shall be Half Associates, Inc.
3. The CONTRACTOR shall do all necessary excavation, trenching, dewatering, demolition, grading, backfill, etc., to complete the project. Such costs shall be subsidiary to the bid items in the Proposal. All excavation is unclassified. All material removed such as concrete, broken pipe, excess backfill, etc., and not deemed salvageable shall become the property of the CONTRACTOR and he shall be responsible for removing it from the site at no extra expense to the OWNER. Existing material, fencing or fixtures deemed salvageable by the ENGINEER or the OWNER shall be carefully removed and hauled to a designated location as directed by the OWNER or ENGINEER within the City at no extra expense to the OWNER.
4. Existing lawns are to remain intact as far as practical. The CONTRACTOR shall duly restore such areas disturbed as good as or better than original condition using the same type of grass, shrubs, or cover as the original. The CONTRACTOR shall be responsible for correcting any erosion that occurs at his cost without claim for extra compensation.
5. Damages done to existing utilities, power poles, sidewalks, fences, signs, mailboxes, driveways, culverts, pavement, drainage systems, signal sensors, other improvements within the ROW or adjacent properties, etc. shall be repaired by the CONTRACTOR, at no cost to the OWNER, and such costs shall be subsidiary to the various unit items in the Proposal. Unless pre-construction conditions show evidence of prior damage, CONTRACTOR shall be responsible to remediate the damaged areas at their cost. CONTRACTOR shall provide evidence of pre-construction conditions through the form of video and/or photographic depictions.
6. All trees, plants, grass, and shrubs, except those which will be affected by construction shall be protected at all times. The areas in and adjacent to the construction site shall be restored to their original conditions after necessary fine grading is completed. The CONTRACTOR shall provide new grass of the same type removed to restore damaged areas. These areas are to be replaced with like materials.

7. The CONTRACTOR shall be limited only to existing ROW for operations and/or easements provided by Rio Grande City. The CONTRACTOR at no extra cost to the OWNER will correct any damages done to property outside these designated work areas to its original or better conditions. It is important that the CONTRACTOR be aware of the work limits so that no damage can result to those areas outside these limits.

8. Raba Kistner, Inc. shall provide all construction material testing for the project. All necessary testing shall be selected and paid for by ENGINEER, but re-testing shall be charged to the CONTRACTOR from his monthly estimates, and no additional compensation will be made or allowed for reworking the necessary defective work not meeting the specified work of the plans and specifications. Any re-testing required by no-passing results shall be paid for by the CONTRACTOR and shall be deducted from the contract amount.

9. In the event that emergency testing is required, or that testing falls outside of the operating hours of 8 a.m. to 5 p.m., or falls on the City's holiday schedule, the CONTRACTOR shall be responsible for payment of overtime fees incurred by Raba Kistner, Inc. and/or OWNER.

10. The CONTRACTOR shall furnish the Site Inspector and Observer, OWNER, and ENGINEER the names, address and telephone numbers of all personnel responsible for the work in case of Emergencies.

11. The CONTRACTOR shall attend a pre-construction conference with the OWNER, ENGINEER, ENGINEERING DEPARTMENT and other Utility Officials at a date and time to be specified.

12. The CONTRACTOR shall submit to the ENGINEER a proposed sequence of work outline with approximate completion dates to be reviewed at the pre-construction conference. It is important that traffic be interrupted at a minimum during construction. If roadways are to be closed or detoured, the CONTRACTOR shall notify the OWNER, ENGINEER, POLICE DEPARTMENT, FIRE DEPARTMENT, EMERGENCY SERVICES, RAILROAD and other interested entities at least 48 hours in advance.

13. All work must be performed during regular business hours of 8 a.m. to 5 p.m., Monday thru Friday, except City recognized holidays. The CONTRACTOR may request work outside these hours, but will require the presence of the Site Inspector, the cost of which will be borne by the CONTRACTOR. No cost for the Site Inspector will be charged should the work be requested by the CITY. CONTRACTOR shall coordinate all work, where construction work is being done around project area, with other contractors and OWNER.

14. The CONTRACTOR shall be responsible for construction staking for the entire project and shall be done in accordance with the Specifications. The ENGINEER shall provide horizontal and vertical control. Staking shall be performed by a Registered Professional Land Surveyor or Professional Engineer qualified to do such construction staking.

15. The Plans show approximate locations of existing utilities including gas lines, telephone lines, power lines, water lines, sewer lines, storm sewers and irrigation lines within the vicinity. The CONTRACTOR is responsible for locating all existing utilities and shall exercise extreme care in working in the vicinity of these lines. Should the contractor identify any conflicts with the existing facilities as located in the field and the information as shown on the plans, the CONTRACTOR shall immediately notify the following:

| NAME | PHONE |
|---------------------------------|----------------|
| RIO GRANDE CITY - UTILITY DEPT. | (956) 487-2702 |
| RIO GRANDE CITY - PUBLIC WORKS | (956) 488-8382 |
| TEXAS 811 | (800) 344-8377 |
| SPECTRUM | (956) 585-5761 |
| VERIZON | (800) 288-2020 |
| AEP TEXAS | (800) 344-8377 |

All existing lines, whether belonging to City or Private, shall remain in operation at all times. Switchover time, re-connecting new service from existing lines or services (if any) shall be kept to a minimum. CONTRACTOR shall be responsible for any re-connects, temporary or otherwise, of all water and sanitary sewer lines required to complete the project. Unless otherwise specified in the bid proposal form, payment for such items shall be subsidiary to all the various items of the bid.

16. The CONTRACTOR shall notify the Utility Companies while working in the vicinity of the corresponding private or public utility.

17. The OWNER reserves the right to add or delete quantities of bid items in the Proposal at the Unit Prices given, provided however that such additions or reductions are within the aggregate limits specified in the General Conditions of the Agreement.

18. The CONTRACTOR shall comply with the requirements and regulations of the TPDES (Texas Pollutant Discharge Elimination System) permit. The CONTRACTOR is expected to conduct his work in such a manner as to minimize any soil erosion or sediment runoff from the construction site. Earth cuts and fills shall have smooth, flat side slopes, as generally indicated on the Plans, to preclude erosion of the soil. Such operations should be times consistent with the actual need for doing the work and only to leave raw, unprotected surfaces for a minimum of time. The CONTRACTOR shall be responsible for correcting any erosion that occurs at his cost without claim for extra compensation. CONTRACTOR'S dewatering plan shall also conform with the requirements of the TPDES.

19. Until FINAL acceptance by the ENGINEER all of the material as provided for in these specifications shall be under the charge and care of the CONTRACTOR, and he shall take every necessary precaution against injury or damage to any part of the material by action of the elements of from the non-execution of the work. The CONTRACTOR shall rebuild, repair, restore and make good, at his own expense, all injuries or damage to any portion of the materials before its' completion and acceptance.

20. In cases where the CONTRACTOR deems extra compensation is due him for materials not clearly covered in the contract or not ordered by the ENGINEER as an extra item, the CONTRACTOR shall notify the ENGINEER in writing of his intention to make claim for such extra compensation before he begins the work. The CONTRACTOR shall not proceed until the OWNER, ENGINEER, and CONTRACTOR approves a written CHANGE ORDER. Failure on the part of the CONTRACTOR to give such notification or to afford the ENGINEER proper facilities for keeping strict account of actual costs shall constitute a waiver of the claim for such extra compensation. The filing of such notice by the CONTRACTOR and the keeping of costs by the ENGINEER shall not in any way be construed to prove the validity of the claim. When the work has been completed, the CONTRACTOR shall, within 10 days, file his claim for extra compensation with the ENGINEER.

21. Upon the failure of the CONTRACTOR to repair satisfactorily or to remove and replace, if so directed, rejected, unauthorized, or condemned materials immediately after receiving formal notice from the ENGINEER, the OWNER may recover for such defective materials on the CONTRACTOR'S bond, or by action in a court having proper jurisdiction over such matters, or may employ labor and equipment and satisfactorily repair or remove and replace such work and charge the cost of the same to the CONTRACTOR, which cost will be deducted from any money due him.
22. CONTRACTOR shall be responsible for submittal of a traffic control plan sealed by a registered professional engineer in the state of Texas prior to the start of construction. CONTRACTOR shall be responsible for all traffic control measures and implementation. All proposed routing of traffic must be approved in writing prior to implementation by OWNER. All traffic control devices shall be in accordance with the Texas Manual on Uniform Traffic Control Devices (TMUTCD), latest edition.
23. Saw cutting of existing asphalt or concrete for construction joints will be the only accepted method.
24. The CONTRACTOR shall warrant all work for a period of not less than one (1) year from the date of issuance of certificate of substantial completion and/or final acceptance of the work by the OWNER. CONTRACTOR is responsible for scheduling a final inspection in the presence of the OWNER, ENGINEER, and CONTRACTOR, whereupon all items must be in accordance with plans and specifications, prior to final acceptance.
25. The CONTRACTOR is responsible for familiarizing himself and following the project plans, project specifications and Rio Grande City Standard Specifications for those items not specifically shown on the project plans or project specifications.
26. All work will be coordinated with the OWNER and ENGINEER.
27. All work shall be performed in compliance with all federal, state, and local laws including governing bodies and guidelines.
28. Relocations of existing fences, mailboxes, driveways, culverts, pavement, drainage systems, etc. (where not indicated on plans) shall be repaired by the CONTRACTOR at no cost to the OWNER, and such costs shall be subsidiary to the various unit items in the Proposal.
29. Submittals and/or shop drawings for all bid items shall be provided to ENGINEER prior to construction.
30. The CONTRACTOR shall coordinate with the OWNER to keep access at all times to adjacent property owners and mail couriers at all times during construction. Any temporary drives used shall also be coordinated with OWNER. No separate pay.
31. CONTRACTOR shall field verify all existing utilities prior to construction and make necessary horizontal and vertical deflections of pipe or installation of fittings to avoid existing utility conflicts while conforming to the respective utility regulation. Do not deflect pipe joints more than 80% of the manufacturer's recommendation.
32. The CONTRACTOR, acting in its capacity as a representative for the CITY, shall comply with the requirements of the Professional Services Procurement Act in Subchapter A, Chapter 2254, Texas Government Code when procuring professional engineering services and shall select and award the contract to the most highly qualified provider of those services on the basis of demonstrated competence

and qualifications at a fair and reasonable price and shall not select services or award contracts on the basis of competitive bidding.

33. All millings resulting from this project shall remain the property of the OWNER. CONTRACTOR is to coordinate with OWNER to safely store and deliver millings to a location designated by the OWNER.

34. CONTRACTOR to coordinate with pavement CONTRACTOR for removal of asphalt for site prior to start.

FORM OF AGREEMENT FOR ENGINEERING/ARCHITECTURAL CONSTRUCTION

This Agreement is made as of _____, 20_____, (the “Effective Date”) by and between

The Owner: Rio Grande City, acting herein through the Board of Commission

and Contractor: _____

for the Project: LAS BRISAS SUBDIVISION WATER LINE IMPROVEMENTS

Project Number: 2020-04_WL

The Owner and the Contractor agree as follows:

ARTICLE 1. SCOPE OF THE WORK

The Contractor hereby agrees to furnish all of the materials and all of the equipment and labor necessary and to perform all of the Work in accordance with the Owner’s requirements and as shown on the drawings and described in the specifications for the project entitled **LAS BRISAS SUBDIVISION WATER LINE IMPROVEMENTS ; PROJECT NO: 2020-04 WL.**

ARTICLE 2. CONTRACT DOCUMENTS

The Contract Documents consist of:

- a. This Form of Agreement and all exhibits and attachments listed, contained or referenced in this Agreement;
- b. Special Provisions
- c. General Conditions of Contract for Engineering/Architectural Construction
- d. Supplemental General Conditions of Contract for Engineering/Architectural Construction
- e. *Reserved*
- f. All Addenda issued before the Effective Date of this Agreement;
- g. All Alternate Bids accepted by the Owner before the Effective Date of this Agreement;
- h. All Change Orders issued after the Effective Date of this Agreement;
- i. Drawings, Specifications, details and other documents developed by Owner and/or Project Architect to describe the Project and accepted by Owner
- j. Drawings and Specifications developed or prepared by Owner’s other consultants, if any, and accepted by Owner
- k. Contractor’s Bid. To the extent of any conflict between Contractor’s Bid and any other Contract Document, the Contract Document shall govern.
- l. Solicitation Documents.

The Contract Documents form the entire and integrated Contract between Owner and Contractor and supersede all prior negotiations, representations or agreements, written or oral.

FORM OF AGREEMENT continued:

ARTICLE 3. CONTRACT SUM

The Owner shall pay the Contractor for performance of the Contract, including the Base Bid and Alternate Bid, the sum of _____ (\$_____), and make payment on account as provided in the General Conditions of Contract for Engineering/Architectural Construction.

ARTICLE 4. TIME OF COMPLETION

The Owner shall issue a Notice to Proceed identifying the date for commencement of the Work. The commencement date shall be ten (10) working days after the date the notice is issued. The Contractor shall achieve completion of the Work within _____ () _____ calendar days after the commencement date, as such completion date may be extended by approved Change Orders.

ARTICLE 5. LIQUIDATED DAMAGES

The time set forth for the completion of the work is an essential element of the contract and one of the reasons for the liquidated damages is the uncertainty and cost of litigation regarding the question of actual damages. The sums payable under this article shall constitute liquidated damages and not penalties and are in addition to all other rights of the Owner, including the right to call a default. The Owner and Contractor acknowledge and agree that (1) the harm caused by the breach is incapable or difficult of estimation and (2) the amount of liquidated damages is a reasonable forecast of just compensation. The Owner and Contractor further acknowledge and agree that the amount of liquidated damages bear a reasonable relationship to, and are not plainly or grossly disproportionate to, the probable loss likely to be incurred in connection with the default by Contractor to complete the work in the time provided under the contract.

For each calendar day or working day, as specified in ARTICLE 4. TIME OF COMPLETION of the Agreement, that any work remains uncompleted after the contract completion time (including all extensions and adjustments as provided in Section 17. EXTENSION OF TIME of the General Conditions of Contract), the sum of \$ 650.00, shall be deducted per Calendar day as liquidated damages from any amounts due or to become payable to the Contractor. Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, shall in no way operate as a waiver on the part of Owner of any of its rights under the contract.

ARTICLE 6. BONDS AND INSURANCE

The Contractor shall provide performance and payment bonds on forms prescribed by Owner and in accordance with the requirements set forth in the General Conditions of Contract for Engineering/Architectural Construction. The penal sum of the payment and performance bonds shall be equal to the Contract Sum.

The Contractor shall not commence work under the Agreement until it has obtained all insurance coverage as required by the General Conditions of Contract and until evidence of the required insurance has been reviewed and approved by the Owner. Owner's review of the insurance shall not relieve nor decrease the liability of the Contractor.

FORM OF AGREEMENT continued:

ARTICLE 7. CONTRACTOR'S SPECIAL WARRANTIES AND RESPONSIBILITIES

7.1 Contractor agrees and acknowledges that Owner is entering into this Agreement in reliance on Contractor's represented expertise and ability to provide construction services. Contractor agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Owner in accordance with Owner's requirements and procedures.

7.2 Contractor represents and agrees that it will perform its services in accordance with the usual and customary standards of Contractor's profession or business and in compliance with all applicable national, federal, state, and municipal, laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction over the Project.

7.3 Contractor agrees to bear the full cost of correcting Contractor's negligent or improper work and services, those of its consultants, and any harm caused by the negligent or improper work or services.

7.4 Contractor's duties shall not be diminished by any approval by Owner nor shall the Contractor be released from any liability by any approval by Owner, it being understood that the Owner is ultimately relying upon the Contractor's skill and knowledge in performing the services required by this Agreement.

7.5 Contractor represents and agrees that all persons connected with the Contractor directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction over the Project if registration is required.

7.6 Contractor represents and agrees to advise Owner of anything of any nature in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Contractor (by the Owner or any other party) that is, in its opinion, unsuitable, improper, or inaccurate for the purposes for which the document or data is furnished.

7.7 The Contractor represents and agrees to perform its services under this Agreement in an expeditious and economical manner consistent with good business practices and the interests of Owner.

7.8 Contractor represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Agreement.

7.9 Contractor represents and agrees that the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and to bind Contractor to its terms.

7.10 Contractor shall designate a representative authorized to act on Contractor's behalf with respect to the Project.

7.11 Contractor shall establish and maintain a numbering and tracking system for all Project records including, but not limited to, changes, requests for information, submittals, and supplementary instructions and shall provide updated records to the Owner when requested.

FORM OF AGREEMENT continued:

7.12 Except for the obligation of Owner to pay Contractor certain fees, costs, and expenses pursuant to the terms of this Agreement, Owner shall have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of Owner to Contractor, no present or future partner or affiliate of Owner or any agent, officer, director, employee, or City Official of Owner, or of the components comprising Rio Grande City, or anyone claiming under Owner has or shall have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.

ARTICLE 8. Party Representatives

8.1 The Owner's Designated Representative (ODR) authorized to act in the Owner's behalf with respect to the Project is:

Rio Grande City, Mayor's Office:
Joel Villarreal, Mayor
(956) 487-0672

8.2 The Contractor's designated representative authorized to act on the Contractor's behalf and bind the Contractor with respect to the Project is:

Company Name
Contact name and Title
Phone number
Email Address

8.3 The parties may make reasonable changes in their designated representatives upon advance written notice to the other party.

ARTICLE 9. NOTICES

Notices of claims or disputes or other legal notices required by this Agreement shall be sent to the following persons at the indicated locations.

If to Owner:

Angela Solis, City Secretary
5332 E. US Highway 83
Rio Grande City, Texas 78582
Email: asolis@cityofrgc.com
Fax No. (956) 716-8899

If to Contractor:

Company Name
Contact name and Title
Address
Email Address
Fax No.

The parties may make reasonable changes in the person or place designated for receipt of notices upon advance written notice to the other party.

FORM OF AGREEMENT continued:

ARTICLE 10. NO PRESUMPTION AGAINST DRAFTING PARTY

The parties acknowledge and agree that each party has been represented by counsel of its choice and have participated jointly in negotiating, contributing, and drafting this Agreement. In any controversy, dispute or contest over the meaning, interpretation, validity, or enforceability of this Agreement, or of any of its terms and conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against any party by virtue of that party having drafted the document or any portion thereof. Accordingly, any applicable rule, law, opinion, or decision that interprets the rule of construction that ambiguities are resolved against the drafting party shall have no application and is expressly waived by each party in this Agreement. Rather, this Agreement shall be interpreted to its fair meaning with no presumption or burden of proof arising strictly in favor or against either party.

IN WITNESS WHEREOF the parties hereto have executed this Agreement, the day and year first above written.

Rio Grande City
(Owner)

By: _____

By: _____

NOE CASTILLO
INTERIM CITY MANAGER

(Contractor)

LEGAL COMPANY NAME

By: _____
Signature of Authorized Representative

Type/Print Name of Authorized Representative

Title

Address

City, State, Zip Code

Phone Number

Fax Number

Email Address

PERFORMANCE BOND

STATUTORY PERFORMANCE BOND PURSUANT TO ARTICLE 2253
OF THE TEXAS LOCAL GOVERNMENT CODE AS AMENDED BY ACTS OF THE 1993,
73RD LEGISLATURE, CH. 268, § 1, EFF. SEPT. 1, 1993, AMENDED BY ACTS 1999, 76TH
LEGISLATURE, CH. 62, SECTION 8.20, EFF. SEPT. 1, 1999

KNOW ALL MEN BY THESE PRESENTS, THAT _____

(hereinafter called the Principal(s), as Principal(s), and _____

(hereinafter called the Surety(s), as Surety(s), are held and firmly bound unto _____

(hereinafter called the Obligee), in the amount of _____

_____ Dollars (\$ _____)

for the payment whereof the said Principal and Surety bind themselves, and their heirs,
administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the
_____ day of _____, 20_____, for the _____

which contract is hereby referred to and made a part hereof as fully and to the same extent as if
copies at length herein.

PERFORMANCE BOND Continued:

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform the work in accordance with plans, specifications and contract documents, during the original term of said contract and any extension thereof that may be granted by Rio Grande City with or without notice to the surety and during the life of any guaranty required under the contract, and shall also truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all authorized modifications of said contract that may hereafter be made, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Statutory Performance Bond Pursuant To Article 2253 of the Texas Local Government Code as Amended by Acts of the 1993, 73rd Legislature, Ch. 268, § 1, Eff. Sept. 1, 1993, Amended By Acts 1999, 76th Legislature, Ch. 62, Section 8.20, Eff. Sept. 1, 1999, and all liabilities on this bond shall be determined in accordance with the provisions of said Article to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, this instrument is executed in five counterparts, each one of which shall be deemed an original, this the _____ day of _____ A.D., 20____.

Principal

ATTEST:

(Principal) Secretary
(SEAL)

Signature

Witness as to Principal

(Print/Type Name)

(Address)

(Address)

ATTEST:

Surety

(Surety) Secretary
(SEAL)

Attorney-in-Fact (Signature)

Witness as to Surety

(Print/Type Name)

(Address)

(Address)

NOTE: Date of Bond must not be prior to date of Contract (1) Correct name of Contractor; (2) A Corporation, a Partnership or an Individual, as case may be; (3) Correct name of Surety; (4) Correct name of Owner; (5) County or Parish and State; (6) Owner; (7) If Contractor is Partnership, all partners should execute bond.

PAYMENT BOND

STATUTORY PAYMENT BOND PURSUANT TO ARTICLE 2253
OF THE TEXAS LOCAL GOVERNMENT CODE AS AMENDED BY ACTS OF THE 1993, 73RD
LEGISLATURE, CH. 268, § 1, EFF. SEPT. 1, 1993, AMENDED BY ACTS 1999, 76TH
LEGISLATURE, CH. 62, SECTION 8.20, EFF. SEPT. 1, 1999

KNOW ALL MEN BY THESE PRESENTS, that _____

(hereinafter called the Principal(s), as Principal(s), and _____

(hereinafter called the Surety(s), as Surety(s), are held and firmly bond unto _____

(hereinafter called the Oblige), in the amount of _____

_____ Dollars (\$ _____)

for the payment whereof, the said Principal and Surety bind themselves, and their heirs,
administrators, executors, successors and assigns, jointly severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Oblige,
dated the _____ day of _____, 20_____, to which contract is hereby

referred to and made a part hereof as fully and to the same extent as if copies at length herein.

P A Y M E N T B O N D Continued:

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, and any extension thereof that may be granted by Rio Grande City with or without notice to the surety and during the life of any guaranty required under the contract, and shall also truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all authorized modifications of said contract that may hereafter be made, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Statutory Payment Bond Pursuant To Article 2253 of the Texas Local Government Code as Amended by Acts of the 1993, 73rd Legislature, Ch. 268, § 1, Eff. Sept. 1, 1993, Amended By Acts 1999, 76th Legislature, Ch. 62, Section 8.20, Eff. Sept. 1, 1999, and all liabilities on this bond shall be determined in accordance with the provisions of said Article to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, this instrument is executed in five counterparts, each one of which shall be deemed an original, this the _____ day of _____ A.D., 20_____.

Principal

ATTEST:

(Principal) Secretary
(SEAL)

Signature

Witness as to Principal

(Print/Type Name)

(Address)

(Address)

ATTEST: _____

Surety

(Surety) Secretary
(SEAL)

Attorney-in-Fact (Signature)

Witness as to Surety

(Print/Type Name)

(Address)

(Address)

NOTE: Date of Bond must not be prior to date of Contract

- (1) Correct name of Contractor; (2) A Corporation, a Partnership or an Individual, as case may be; (3) Correct name of Surety; (4) Correct name of Owner; (5) County or Parish and State; (6) Owner; (7) If Contractor is Partnership, all partners should execute bond.

GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING/ARCHITECTURAL CONSTRUCTION

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GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING/ ARCHITECTURAL CONSTRUCTION

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GENERAL CONDITIONS OF CONTRACT FOR ENGINEERING/ARCHITECTURAL CONSTRUCTION

SECTION 1. DEFINITIONS

1.1 The *Contract Documents* shall consist of Form of Agreement and all exhibits and attachments listed, contained or referenced in the Agreement; Special Provisions; General and Supplemental Conditions of Contract for Engineering/Architectural Construction; All Addenda issued before the Effective Date of the Agreement; All Alternate Bids accepted by the Owner before the Effective Date of the Agreement; All Change Orders issued after the Effective Date of the Agreement; Drawings, Specifications, details and other documents developed by Owner and/or Project Architect to describe the Project and accepted by Owner; Drawings and Specifications developed or prepared by Owner's other consultants, if any, and accepted by Owner; and Contractor's Bid.

1.2 The *Owner* shall represent Rio Grande City.

1.3 *Contractor* means the individual, corporation, limited liability company, partnership, firm, or other entity contracted to perform the Work, regardless of the type of construction contract used, so that the term as used herein includes general or prime Contractor. The Contract Documents refer to Contractor as if singular in number.

1.4 Wherever in this contract the word "*Engineer/Architect*" is used it shall be understood as referring to the Engineer/Architect of the Owner, acting personally or through assistants duly authorized in writing by the Engineer/Architect.

1.5 *Subcontractor* shall mean anyone (other than the Contractor) who furnished at the site, under an Agreement with the Contractor, labor, materials, or equipment, or a combination thereof, but shall not include any person who furnishes services of a personal nature.

1.6 *Work* shall mean the furnishing of all labor, materials, equipment, and other incidentals as are required to complete the Project for the purpose for which it was intended

1.7 *Dispute* shall mean lack of agreement between any parties that have any obligations, duties, or responsibilities under the terms of the contract, Drawings, or Specifications.

1.8 *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 an officer of the corporation for whom it is intended, or to an authorized representative of such individual, firm, or corporation, or if delivered at or sent by registered mail to the last business address known to him who gives the notice, with a copy sent to the central office of the contractor.

SECTION 2. COPIES OF DRAWINGS FURNISHED

Unless otherwise provided in the Contract Documents, the Engineer/Architect will furnish to the Contractor, free of charge, all copies of Drawings and Specifications reasonably necessary for the execution of the work.

SECTION 3. ORDER OF COMPLETION

On the first day of every month in which any portion of the work is to be completed, and at such times thereafter as may be reasonably requested by the Owner's Representative, the Contractor shall submit schedules that show the order in which the Contractor proposes to carry out the work for the duration of the project and, in particular, for the current month, with dates at which the Contractor will start each portion or part of the work, specific estimated dates of completion of each portion or part of the work, and a detailed description of the specific portion or part of the work to be completed by the end of the current month.

GENERAL CONDITIONS OF CONTRACT continued:

SECTION 4. OWNER OF DRAWINGS

Rio Grande City shall be the owner of all drawings, specifications, and copies thereof furnished by the Engineer/Architect. Contractor shall not reuse the same on other work and sets are to be returned to Engineer/Architect at the completion of the work on request.

SECTION 5. FAMILIARITY WITH WORK

The Owner shall make known to all prospective bidders, prior to the receipt of bids, all information that Owner may have as to subsurface conditions in the vicinity of the work, topographical maps, or other information that might assist the bidder in properly evaluating the amount and character of the work that might be required. Such information is given, however, as being the best factual information available to the Owner. The Contractor shall carefully examine the nature and location of the work, the character of equipment and facilities needed preliminary to and during the prosecution of the work, general and local conditions, and all other matters which can in any way affect the work under the Contract.

SECTION 6. CHANGED CONDITIONS

Before project conditions are disturbed, the Contractor shall notify the Owner in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in this Contract; or (2) previously unknown physical or other conditions at the site of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract. The Owner's Representative shall promptly investigate the conditions, and if it is found that such conditions do so materially differ and cause an increase or decrease in the cost of, or the time required for, performance of this Contract, the Contractor shall submit a claim for an adjustment in compensation and/or time. Contractor must provide written notice to the Owner within seven (7) days after the Contractor knew, or reasonably should have known, of such changed condition(s). Any claim of the Contractor for an adjustment of compensation and/or time hereunder after the required notice period shall not be allowed or approved, and the Contractor waives all right to additional compensation or time. If the Contractor timely provides written notice in accordance with this Section 6 and the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in Section 36 hereinafter.

SECTION 7. MATERIALS AND APPLIANCES

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the execution and completion of the work. Unless otherwise specified, all materials incorporated in the permanent work shall be new and both workmanship and materials shall be of good quality. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials. Unless otherwise stipulated, the Owner will not pay for materials stored on hand.

SECTION 8. EMPLOYEES

8.1 Neither the Contractor nor his/her employees engaged in fulfilling the terms and conditions of the awarded Construction Contract shall be considered employees of the Owner.

8.2 The Contractor shall at all times enforce strict discipline and good order among his employees, and shall seek to avoid employing on the work any unfit person or anyone not skilled in the work assigned to him. The Owner shall have the authority to request that Contractor remove any objectionable employee from project site.

8.3 Adequate sanitary facilities shall be provided by the Contractor.

GENERAL CONDITIONS OF CONTRACT continued:

SECTION 9. ROYALTIES AND PATENTS

9.1 The Contractor shall hold and save the owner and its officers, agents, servants and employees, harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article or appliance manufactured or used in the performance of the contract, including its use by the Owner.

9.2 *License or Royalty Fee:* License and/or royalty fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his/her authorized licensee, directly by the Contractor. If the Contractor uses any design, device or materials covered by letters, patent or copyright, he/she shall provide for such use by suitable agreement with the Owner of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his/her Sureties shall indemnify and hold harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

SECTION 10. SURVEYS

10.1 Unless otherwise specified, the Owner shall furnish all land surveys and establish all base lines for locating the principal component parts of the work together with a suitable number of bench marks adjacent to the work. From the information provided by the Owner, the Contractor shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pile locations, and other working points, lines and elevations.

10.2 The contractor shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, he shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

SECTION 11. PERMITS, LICENSES AND REGULATIONS

Permits and licenses of a temporary nature necessary for the prosecution and completion of the work shall be secured and paid for by the Contractor. Permits, licenses, and easements of a permanent nature that will be required after the completion of the project will be secured and paid for by the Owner, unless otherwise specified. The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the Drawings and Specifications are at variance therewith, Contractor shall promptly notify the Engineer/Architect in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in the work.

SECTION 12. PROTECTION OF THE PUBLIC AND OF WORK AND PROPERTY

12.1 The Contractor shall provide and maintain all necessary watchmen, barricades, warning lights and signs and take all necessary precautions for the protection, and safety of the public. Contractor shall take all reasonable precautions to protect the Owner's property from injury or loss arising in connection with this contract. Contractor shall make good any damage, injury or loss to his work and to the property of the Owner resulting from lack of reasonable protective precautions, except such as resulting from lack of reasonable protective precautions, except such as may be due to errors in the Contract Documents, or caused by agents or employees of the Owner. Contractor shall adequately protect adjacent private and public property, as provided by law and the Contract Documents.

GENERAL CONDITIONS OF CONTRACT continued:

SECTION 12. PROTECTION OF THE PUBLIC AND OF WORK AND PROPERTY continued:

12.2 In an emergency affecting the safety of life, work, or of adjoining property, the Contractor is hereby permitted to act at Contractor's discretion to prevent such threatened loss or injury. Contractor shall act without special instructions or authorization from the Engineer/Architect and without appeal, if so authorized or instructed by the Engineer/Architect.

12.3 Any compensation claimed by the Contractor on account of emergency work, shall be determined by agreement, litigation or arbitration.

SECTION 13. INSPECTION OF WORK

13.1 The Owner shall provide sufficient competent personnel, under the supervision of a qualified Engineer/Architect, for the inspection of the work while such work is in progress to ascertain that the completed work will comply in all respects with the standards and requirements set forth in the Specifications. Notwithstanding such inspection, the Contractor will be held responsible for the acceptability of the finished work.

13.2 The Engineer/Architect and his representatives shall at all times have access to the work whenever it is in preparation and/or progress, and the Contractor shall provide proper facilities for such access and inspection.

13.3 If the Specifications, the Engineer's/Architect's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the Engineer/Architect timely notice of its readiness for inspection, and scheduled date of such inspection if the inspection is by an authority other than the Engineer/Architect. Inspections by the Engineer/Architect shall be made promptly and at the source of supply, where practicable. If any work should be covered up without approval or consent of the Engineer/Architect, it must be uncovered if required by the Engineer/Architect at the Contractor's expense, unless the Engineer/Architect has unreasonably delayed inspection.

13.4 Re-examination of the work may be ordered by the Engineer/Architect and if so ordered, the work must be uncovered by the Contractor. If such work is found to be in accordance with the Contract Documents, the Owner shall pay the cost of re-examination and replacement. If such work is not in accordance with the Contract Documents, the Contractor shall pay such cost.

SECTION 14. SUPERINTENDENCE

The Contractor shall keep a competent superintendent and any necessary assistants on the project site throughout the duration of the work. The superintendent shall represent the Contractor and all directives given to superintendent shall be binding as if given to the Contractor. Directives shall immediately be confirmed in writing to the Contractor. The Contractor shall give efficient superintendence to the work using best skill and attention.

SECTION 15. DISCREPANCIES

If in the course of the work, the Contractor finds any discrepancy between the Drawings and the physical conditions of the locality, or any errors or omissions in Drawings or in the layout as given by survey points and instructions, Contractor shall immediately inform the Engineer/Architect in writing, and the Engineer/Architect shall promptly verify the same. Any work done by Contractor after such discovery without prior authorization will be done at the Contractor's risk.

GENERAL CONDITIONS OF CONTRACT continued:

SECTION 16. CHANGES IN THE WORK

16.1 The Owner may make changes to the contract drawings and specifications at any time by a written order. Changes shall be within the general scope of work and reasonable for the completion of the project scope. If such changes add to or deduct from the contractor's cost of the work, the Contract Sum shall be adjusted accordingly. All such changes in the work shall be executed under the conditions of the original Contract in at mutually agreed-upon unit price and through approved Change Orders, except that any claim for extension of time or additional compensation caused thereby shall be adjusted only at the time of ordering such change. Changes to work shall be in accordance to Texas Local Government Code Chapter 252.

16.2 The Engineer/Architect shall have authority to give directives and make minor changes in the work only to the extent that the work does not involve additional cost and changes are consistent with the purposes of the work.

16.3 Except as provided for in Section 12, no extra work or change shall be made unless in pursuance of a written order by the Engineer/Architect, and no claim for additional compensation to the Contract Sum shall be valid unless the additional work was so ordered.

16.3 The Contractor shall proceed with the work as changed and the value of any changes in work or change shall be determined as provided in the Agreement. The Contractor's acceptance of any written order(s) for changes in the work constitutes the Contractor's acknowledgement that all extensions, increases or deductions of time and/or compensation, and claims and disputes related to the subject of the written order(s) have been or were resolved by the written order(s). By accepting the written order(s) for changes in the work, the Contractor waives and releases any and all claims and causes of action, including, but not limited to, claims for additional compensation or extensions of time, related to or arising from any work added to, deducted from, or affected by the written order(s).

SECTION 17. EXTENSION OF TIME

17.1 Extension of time for completion of the Work may be granted by the Owner by means of a change order and shall apply in the following instances:

- a. changes in the work, as provided in Section 16;
- b. when work is suspended as provided in Section 21;
- c. when Contractor's performance of the work is delayed on account of conditions which could not have been foreseen, or which were beyond the control of the Contractor, his Subcontractors or suppliers, and which were not the result of their fault or negligence.
- d. neglect of the Owner or of his employees or by other contractors employed by the Owner, or by any delay in the furnishing of Drawings and necessary information by the Engineer/Architect;
- e. or by any other cause which in the opinion of the Engineer/Architect entitled the Contractor to an extension of time, including but not restricted to, acts of the public enemy, acts of any government in either its sovereign or any applicable contractual capacity, acts of another contractor in the performance of a contract with the Owner, fires, floods, epidemics, quarantine restrictions, freight embargoes, usually severe weather, or labor disputes.

GENERAL CONDITIONS OF CONTRACT continued:

SECTION 17. EXTENSION OF TIME continued:

17.2 The Contractor shall notify the Owner's Representative in writing within seven (7) working days of any occurrence or conditions which describes in detail the Contractor's claim to an extension of time. Such notice shall permit full investigation and evaluation of the contractor's claim. The Engineer/Architect shall acknowledge receipt of the Contractor's notice within five (5) working days of its receipt. Contractor's failure to provide such notice shall constitute a waiver by the Contractor of any claim.

SECTION 18. CLAIMS

If the Contractor claims that any directives issued after the date of the Contract, either by Drawings or other means, involve additional cost under the Contract, Contractor shall give the Engineer/Architect written notice thereof within seven (7) working days after the receipt of such instructions, and in any event before proceeding to execute the work, except as provided for in Section 12. No such claim shall be valid unless so made.

SECTION 19. DEDUCTIONS FOR UNCORRECTED WORK

If the Engineer/Architect deems it inexpedient to correct work that has been damaged or that was not done in accordance with the Contract, an equitable deduction from the Contract price shall be made thereof, unless the Contractor elects to correct to work.

SECTION 20. CORRECTION OF WORK BEFORE FINAL PAYMENT

20.1 The Contractor shall promptly remove from the premises all materials and work rejected by the Engineer/Architect due to failing to meet Contract requirements, whether incorporated in the work or not. The Contractor shall promptly replace and re-execute the work in accordance with the Contract and without expense to the Owner and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

20.2 If the Contractor does not take action to remove such rejected materials and work within ten (10) working days after written notice, the Owner may remove such rejected materials and may store the material at the expense of the Contractor. If the Contractor does not pay the expense of such removal and storage within ten (10) working days' time thereafter, the Owner may, upon ten (10) working days' written notice, sell such materials at auction or private sale and shall pay to the Contractor any net proceeds thereof after deducting all the costs and expenses that should have been borne by the Contractor.

SECTION 21. SUSPENSION OF WORK

21.1 The Owner may at any time suspend the work, or any part thereof by giving one (1) day written notice to the Contractor. The work shall be resumed by the Contractor within ten (10) working days after the date of the written notice from the Owner to the Contractor so to do. The Owner may reimburse the Contractor for expense incurred by the Contractor in connection with the work under this Contract as a result of such suspension; eligibility and amount of disbursement shall be determined by the Engineer/Architect.

21.2 If the work, or any part thereof, shall be suspended by written notice by Owner and if the Owner does not give written notice to the Contractor to resume work within fifteen (15) working days of the notice to suspend, then the Contractor may abandon that portion of the work and Contractor shall be entitled to the estimates and payments for all work done on the portions so abandoned, if any; Contractor is not entitled to any compensation for loss of overhead, plant expense, and anticipated profit.

GENERAL CONDITIONS OF CONTRACT continued:

SECTION 22. THE OWNER'S RIGHT TO TERMINATE CONTRACT

If the Contractor is adjudged as bankrupt, or if Contractor makes a general assignment for the benefit of its creditors, or if a receiver is appointed as a result of Contractor's insolvency, or if Contractor is guilty of a substantial violation of the Contract, then the Owner may without prejudice to any other right or remedy terminate the Contract with the Contractor, after giving the Contractor and his Surety seven (7) working days' written notice, and take possession of the premises and of all materials, tools, equipment and other facilities installed on the work and paid for by the Owner, and finish the work by whatever method Owner may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract price shall exceed the expense of finishing the work, including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If the expense of finishing the work shall exceed such unpaid balance to the Contractor, the Contractor shall pay the difference to the Owner.

SECTION 23. REMOVAL OF EQUIPMENT

In the case of termination of the Contract for any cause before the completion of the work, the Contractor, if notified to do so by the Owner, shall promptly remove any part or all of his equipment and supplies from the Owner's property. If Contractor fails to do so, the Owner shall have the right to remove such equipment and supplies at the expense of the Contractor.

SECTION 24. RESPONSIBILITY FOR WORK

25.1 The Contractor assumes full responsibility for the work. Until its final acceptance, the Contractor shall be responsible for damage to or destruction of the work (except for any part covered by partial acceptance as set forth in Section 26). Contractor agrees to make no claims against the Owner for damages to the work from any cause (except negligence or willful acts of the Owner), acts of an enemy, acts of war, or as provided for in Section 32.

24.2 Existing Structures: The Contractor shall, at Contractor's expense, immediately make permanent repairs and restore to original condition any and all utility lines, irrigation lines, pipe lines, pavement, or structures that are to remain in place and damaged by the Contractor's equipment or workmen during the performance of work under this contract, or damaged as a result of improperly executed work.

24.3 Traffic Areas, Driveways, Entrances: All traffic areas, driveways and entrances shall be restored to usable condition at the Contractor's expense as the work progresses. The Contractor shall make every effort to cooperate with the wishes of the individual property owners in providing access to private property along the site of the work.

24.4 Detours: The Contractor shall do such work as may be necessary to provide and maintain a detour adjacent to all road structures for public travel. The Contractor shall maintain the detours in such condition that the public can travel over same in comfort and safety, and shall at his own expense perform such work as may be required to keep said detours open to the public at all times. The Contractor shall cooperate with the Engineer/Architect in the regulation of traffic and Contractor shall govern its work that when it becomes necessary to suspend construction for a considerable period of time, the roadways will be re-opened to public travel. Materials and equipment shall be stored and the work shall be so conducted as to obstruct public travel as little as possible, and in no case shall there be less than twenty (20) feet in width of unobstructed roadway for the use of traffic. Materials and equipment stored in or near the path of traffic shall be protected with applicable traffic control devices in compliance with the Texas Manual on Uniform Traffic Control Devices (TMUTCD).

GENERAL CONDITIONS OF CONTRACT continued:

SECTION 24. RESPONSIBILITY FOR WORK continued:

24.5 Traffic Control Devices: When any section of the contraction site is closed to traffic, the Contractor shall furnish and maintain at each end of the closed section and at all intersecting streets - roads - construction site within the section, standard barricades, adequate warning signs and directional signs. All lights shall be kept burning from sunset to sunrise. If at any time the barricades are not, in the opinion of the Engineer/Architect, sufficient to prevent traffic from entering the closed portions of the street-road-construction site, the Contractor shall provide and maintain watchmen at such points and for such periods of time as the Engineer/Architect may direct. When directed by the Engineer/Architect, the Contractor shall provide and maintain such standard barricades, signs, lights and flags within the closed portion of the street-road-construction site as may be necessary to protect the work and safeguard local traffic.

24.6 No direct compensation, except as specifically provided in these specifications, will be made to the Contractor for the work and material involved in constructing and maintaining detours and approaches; furnishing, installing and maintaining barricades, danger, warning, and necessary for the proper direction, safety, and convenience of traffic during the Contract period, as this work is to be considered subsidiary to the several items for which unit prices are requested in the bid.

SECTION 25. PARTIAL COMPLETION AND ACCEPTANCE

If at any time prior to the issuance of the final payment, referred to in Section 40 hereinafter, any portion of the permanent construction has been satisfactorily completed, and if the Engineer/Architect determines that such portion of the permanent construction is not required for the operations of the Contractor but is needed by the Owner, the Engineer/Architect shall issue to the Contractor a certificate of partial completion, and thereupon or at any time thereafter the Owner may take over and use the portion of the permanent construction described in such certificate, and exclude the Contractor therefrom. The issuance of a certificate of partial completion shall not be constructed to constitute an extension of the Contractor's time to complete the portion of the permanent construction to which it relates if he has failed to complete it in accordance with the terms of this contract. The issuance of such a certificate shall not operate to release the Contractor or his sureties from any obligations under this contract or the performance bond. If any prior use increases the cost of or delays the work, the Contractor shall be entitled to extra compensation, or extension of time, or both, as the Engineer/Architect may determine, unless otherwise provided.

SECTION 26. PAYMENTS WITHHELD PRIOR TO FINAL ACCEPTANCE OF WORK

26.1 The Owner, as a result of subsequently discovered evidence, may withhold or nullify the whole or part of any payment certificate to such extent as may be necessary to protect himself from loss caused by:

- (a) Defective work not remedied.
- (b) Claims filed or reasonable evidence indicating probable filing of claims by other parties against the Contractor.
- (c) Failure of the Contractor to make payments properly to Subcontractors or for material or labor.
- (d) Damage to another contractor.
- (e) Claims filed or reasonable evidence indicating probable filing of claims by Contractor against Owner.

26.2 No money may be withheld under (b) and (c) above if a payment bond is included in the Contract.

GENERAL CONDITIONS OF CONTRACT continued:

SECTION 27. CONTRACTOR'S INSURANCE REQUIREMENTS

The term "City" shall include Rio Grande City and their employees, officers, officials, agent, and volunteers in respect to the contracted services. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirement.

All Certificates of Insurance must be received prior to commencement of service/work and shall be reviewed by the Purchasing & Contracting department. Any exceptions or variations to these insurance requirements shall be approved by the Director of Risk Management or his/her designated representative **prior** to the commencement of any work. These insurance requirements shall be complied with by any and all sub-contractors, and/or lower-tier sub-contractors.

All insurance carriers shall be rated A6 or better and be published on a current A.M. Best Rating Guide, or some other recognized equivalent rating service. Rio Grande City may request a copy of the insurance policy according to the nature of the project and reserves the right to accept or reject the insurance carrier. All Certificates of Insurance shall be provided on an Acord 25 Form.

The Certificate of Insurance shall be made to Rio Grande City, 5332 US-83, Rio Grande City, TX 78582. This information shall be listed under "Certificate Holder".

In the event the insurance coverage expires prior to the completion of the contract, a renewal certificate shall be issued thirty (30) days prior to said expiration date. The City must be notified at least thirty (30) days prior to any material change in and/or cancellation and/or non-renewals of such policies.

The City reserves the right to make reasonable requests or revisions pertaining to the types and limits of that coverage.

During the term of the Contract, the successful contractor/respondent/selected firm shall acquire and maintain, for the duration of the contract period the following insurances:

- A. **Comprehensive Commercial General Liability:** The Contractor/Respondent/Selected Firm shall provide minimum limits of \$250,000 Each Occurrence, \$500,000 General Aggregate combined single limit for bodily injury and property damage liability. This shall include premises/operations, independent contractors, products, completed operations, personal and advertising injury, and contractual liability. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs maintained by the City and shall name the "Rio Grande City" as an additional insured with a waiver of subrogation. The policy of insurance shall be written on an "occurrence" form.

Blanket "XCU" – Explosion, Collapse & Underground
Independent Contractors
Care, Custody and Control
Contractual Liability

No endorsements excluding these coverages are allowed.

GENERAL CONDITIONS OF CONTRACT continued:

SECTION 27. CONTRACTOR'S INSURANCE REQUIREMENTS continued:

Additional Insured Requirement:

To the fullest extent of coverage allowed under Chapter 151 of the Texas Insurance Code, Rio Grande City shall be included as additional insured under the CGL policy, using ISO Additional Insured Endorsements CG20101001 and CG20371001, or endorsements providing equivalent coverage, including products completed operations

- B. **Business Automobile Liability:** The Contractor/Respondent/Selected Firm shall maintain limits of no less than \$500,000 combined single limit (each accident). This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs maintained by the City and shall name the "Rio Grande City" as an additional insured with a waiver of subrogation. The policy of insurance shall be written on an "occurrence" form.

Applicable as long as no fragile or perishable products are transported; otherwise, Cargo Insurance is required.

Additional Insured Requirement:

To the fullest extent of coverage allowed under Chapter 151 of the Texas Insurance Code, Rio Grande City shall be included as additional insured under the CGL policy, using ISO Additional Insured Endorsements CG20101001 and CG20371001, or endorsements providing equivalent coverage, including products completed operations.

- C. **Builder's Risk/Fire & Extended Coverage**

The Contractor shall insure the building or other work included in this contract on an all-risk (special causes of loss) policy, with an insurance company or companies acceptable to the Owner. The amount of the insurance at all times to be at least equal to the amount paid on account of work and material and plus the value of the work or materials furnished or delivered but not yet paid for by the Owner. Builder's Risk Policies shall cover loss of materials by theft, vandalism, malicious mischief or other loss whether materials are incorporated in the work or not.

The policies shall be in the names of the City and the Contractor, as their interests may appear, and certificates of insurance shall be delivered to the Owner before monthly partial payments are made. The policy shall provide for the inclusion of names of all other contractors, subcontractors and other employed on the premises as ensured and shall stipulate that the insurance companies shall have no right to subrogation against any contractors, subcontractors or other parties employed on the premises for any work building alterations, construction or erection to the described property.

- D. **Workers' Compensation:** The contractor/respondent/selected firm shall provide and maintain workers' compensation insurance for all employees in the full amount required by statute and full compliance with the applicable laws of the State of Texas. Employer's Liability insurance shall be provided in amounts not less than \$500,000 per accident for bodily injury by accident; \$500,000 policy limit by disease; and \$500,000 per employee for bodily injury by disease."

In addition, a Waiver of Subrogation Endorsement shall be provided by the contractor naming Rio Grande City in said policy for Worker's Compensation Insurance. Contractor/Respondent/Selected Firm shall further ensure that all of its sub-contractors maintain appropriate levels of workers' compensation insurance.

GENERAL CONDITIONS OF CONTRACT continued:

SECTION 27. CONTRACTOR'S INSURANCE REQUIREMENTS continued:

- E. **Professional Services - Insurance Provisions:** Errors & Omissions (Professional Liability): \$1,000,000 Each Claim Limit \$1,000,000 Aggregate Limit. If coverage is written on a claims-made basis, the retroactive date shall be on or prior to the date of the contractual Agreement. The certificate of insurance shall state that the coverage is claims-made and include the retroactive date. The insurance shall be maintained for the duration of the contractual Agreement and for four (4) years following completion of the services provided under the contractual Agreement or for the warranty period, whichever is longer. An annual certificate of insurance submitted to the City shall evidence coverage.
- F. **Deductible Clause:** Contractor/Respondent/Selected Firm to declare self-insured retention or deductible amounts in excess of \$25,000.

SECTION 28. PAYMENT AND PERFORMANCE BONDS

The Owner shall have the right, prior to the signing of the Contract, to require the Contractor to furnish bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder, in such form as the Owner may prescribe in the bidding documents and executed by one or more financially responsible sureties. If such bonds are required, the premium shall be paid by the Contractor. The Owner may require additional bond if the contract is increased appreciably.

SECTION 29. ASSIGNMENT

Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due to Contractor or to become due to Contractor hereunder, except to bank or financial institution acceptable to the Owner.

SECTION 30. RIGHTS OF VARIOUS INTERESTS

If work by the Owner's or Contractor's forces is contiguous to work covered by this Contract, the respective rights of the various interests involved shall be established by the Engineer/Architect to secure the completion of the various portions of the work in general harmony.

SECTION 31. SEPARATE CONTRACTS

31.1 The Owner reserves the right to permit other contracts in connection with the project. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate Contractor's work with other contracted parties. The parties agree that the Owner shall not be responsible or liable for any delays in Contractor's progress or completion of the work that are caused, in whole or in part, by the acts or omissions of other contractors, subcontractors, or third parties.

31.2 If the proper execution or results of any part of the Contractor's work depends upon the work of any other contract, the Contractor shall inspect and promptly report to the Engineer/Architect any defects in such work that render it unsuitable for such proper execution and results.

SECTION 32. SUBCONTRACTS

32.1 The Contractor shall, as soon as practical after signing of the Contract, notify the Engineer/Architect in writing of the names of Subcontractors proposed for the work.

32.2 The Contractor shall be fully responsible to the Owner for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by them.

GENERAL CONDITIONS OF CONTRACT continued:

SECTION 32. SUBCONTRACTS continued:

32.3 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the Owner.

SECTION 33. ENGINEER'S/ARCHITECT'S STATUS

The Engineer/Architect shall perform technical observation of the work. Engineer/Architect shall also have authority to reject all work and materials which do not conform to the Contract and to decide questions which arise in the execution of the work.

SECTION 34. ENGINEER'S/ARCHITECT'S DECISION

The Engineer/Architect shall, within a reasonable time after having received proper notification, make decisions in writing on all claims of the Owner or the Contractor and on all other matters relating to the execution and progress of the work or the interpretation of the Contract Documents.

SECTION 35. JURISDICTION AND VENUE; MEDIATION, LITIGATION AND ARBITRATION

35.1 As a condition precedent to any suit or arbitration being filed or initiated, any controversy or claim arising out of or relating to this contract, or the breach thereof, is subject to mandatory mediation to take place in Hidalgo County, Texas at a time agreed upon by the parties. Such mediation must be held within thirty (30) days after the date either party requests mediation, unless otherwise agreed.

35.2 The Parties agree that any dispute arising out of or related to this Contract would likely involve an inquiry and interpretation of a substantial federal issue. Accordingly, the parties further agree that, if such mediation is unsuccessful, the proper and exclusive forum and venue in all legal actions brought to enforce or construe any of the provisions of this Contract shall be in the United States District Court for the Southern District of Texas, McAllen Division. The Owner and Contractor agree and stipulate that the United States District Court for the Southern District of Texas, McAllen Division, has personal jurisdiction over the parties. However, if federal subject matter jurisdiction is found to be lacking in any legal action, or if a federal court otherwise refuses or fails to exercise jurisdiction over the parties or the dispute, the Parties agree to submit any dispute arising out of or related to this Contract to binding arbitration pursuant to the Texas General Arbitration Act, Chapter 171 of the Texas Civil Practice and Remedies Code ("TAA") and the terms of this Section 36. To the extent that TAA and this Section 36 conflict, the provisions of this Section 36 will apply.

35.3 The parties will select a single arbitrator in accordance with the rules of the American Arbitration Association. The parties further agree that all depositions in any arbitration shall be limited to a total of 24 hours for each party. The parties further agree that the parties shall not serve interrogatories or requests for admission on the other party. The parties further agree that the parties will instruct the Arbitrator, and the Arbitrator is required, to follow the substantive law of the State of Texas and to issue a reasoned award with findings of fact and conclusions of law. **The Arbitrator does not have authority to render a decision which contains a reversible error of state or federal law; the Arbitrator exceeds the Arbitrator's powers if the Arbitrator renders a decision which contains a reversible error of state or federal law.** The parties further agree that a court reporter shall be present and keep a record of all hearings, which shall be conducted in Hidalgo County, Texas, and the cost of which will be divided equally among the parties notwithstanding any final award entered by the Arbitrator.

GENERAL CONDITIONS OF CONTRACT continued:

SECTION 35. JURISDICTION AND VENUE; MEDIATION, LITIGATION AND ARBITRATION continued:

35.4 The parties further agree that the award of the Arbitrator may be reviewed based on the record by a state district court having jurisdiction over the parties and the subject matter and that, notwithstanding the applicability of the TAA, such district court shall conduct a *de novo* review of the award of the Arbitrator and consider any improper application of the law, and/or abuse of discretion by the Arbitrator, in considering the award of the Arbitrator and determining whether to confirm, vacate or modify the award of the Arbitrator. The parties further agree that any judgment or final order entered by the district court is subject to further appellate review consistent with applicable rules of appellate procedure that otherwise would be followed upon a judgment or final order being issued by such District Court.

SECTION 36. COORDINATION WITH OTHER PARTIES

The Contractor shall coordinate the Contractor's schedule with the schedule, work, labor, materials and/or equipment provided by all other contractors, subcontractors, manufacturers and suppliers to ensure timely completion of the project. The Contractor shall be responsible for reducing, mitigating, eliminating or limiting any delays or damages caused, in whole or in part, by all other contractors, subcontractors, manufacturers, suppliers and any other third parties, including, but not limited to, delays or damages caused by a lack of access to the lands upon which the work under the Contract is to be done. The parties agree that the Owner is not liable for any delays or damages caused, in whole or in part, by any other contractors, subcontractors, manufacturers, suppliers and/or any other third parties. The Contractor shall provide at his own expense and without liability to the Owner any land and access thereto that may be required for temporary construction facilities, or for storage of material.

SECTION 37. LAND FOR WORK

37.1 The Owner shall provide as indicated on Drawings, and not later than the date when needed by the Contractor, the lands upon which the work under this Contract is to be done, right-of-ways for access to same, and such other lands which are designated on the Drawings for the use of the Contractor. Such lands and right-of-ways shall be adequate for the performance of the Contract. Any delay in the furnishing of these lands by the Owner shall be deemed proper cause for an equitable adjustment in both Contract price and time of completion.

37.2 The Contractor shall provide at his own expense and without liability to the Owner any additional land and access thereto that may be required for temporary construction facilities, or for storage of material.

SECTION 38. CLEANING UP

The Contractor shall remove from the Owner's property and from all public and private property all temporary structures, rubbish and waste materials resulting from Contractor's operations, at Contractor's expense. This requirement shall not apply to property used for permanent disposal of rubbish or waste, and materials in accordance with permission granted of such disposal to the Contractor by the Owner thereof.

GENERAL CONDITIONS OF CONTRACT continued:

SECTION 39. ACCEPTANCE AND FINAL PAYMENT

39.1 Upon receipt of written notice that the work is substantially completed or ready for final inspection and acceptance, the Engineer/Architect will promptly make such inspection, if Engineer/Architect finds the work acceptable under the Contract, and Contract fully performed, or substantially completed, Engineer/Architect shall promptly issue a signed certificate stating that the work required by this Contract has been completed or substantially completed and is accepted by Engineer/Architect under the terms and conditions thereof. The certificate shall contain the entire balance found to be due and payable to the Contractor, including the retained percentage, less a retention based on the Engineer's/Architect's estimate of the fair value of the claims against the Contractor and the cost of completing the incomplete or unsatisfactory items of work with specified amounts for each incomplete or defective item of work. The date of substantial completion of a project or specified area of a project is the date when the construction is sufficiently completed in accordance with the Contract Documents as modified by any change orders agreed to by the parties so that the Owner can occupy the project for the use for which it was intended.

39.2 Before issuance of final payment, the Contractor, if required in the Special Conditions, shall certify in writing to the Engineer/Architect that all payrolls, material bills, and other indebtedness or liens, with the work have been paid, or otherwise satisfied, except that in case of disputed indebtedness or liens, if the Contract does not include a payment of all such disputed amounts, including all related costs and interest in connection with said disputed indebtedness or lien which the Owner may be compelled to pay upon adjudication.

39.3 The making and acceptance of the final payment shall constitute a waiver of all claims by the Owner, other than those arising from unsettled liens, from faulty work appearing within a one year guarantee period from date of acceptance, from the requirements of the Drawings and Specifications, or from the manufacturer's guarantees. It shall also constitute a waiver of all claims by the Contractor, except those previously made and still unsettled.

39.4 In the event that the Contractor has previously made a claim that is still unsettled, the Owner shall be entitled to withhold from the final payment, as an offset, any amounts that the Owner, in its sole discretion, believes that the Contractor may owe to the Owner for liquidated damages or for the Contractor's failure to timely complete the project. Notwithstanding anything to the contrary herein, the Owner shall not be liable, in any event, for any interest that accrues on any amount(s) withheld from the final payment, as an offset, that the Owner, in its sole discretion, believes that the Contractor may owe to the Owner for liquidated damages or for the Contractor's failure to timely complete the project.

39.5 If after the work has been substantially completed, full completion thereof is materially delayed through no fault of the Contractor's and the Engineer/Architect so certified, the Owner shall, upon certificate of the Engineer/Architect, and without terminating the contract, make payment of the balance due for that portion of the work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

39.6 Payments shall be in accordance with Texas Government Code § 2251. The Owner shall not be responsible for paying any interest on any amounts withheld from any progress payments or from final payment that the Owner, in its sole discretion, believes that the Contractor may owe to the Owner for liquidated damages or for the Contractor's failure to timely complete the project.

GENERAL CONDITIONS OF CONTRACT continued:

SECTION 39. ACCEPTANCE AND FINAL PAYMENT continued:

39.7 Contractor is advised that it shall be a requirement of this contract to submit the following forms, properly executed, along with their final Request for Payment: “AFFIDAVIT AND WAIVER OF LIEN-PRIME CONTRACTOR”, “RELEASE AND WAIVER OF CLAIMS BY SUBCONTRACTORS AND PRODUCT VENDORS”, “CONTRACTOR’S AFFIDAVIT AS TO STATUS OF LIENS”. **Failure to submit these forms as required will cause a delay in payment to the contractor.**

SECTION 40. GENERAL GUARANTY

40.1 Neither the final certificate of payment nor any provision in the Contract Documents nor partial or entire occupancy of the premises by the Owner shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall guarantee all materials and equipment furnished and Work performed for a period of one (1) year from the date of Substantial Completion. The Contractor warrants and guarantees for a period of one (1) year from the date of Final Acceptance of the system that the completed system is free from all defects due to faulty materials or workmanship and the Contractor shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the system or other work resulting from such defects.

40.2 The Owner will give notice of observed defects with reasonable promptness. In the event that the Contractor should fail to make such repairs, adjustments, or other work that may be made necessary by such defects, the Owner may do so and charge the Contractor the cost thereby incurred. The Performance Bond shall remain in full force and effect through the guarantee period.

SECTION 41. SHOP DRAWINGS

The approval of shop drawings by the Engineer/Architect shall not be construed as a complete check, but will indicate only that the general method of construction and detailing is satisfactory. Approval of such drawings will not relieve the Contractor of the responsibility for any error which may exist as the Contractor shall be responsible for the dimensions and design of adequate connections, details and satisfactory construction of all work.

SECTION 42. TESTING

All testing authorized by the Engineer/Architect that meets specification requirements will be paid for by the Owner. Tests on materials that fail will be billed to and paid for by the Contractor.

SECTION 43. PAYMENTS

43.1 Payments shall be in accordance with Texas Government Code § 2251.

43.2 Contractor shall submit to the Owner a Certificate for Payment on or before the 1st of the month.

43.3 The Owner shall pay to the Contractor for the performance of the work the amounts determined for the total number of each of the units of work completed at the unit price stated thereafter. The total number of units contained in the schedule is approximate only, and the final payment shall be made for the actual number of units that are incorporated in or made necessary by the work covered by the contract.

GENERAL CONDITIONS OF CONTRACT continued:

SECTION 44. PROGRESS PAYMENTS

The owner shall make payments on account of the Contract as follows:

44.1 Not later than the first day of every month the Contractor shall present to the Engineer/Architect a Certificate for Payment covering the total quantities under each item of work that has been completed from the start of the job to and including the last day of the preceding month, and the value of the work so completed determined in accordance with the schedule of unit prices for such items together with such supporting evidence as may be required by the Engineer/Architect.

44.2 Measurements of units for payment shall be made in accordance with the Special Conditions of the contract.

44.3 Owner's duty to pay shall be after receipt of complete certificate for payment certified by Engineer/Architect. Owner shall pay by mail to the Contractor (___%) of the amount of the invoice--less previous payments made. The (___%) retained percentage may be held by the Owner until the value of the work completed at the end of any month equals 50 percent of the total amount of the Contract after which, if the Engineer/Architect finds that satisfactory progress is being made, recommendation shall be that all of the remaining monthly payments be paid at a percentage of retainage less than stated above. Payments for work under subcontracts of the Contractor, shall be subject to the above conditions applying to the Contract after the work under a Subcontract has been 50 percent completed.

44.4 The Engineer/Architect will have up to ten (10) business days of review after a complete and accurate application has been received for review from the Contractor.

44.5 For purposes of Tex. Gov't Code § 2251.021(a)(2), the date the performance of service is complete is the date when the Owner's Designated Representative (ODR) approves the Application for Payment.

SECTION 45. RETAINAGE

Contracts equaling a total amount of \$400,000.00 or over will bear a retainage of five percent (5%) on each partial disbursement. Contracts totaling less than \$400,000.00 will bear a retainage of ten percent (10%) on each partial disbursement.

SECTION 46. OVERTIME

Contractor shall pay its employees performing work under the contract time and one half for all hours worked in excess of forty (40) hours in one work week.

SECTION 47. RIGHT TO AUDIT

The Owner reserves the right to audit the Contractor's books and records relating to the performance of the contract. The Owner, at its own expense, shall have the right at all reasonable times during normal business hours and upon at least twenty-four (24) hours' advance notice, to audit, examine, and make copies of or extracts from the books of account and records maintained by the Contractor with respect to the Construction Contract. If such audit shall disclose overpayment by Owner to Contractor, written notice of such overpayment shall be provided to the Contractor and the amount of overpayment shall be promptly reimbursed by Contractor to the Owner. In the event any such overpayment is not paid within ten (10) business days after receipt of such notice, the unpaid amount of such overpayment shall bear interest at the rate of one percent (1%) per month from the date of such notice until paid.

GENERAL CONDITIONS OF CONTRACT continued:

SECTION 48. INDEMNITY AND HOLD HARMLESS AGREEMENT

To the fullest extent permitted by law, the CONTRACTOR will defend, indemnify and hold harmless the Owner, the Owner's Representative, the engineer/Architect and their agents and employees from any and all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from the performance of the WORK, including, but not limited to, claims, damage, loss or expenses attributable to bodily injury, sickness, death or to any injury to destruction of tangible property, including the loss of use resulting therefrom, caused in whole or in part by any negligent or willful act or omission of the CONTRACTOR, SUBCONTRACTOR, anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable.

SECTION 49. LIMITATION OF LIABILITY

The Owner's liability to Contractor UNDER any CLAIM FOR breach of contract is limited pursuant Section 271.153 of the Texas Local Government Code. Notwithstanding the foregoing, and to the fullest extent permitted by law, the Owner's liability to Contractor shall not exceed the difference between Contractor's actual costs to complete the Work, on one hand, and the total amount of compensation for which Contractor agreed to perform all of the Work described in the Contract Documents as referenced in the bid schedule and in article 1 of the form of Agreement, allowing for adjustments in the compensation owed to Contractor pursuant to any change orders agreed upon by the parties in writing, on the other hand. Additionally, regardless of the nature of any claim(s) asserted against the Owner, the parties agree that the Owner shall not be liable to the Contractor for any labor overrun, equipment overrun, material escalation, extended field costs, DELAYS CAUSED BY THE SUBMISSION OF INCORRECT OR INCOMPLETE SUBMITTALS, consequential DAMAGES, indirect DAMAGES, incidental DAMAGES, punitive OR EXEMPLARY DAMAGES, or any other non-direct damages, including, but not limited to, lost profits, loss of bonding capacity, unabsorbed home office overhead, loss in labor productivity, or any consequential damages that otherwise would be allowed under Section 271.153(a)(1) of the Texas Local Government Code.

END OF SECTION

EXHIBIT 1

AFFIDAVIT AND WAIVER OF LIEN PRIME CONTRACTOR

STATE OF _____

COUNTY OF _____

Personally appeared before me, the undersigned Notary Public for said County and State
_____ (Name of Individual),

_____ (Title) of _____

(Prime Contractor), who being duly sworn by me states on oath that all product suppliers and Subcontractors, payrolls, sales tax, privilege tax or license, old age benefits tax, state and federal unemployment insurance, and other liabilities incurred in the performance of _____

(Type of Contract) Contract for the construction of improvements at **Project No. #** _____

Project Title _____ (**Name of Project**), have been paid in full and that the above named Prime Contractor waives any claims and released _____

(Owner) from any rights or claims (including lien rights) for debts due and owing by virtue of the furnishing of any labor, products, and supplies furnished for such improvements.

The above named Prime Contractor agrees to indemnify the Owner and save him harmless on account of any loss he may sustain in reliance upon this Affidavit and Waiver of Lien including the amount of any lien he may be compelled to pay all costs relating thereto and a reasonable attorney's fee.

(Name of Company)

Signature: _____

By: _____
Type/Print Name

Title: _____

Date: _____

Sworn to and subscribed before me
this the ___ day of _____, 20__.

Notary Public

My Commission Expires: _____

EXHIBIT 2

**RELEASE AND WAIVER OF CLAIMS BY
SUBCONTRACTORS AND PRODUCT VENDORS**

STATE OF _____

COUNTY OF _____

Personally appeared before me the undersigned authority in and for said County and State, _____ (Name of Individual), _____ (Title) of _____ (Company), who, being duly sworn by me states on oath that all bills for labor and products, sales tax, privilege tax or license, old age benefits tax, state and federal unemployment insurance and other liability have been paid in full, or that funds are in hand to discharge such liabilities when due, incurred in the performance of its Subcontract for furnishing labor or products in the construction of improvements at **Project No. #** _____ **Project Title** _____ (**Name of Project & Location**), upon receipt of check in the amount \$ _____, the undersigned company waives any claims and releases _____ (Owner) from any rights or claims for debts due and owing by virtue of the furnishing of any labor or products and any lien therefore.

(Name of Company)

Signature: _____

By: _____
Type/Print Name

Title: _____

Date: _____

Sworn to and subscribed before me
this ____ day of _____, 20__.

Notary Public

My Commission Expires: _____

EXHIBIT 3

CONTRACTOR’S AFFIDAVIT AS TO STATUS OF LIENS

STATE OF _____

COUNTY OF _____

Personally appeared before me, the undersigned Notary Public for said County and State,
_____(Name of Individual), _____ (Title),
of _____ (Prime Contractor), who being duly sworn
by me states on oath that to the best of his knowledge and belief, except as listed below, the
Releases and Waivers of Claim attached hereto include all Subcontractors and all suppliers of
labor, products, and equipment provided by all persons who may have lien against the property of
(Owner), **Project No.** _____ **Project Title** _____
_____, located at _____
(Location of Project), arising out of the construction of improvements thereon.

Exceptions: (If none, write “NONE.” Any exception listed shall be bonded by the Contractor to indemnify the Owner, and a copy of each such bond shall be attached hereto.)

- 1.
- 2.
- 3.
- 4.

(Name of Company)

Signature: _____

By: _____
Type/Print Name

Title: _____

Date: _____

Sworn to and subscribed before me
this ____ day of _____, 20____

Notary Public
My Commission Expires: _____

TECHNICAL SPECIFICATIONS

DRAWINGS

(REFERENCE SEPARATE PLANS)