

BID DOCUMENTS

CITY OF COPPERAS COVE



PARKS MAINTENANCE BUILDING

Prepared for:

City of Copperas Cove
914 South Main
Copperas Cove, Texas 76522

BID NO.: 2016-21-54

DUE: August 11, 2016 @ 2:00 pm



June 23, 2016

Prepared By:

BSP Engineers, Inc.
15 W. Central
Temple, Texas 76501
(254) 774-9611



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**INVITATION TO PROPOSERS
(Competitive Sealed Proposals)**

PARKS MAINTENANCE BUILDING – BID NO. 2016-21-54

CITY OF COPPERAS COVE
Copperas Cove, Texas

CITY MANAGER
Andrea Gardner

Engineer:
BSP Engineers, Inc.
15 W. Central Ave.
Temple, Texas 76501
(254) 774-9611

1. **REQUEST FOR COMPETITIVE SEALED PROPOSALS (RFCSP):** The City of Copperas Cove, Texas, (“Owner”) of Coryell County, Texas, proposes to construct a new Parks Maintenance Building and is requesting competitive sealed proposals for the work. Proposals are to be submitted in accordance with this invitation and the accompanying instructions.
2. **DESCRIPTION OF PROJECT:** The Project is generally described as follows: The addition of a 5,560 square foot parks maintenance shop building, electrical upgrades to an existing shop building, and the conversion of an existing storage building to provide two offices, an employee breakroom, a storage room, and upgrades to an existing restroom to meet ADA compliance.
3. **TIME OF COMMENCEMENT AND COMPLETION:** It is expected that work is to commence no later than 10 calendar days after Notice to Proceed is issued. The project is expected to be completed in 150 calendar days.
4. **SELECTION CRITERIA:** Proposals shall be evaluated based on a combination of factors that the Owner determines provide the best value, including:
 - a. the purchase price; 25 points
 - b. the reputation of the proposer and of the proposer’s goods or services; 15 points
 - c. the quality of the proposer’s goods or services; 10 points
 - d. the extent to which the goods or services meet the Owner’s needs; 05 points
 - e. the proposer’s past performance on other similar projects; 10 points
 - f. the proposer’s ability to meet the required schedule or finish earlier than the required schedule 15 points
 - g. the total long-term cost to the Owner to acquire the proposer’s goods or services; and 05 points
 - h. any relevant criteria as follows: the Owner prefers to select a proposer in which the firm and both the Project Manager and the onsite Construction Superintendent have served in their respective capacities on two successful completed facilities having similar components 15 points

The Owner reserves the right to waive any informalities or to reject any or all proposals. Refer to the "INSTRUCTIONS TO PROPOSERS" for more information regarding selection criteria.

5. NON-MANDATORY PRE-PROPOSAL CONFERENCE: A Non-mandatory Pre-proposal Conference will be conducted at the Hills of Cove Golf Course Pro Shop, 1408 Golf Course Road, Copperas Cove, Texas, at 2:00 pm on Wednesday, July 27, 2016. All persons desiring to submit a proposal are invited to attend this conference. Although attendance is not required, it is highly recommended.
6. PROPOSAL DOCUMENTS: Proposal Documents, including Drawings and Technical Specifications may be obtained free of charge by logging onto www.civcastUSA.com.

In addition to the above, copies of the Proposal Documents may be examined during normal business hours at the following location:

Office of Financial Services
914 South Main Street, Suite H
Copperas Cove, TX 76522

7. SCHEDULE FOR PROPOSAL RECEIPT AND OPENING OF PROPOSALS: All proposals must be delivered in person, by United States mail, or common carrier. Proposals received by oral, telephone, fax, or other electronic means are invalid and will not receive consideration. All documents required to be submitted as set forth in the Instructions to Offerors shall be enclosed in a sealed, opaque envelope, addressed to the City Manager, City of Copperas Cove, at the address specified below and identified as a proposal for "**Parks Maintenance Building – Bid No. 2016-21-54**". If the proposal is delivered other than by personal delivery, the sealed envelope shall be enclosed in a separate envelope clearly notated "Sealed Proposal Enclosed" on the face thereof. All proposals must be delivered to the Owner at the following address:

Andrea Gardner
City Manager
City of Copperas Cove
914 South Main Street, Suite H
or P.O. Drawer 1449
Copperas Cove, TX 76522

Proposals will be received by the Owner until 2:00 pm on Thursday, August 11, 2016. At such time, all proposals timely received shall be publicly opened and the name of the Proposer, the monetary terms, and proposed schedule of the proposal read aloud. Each offeror shall assume full responsibility for timely delivery of its proposal to the location designated for receipt of proposal. Proposals received after

the date and time for receipt of proposals will not receive consideration and will be returned unopened. Refer to the "INSTRUCTIONS TO PROPOSERS" for more information regarding the selection process. In the event a successful contract has been negotiated, the Owner shall award the contract at their earliest convenience.

8. **PROPOSAL SECURITY:** Each proposal must be accompanied by proposal security in the amount of five percent (5%) of the total proposal, including all additive alternatives, pledging that the successful Proposer will, within 14 calendar days after the successful Proposer is notified of the acceptance of its proposal, enter into a written contract with the Owner on the terms stated in the proposal documents, as evidenced by the unconditional execution and delivery of such contract, and furnish payment and performance bonds, evidence of insurance and other submittals as required by the proposal documents. Should the successful offeror fail or refuse to enter into such contract or furnish such bonds or evidence of insurance within the time above-stated, such proposal security shall be forfeited to the Owner as damages, not as a penalty. Such proposal security shall be in the form of cash, certified funds payable to the order of the Owner, or a bond in favor of the Owner. The bond shall be on AIA Document A310 "1970 Edition," and shall be issued by a corporate surety duly authorized and admitted to do business in the State of Texas and licensed by the State of Texas to issue surety bonds. If the amount of the bond exceeds the legal underwriting limitation of the surety, the Proposer and the surety shall provide the Owner with evidence that the excess is reinsured with one or more reinsurers who are duly authorized, accredited, and licensed to do business in the State of Texas. Any proposal which is not accompanied with proposal security in the form and amount required herein shall be rejected as nonconforming. The Owner shall have the right to retain the security of all proposers to whom an award is being considered until either (i) the Contract has been unconditionally executed and delivered by the parties and any required payment and performance bonds, evidence of insurance and other submittals have been furnished, or (ii) all proposals have been rejected by the Owner without the acceptance of any proposal.
9. **EXEMPTION FROM SALES TAX ON MATERIALS:**
 - a. Under Ruling Number 9, Repairmen and Contractor (amended April 3, 1962), Limited Sales, Excise and Use Tax Rules and Regulations, Comptroller of Public Accounts, State of Texas, tangible personal property (materials) becoming a part of improvements and structures and incorporated in such under lump sum contracts are not subject to sales taxes when the cost of such materials are segregated from the cost of skill, labor, and all other materials not becoming a part of the improvement of structure. Under the interpretation of this ruling, contracts entered into with the tax exempt Owner will state not only the lump sum but also the value of materials and equipment incorporated into this project which are exempt (in accordance with Article 20.01 (T) of the Texas Limited Sales Tax Law) from the State Sales Tax, provided: the contract is drawn segregating the cost of labor, contractor's equipment, overhead, profit or other costs of the Contract; The Comptroller of Public Accounts; the Owner issues an Exemption Certificate to the Contractor for the project. Subcontractors may follow this same procedure in purchasing materials or equipment which are to be incorporated into the construction.
 - b. Tools, scaffolding, form lumber, fuel and all other items relating to, but not actually a part of the construction, are not exempt from the State Sales Tax. The Owner will issue an Exemption Certificate for this project, but will accept no

responsibility for the performance by the Contractor or his Subcontractors of the procedures necessary to insure exemption or payment of the tax.

10. APPLICABLE LAWS, ORDINANCES, RULES AND REGULATIONS: The Proposer's attention is directed to the fact that all applicable State Laws, ordinances, and the rules and regulations of all authorities having jurisdiction over the construction of the project shall apply to the Contract throughout and they will be deemed to be included in the Contract the same as if written therein in full.

11. INFORMATION OR INTERPRETATION OF CONTRACT DOCUMENTS:

Prospective Proposers requiring further information or interpretation of the Contract Documents (Drawings and Specifications) shall request such information in writing on the form "Proposal Information Request" included in this document no later than 2:00 pm Friday, August 5, 2016, from:

Velia Key
Director of Financial Services
914 S. Main Street, Suite H
or P.O. Drawer 1449
Copperas Cove, TX 76522

Only written responses in the form of addenda shall be considered by the Prospective Proposers when submitting a proposal.

12. ADDENDA: Answers to all questions, inquiries, or request for additional information will be issued in the form of Addenda, and copies of each Addendum will be issued to all prospective Proposers. Also, prospective Proposers may, during the proposal period be advised by Addendum of additions to, deletions from, or changes in the requirements of the Contract Document. The Engineer and the Owner will not be responsible for the authenticity or correctness of oral interpretations of the Contract documents or for information obtained in any other manner than through the media of addenda. Receipt of each Addendum shall be acknowledged by Proposers in their proposal form and each Addendum shall be considered a part of the Contract Documents. Failure to acknowledge receipt of any addendum issued may invalidate a proposal as unresponsive.

INSTRUCTIONS TO PROPOSERS

1. All definitions set forth in the General Conditions are applicable to these Instructions to Proposers.
2. Each Proposer, by making their proposal, represents that they have read and understand the proposal documents.
3. The proposal shall be submitted in duplicate on the form furnished which is inserted in the Project Manual. The envelope containing any proposals shall be endorsed: **“Parks Maintenance Building – Bid No. 2016-21-54”**.
4. Proposal is to be accompanied by a certified check, bank cashier's check, or bid bond issued by a surety company licensed to do business in the State of Texas, in an amount equal to five percent (5%) of the proposal, payable without condition to the City of Copperas Cove as a guaranty that Proposer, if awarded the contract, will promptly execute the agreement in accordance with the proposal. The guarantees of all Proposers not receiving consideration will be promptly returned.
5. In case of ambiguity or lack of clearness in the proposal, the Owner reserves the right to adopt the most advantageous construction thereof.
6. The Owner reserves the right to reject any and all proposals, to waive all formalities, or to award a contract to the lowest Proposer as qualified in accordance with the conditions set forth in the specifications, or to make the award most favorable to the Owner according to the best judgment of the Owner.

No proposal may be withdrawn by the Bidder until sixty (60) days after the opening of proposals.

7. The successful Proposer will be required to enter into a contract with the City of Copperas Cove requiring full compliance and performance of the conditions of the proposal, plans and specifications, within fourteen (14) days of the award of contract and agrees to commence work no later than ten (10) days after Notice to Proceed.
8. Proposers are required to thoroughly familiarize themselves with all of the provisions of the “Instructions to Proposers”, “General Conditions”, “Plans” and “Specifications”. They are further required to inspect the site of the work to be performed. The filing of the “Proposal” shall constitute an admission by the proposer that he has carried out the foregoing stipulations to his entire satisfaction. All incidentals of work or material which are required to complete the item specified shall be included in the Proposal Item or furnished at no added cost to the Owner.
9. Proposal Documents, including Drawings and Technical Specifications may be obtained free of charge by logging onto www.civcastUSA.com.

In addition to the above, copies of the Proposal Documents may be examined during normal business hours at the following location:

Office of Financial Services
914 South Main Street, Suite H
Copperas Cove, TX 76522

10. The Bidder's attention is directed to the fact that all applicable State Laws, Ordinances, and the rules and regulations of all authorities having jurisdiction over the construction of the project shall apply to the Contract throughout and they will be deemed to be included in the Contract the same as if written therein in full.
11. Answers to all questions, inquiries, or request for additional information will be issued in the form of Addenda, and copies of each Addendum will be issued to all prospective Proposers. Also, prospective Proposers may, during the proposal period be advised by Addendum of additions to, deletions from, or changes in the requirements of the Contract Documents. The Engineer and the Owner will not be responsible for the authenticity or correctness of oral interpretations of the Contract Documents or for information obtained in any other manner than through the media of addenda. Receipt of each Addendum shall be acknowledged by Proposers in their proposal form and each Addendum shall be considered a part of the Contract Documents. Failure to acknowledge receipt of any addendum issued may invalidate a proposal as unresponsive.
12. If the Contractor should fail to complete the work within the Contract Time, or extensions of time granted by the Engineer, then the Contractor will pay the Owner the amount of Liquidated Damages, all as outlined in the Agreement. Furthermore, no payment will be made on account of the Contract after Completion Dates set out in the Notice to Proceed other than the final payment at completion of work.
14. Before making an award, the successful proposer may be required to submit a statement of financial resources, a listing of equipment available for the work being bid upon, and to show evidence of having performed work of a nature similar to that to be undertaken, and upon award of a contract, must show evidence of insurance to fully cover and protect the Owner, the Engineer, and the Contractor. Bond and insurance requirements are shown elsewhere.
15. Insurance coverage must be approved in all respects by the Owner's Insurance Counselor and shall provide that written notice must be furnished to the Owner 30 days prior to any cancellation of the insurance coverage required by the Contract Documents.

The required kinds and amounts of insurance are listed in the Insurance Requirements Sections included in this Project Manual.
16. Performance and Payment Bonds will be required on this project. The Successful Bidder Must Deliver to the Owner fully executed Performance and Payment Bonds in the amount of 100 percent (100%) of the accepted proposal as security for the faithful performance of the contract and payment of all persons performing labor and furnishing materials in connection with this contract prior to commencing work.
17. The Payment and Performance Bonds shall meet the requirements of Tex. Rev. Civ. Stat. Art. 5160 (the McGregor Act) as amended by House Bill No. 2, 72nd Legislature, Regular Session. All bonds shall be issued by a surety company

licensed, listed and authorized to issue bonds in the State of Texas by the Texas Department of Insurance. The surety company may be required by the City of Copperas Cove to have a rating of not less than ABC in the latest edition of Best's Insurance Reports, Property Casualty. The surety company shall also provide the requested information necessary to document net worth, stability, total bonding capacity, other projects under coverage and shall provide proof of establish adequate financial capacity for this project.

18. Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by an reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus.

19. CLARIFICATION CLAUSE:

If any person contemplating submitting a proposal for this contract is in doubt as to the true meaning of the specifications, or other proposal documents or any part thereof, he may request such information in writing on the form "Proposal Information Request" included in this document no later than 2:00 pm Friday, August 5, 2016, from:

Velia Key
Director of Financial Services
914 S. Main Street, Suite H
or P.O. Drawer 1449
Copperas Cove, TX 76522

Only written responses in the form of Addenda shall be considered by the Prospective Proposers when submitting a proposal.

In case of a difference in written words and figures in a proposal, the amount stated in written words shall govern.

20. Proposer shall execute and deliver to Owner with its Proposal, each of the following:
- Schedule 1. **Contractor's Qualification Statement (AIA Form A305).**
 - Schedule 2. **Certificate for "Asbestos Free":** Materials used in all phases of the construction process.
 - Schedule 3. **Felony Conviction Notification:** Executed counterpart of the Felony Conviction Notification, in the form attached to the Proposal Form.
 - Schedule 4. **Hold Harmless Agreement**
 - Schedule 5. **Certificate of Insurance:** A specimen form of insurance certificate(s) (which may be marked "For Proposal Purposes Only") evidencing the coverages specified in the General Conditions is to be furnished by the Contractor, on the most current edition of the **ACORD Form 25-S.**

Items (1) – (5) above are required by the Owner to adequately evaluate the Proposer’s qualifications. Failure of the Proposer to deliver any such items with its proposal shall constitute a basis for rejection of the proposal by the Owner.

21. PROPOSAL SELECTION CRITERIA: Award of the Contract resulting from this solicitation shall be under the selection process described herein. Owner will evaluate Proposals submitted in response to this solicitation. The eight (8) divisions of selection criteria (“Divisions”) are as follows:

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| a. the purchase price; | 25 points |
| b. the reputation of the proposer and of the proposer’s goods or services; | 15 points |
| c. the quality of the proposer’s goods or services; | 10 points |
| d. the extent to which the goods or services meet the Owner’s needs; | 05 points |
| e. the proposer’s past performance on other similar projects; | 10 points |
| f. the proposer’s ability to meet the required schedule or finish earlier than the required schedule | 15 points |
| g. the total long-term cost to the Owner to acquire the proposer’s goods or services; and | 05 points |
| h. any relevant criteria as follows: the Owner prefers to select a proposer in which the firm and both the Project Manager and the onsite Construction Superintendent have served in their respective capacities on two successful completed facilities having similar components | 15 points |

Proposals are to include all documents that would be necessary to evaluate submitted proposal and rank proposal according to the above criteria. Examples of documentation necessary are Contractor’s Qualifications Statement (AIA Form 305), List of References, and completion of all documentation contained within this Request for Proposals.

Each of the Divisions has been assigned an appropriate weight by the Owner. Following an analysis and evaluation of the proposals, ranking of the Proposers will be made based upon the selection Criteria. Subjective judgment on the part of the Owner is implicit in the criteria selection process. The selection process permits placing technical considerations above total price. Therefore, the Owner reserves the right to award to other than the lowest proposed price. Once the Proposers have been ranked, the Owner will begin contract negotiations with the first ranked Proposer. If the Owner is unable to come to terms with the first ranked Proposer, discussions will be terminated and the Owner will proceed to the next ranked Proposer and then repeat the process until a contract agreement is reached or all proposals are rejected.

PROPOSAL INFORMATION REQUEST
PARKS MAINTENANCE BUILDING – BID NO. 2016-21-54

DATE: _____

TO: Velia Key
Director of Financial Services
914 S. Main Street, Suite H
or P.O. Drawer 1449
Copperas Cove, TX 76522

PROJECT: _____

FROM: _____

Address: _____

Telephone: _____

The following are questions which require clarification on the above referenced project:

RESPONSE (By Engineer):

BY: _____

DATE: _____

WAGE RATES FOR COMMERCIAL BUILDING CONSTRUCTION

The following information is from Chapter 2258 Texas Government Code Title 10:

(2258.021) Duty of Governmental Entity to Pay Prevailing Rates

- (a) The state or any political subdivision of the state shall pay a worker employed by it or on behalf of it:
 - (1) not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and
 - (2) not less than the general prevailing rate of per diem wages for legal holiday and overtime work.
- (b) Subsection (a) does not apply to maintenance work.
- (c) A worker is employed on a public work for the purposes of this section if the worker is employed by a contractor or subcontractor in the execution of a contract for the public work with the state, a political subdivision of the state, or any officer or public body of the state or a political subdivision of the state.

(2258.023) Prevailing Wage Rates to be Paid by Contractor and Subcontractor; Penalty

- (a) The contractor who is awarded a contract by a public body or a subcontractor of the contractor shall pay not less than the rates determined under Section 2258.022 to a worker employed by it in the execution of the contract.
- (b) A contractor or subcontractor who violates this section shall pay to the state or a political subdivision of the state on whose behalf the contract is made, \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. A public body awarding a contract shall specify this penalty in the contract.
Note: This penalty applies even if the contractor or subcontractor and the worker come to an agreement on the underpaid wages (see Attorney General Opinion DM-469).
- (c) A contractor or subcontractor does not violate this section if a public body awarding a contract does not determine the prevailing wage rates and specify the rates in the contract as provided by Section 2258.022.
- (d) The public body shall use any money collected under this section to offset the costs incurred in the administration of this chapter.
- (e) A municipality is entitled to collect a penalty under this section only if the municipality has a population of more than 10,000.

(2258.051) Duty of Public Body to Hear Complaints and Withhold Payment

- A public body awarding a contract, and an agent or officer of the public body, shall:
- (1) take cognizance of complaints of all violations of this chapter committed in the execution of the contract; and
 - (2) withhold money forfeited or required to be withheld under this chapter from the payments to the contractor under the contract, except that the public body may not withhold money from other than the final payment without determination by the public body that there is good cause to believe that the contractor has violated this chapter.

GENERAL CONTRACT CONDITIONS FOR CONSTRUCTION PARKS MAINTENANCE BUILDING – BID NO. 2016-21-54

1. Contract and Contract Documents

- (a) The project to be constructed pursuant to this contract will be funded by City of Copperas Cove funds and is subject to all applicable Federal and State laws and regulations.
- (b) The Plans, Specifications, and Addenda shall form part of this contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth.

2. Definitions

Whenever used in any of the contract Documents, the following meanings shall be given to the terms here in defined:

- (a) The term "Contract" means the Contract executed between the City of Copperas Cove, hereinafter called the Owner and _____, hereinafter called Contractor, of which these GENERAL CONDITIONS, form a part.
- (b) The term "Project Area" means the area within which are the specified Contract limits of the Improvements contemplated to be constructed in whole or in part under this contract.
- (c) The term "Engineer" means BSP Engineers, Inc., Engineer in charge, serving the Owner with architectural or engineering services, his successor, or any other person or persons, employed by the Owner for the purpose of directing or having in charge the work embraced in this Contract.
- (d) The term "Contract Documents" means and shall include the following: Executed Contract, Addenda (if any), Invitation to Proposers, Instructions to Proposers, Signed Copy of Bid, General Conditions, Special Conditions, Technical Specifications, and Drawings (as listed in the Schedule of Drawings).

3. Supervision By Contractor

- (a) Except where the Contractor is an individual and gives his personal supervision to the work, the Contractor shall provide a competent superintendent, satisfactory to the Local Public Agency and the Engineer, on the work at all times during working hours with full authority to act for him. The Contractor shall also provide an adequate staff for the proper coordination and expediting of his work.
- (b) The Contractor shall lay out his own work and he shall be responsible for all work executed by him under the Contract. He shall verify all figures and elevations before proceeding with the work and will be held responsible for any error resulting from his failure to do so.

4. Subcontracts

- (a) The Contractor shall not execute an agreement with any subcontractor or permit any subcontractor to perform any work included in this contract until he has verified the subcontractor as eligible to participate in federally funded contracts.
- (b) No proposed subcontractor shall be previously disapproved by the City except for cause.

- (c) The Contractor shall be as fully responsible to the City for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them.
- (d) The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work and required compliance by each subcontractor with the applicable provisions of the Contract.
- (e) Nothing contained in the Contract shall create any contractual relation between any subcontractor and the Owner.

5. Fitting and Coordination of Work

The Contractor shall be responsible for the proper fitting of all work and for the coordination of the operations of all trades, subcontractors, or material suppliers engaged upon this Contract.

6. Payments to Contractor

(a) Partial Payments

- 1) The Contractor shall prepare his requisition for partial payment as of the last day of the month and submit it, with the required number of copies, to the Engineer for his approval. The amount of the payment due the Contractor shall be determined by adding to the total value of work completed to date, the value of materials properly stored on the site and deducting (1) ten percent (10%) of the total amount, to be retained until final payment and (2) the amount of all previous payments. The total value of work completed to date shall be based on the estimated quantities of work completed and on the unit prices contained in the agreement. The value of materials properly stored on the site shall be based upon the estimated quantities of such materials and the invoice prices. Copies of all invoices shall be available for inspection of the Engineer.
- 2) Monthly or partial payments made by the Owner to the Contractor are moneys advanced for the purpose of assisting the contractor to expedite the work of construction. The Contractor shall be responsible for the care and protection of all materials and work upon which payments have been made until final acceptance of such work and materials by the Owner. Such payments shall not constitute a waiver of the right of the Owner to require the fulfillment of all terms of the Contract and the delivery of all improvements embraced in this Contract complete and satisfactory to the Owner in all details.

(b) Final Payment

- 1) After final inspection and acceptance by the Owner of all work under the Contract, the Contractor shall prepare his requisition for final payment which shall be based upon the careful inspection of each item of work at the applicable unit prices stipulated in the Agreement. The total amount of the final payment due the Contractor under this contract shall be the amount computed as described above less all previous payments.
- 2) The Owner before paying the final estimate, shall require the Contractor to furnish releases or receipts from all subcontractors having performed any work and all persons having supplied materials, equipment (installed on the Project) and services to the Contractor, if the Owner deems it necessary in order to protect its interest. The Owner may, if it deems such action advisable, make payment in part or in full to the Contractor without requiring the furnishing of such releases or receipts and any payments made shall in no way impair the obligations of any surety or sureties furnished under this Contract.

3) Any amount due the Owner under Liquidated Damages, shall be deducted from the final payment due the contractor.

4) Retainage in the amount of ten percent (10%) shall be held until final completion.

(c) Payments Subject to Submission of Certificates

Each payment to the Contractor by the Owner shall be made subject to submission by the Contractor of all written certifications required of him and his subcontractors.

(d) Withholding Payments

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

7. Changes in the Work

(a) The Owner may make changes in the scope of work required to be performed by the Contractor under the Contract without relieving or releasing the Contractor from any of his obligations under the Contract or any guarantee given by him pursuant to the Contract provisions, and without affecting the validity of the guaranty bonds, and without relieving or releasing the surety or sureties of said bonds. All such work shall be executed under the terms of the original Contract unless it is expressly provided otherwise.

(b) Except for the purpose of affording protection against any emergency endangering health, life, limb or property, the Contractor shall make no change in the materials used or in the specified manner of constructing and/or installing the improvements or supply additional labor, services or materials beyond that actually required for the execution of the Contract, unless in pursuance of a written order from the Owner authorizing the Contractor to proceed with the change. No claim for an adjustment of the Contract Price will be valid unless so ordered.

(c) If applicable unit prices are contained in the Agreement, the Owner may order the Contractor to proceed with desired unit prices specified in the Contract; provided that in case of a unit price contract the net value of all changes does not increase the original total amount of the agreement by more than twenty-five percent (25%) or decrease the original the total amount by eighteen percent (18%).

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

1) A detailed description of the change in the work.

2) The Contractor's proposal (if any) or a confirmed copy thereof.

3) A definite statement as to the resulting change in the contract price and/or time.

4) The statement that all work involved in the change shall be performed in accordance with contract requirements except as modified by the change order.

- 5) The procedures as outlined in this Section for a unit price contract also apply in any lump sum contract.

8. Claims for Extra Cost

- (a) If the Contractor claims that any instructions by Drawings or otherwise involve extra cost or extension of time, he shall, within ten days after the receipt of such instructions, and in any event before proceeding to execute the work, submit his protest thereto in writing to the Owner, stating clearly and in detail the basis of his objections. No such claim will be considered unless so made.
- (b) Claims for additional compensation for extra work, due to alleged errors in ground elevations, contour lines, or bench marks, will not be recognized unless accompanied by certified survey data, made prior to the time the original ground was disturbed, clearly showing that errors exist which resulted, or would result, in handling more material, or performing more work, than would be reasonably estimated from the Drawings and maps issued.
- (c) Any discrepancies which may be discovered between actual conditions and those represented by the Drawings and maps shall be reported at once to the Owner and work shall not proceed except at the Contractor's risk, until written instructions have been received by him from the Owner.
- (d) If, on the basis of the available evidence, the Owner determines that an adjustment of the Contract Price and/or time is justifiable, a change order shall be executed.

9. Termination, Delays, and Liquidated Damages

- (a) Right of the Owner to Terminate Contract.
- (b) In the event that any of the provisions of this contract are violated by the Contractor, or by any of his subcontractors, the Owner may serve written notice upon the Contractor and the Surety of its intention to terminate the contract. The notices shall contain the reasons for such intention to terminate the contract, and unless such violation or delay shall cease and satisfactory arrangement of correction be made within ten days, the contract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, the Owner shall immediately serve notice thereof upon the Surety and the Contractor. The Surety shall have the right to take over and perform the contract. Provided, however, that if the Surety does not commence performance thereof within ten (10) days from the date of the mailing to such Surety of notice of termination, the Owner may take over the work and complete the project by bid/contract or by force account at the expense of the Contractor and his Surety shall be liable to the Owner for any excess cost incurred. In such event the Owner may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore.
- (c) Liquidated Damages for Delays. If the work is not completed within the time stipulated in the applicable bid for Lump Sum or Unit Price Contract provided, the Contractor shall pay to the Owner as fixed, agreed, and liquidated damages (it being impossible to determine the actual damages occasioned by the delay) the amount of \$200 for each calendar day of delay, until the work is completed. The Contractor and his sureties shall be liable to the Owner for the amount thereof.
- (d) Excusable Delays.

- 1) The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the work due to:
- 2) Any acts of the Government, including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, national defense, or any other national emergency;
- 3) Any acts of the Owner;
- 4) Causes not reasonably foreseeable by the parties to this Contract at the time of the execution of the Contract which are beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, acts of another Contractor in the performance of some other contract with the Owner, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, cyclones and other extreme weather conditions.
- 5) Provided, however, that the Contractor promptly notifies the Owner within ten (10) days in writing of the cause of the delay. Upon receipt of such notification, the Owner shall ascertain the facts and the cause and extent of delay. If, upon the basis of the facts and the terms of this contract, the delay is properly excusable, the Owner shall extend the time for completing the work for a period of time commensurate with the period of excusable delay.

10. Assignment or Novation

The Contractor shall not assign or transfer, whether by an assignment or novation, any of its rights, duties, benefits, obligations, liabilities, or responsibilities under this Contract without the written consent of the Owner; provided, however, that assignments to banks or other financial institutions may be made without the consent of the Owner. No assignment or novation of this Contract shall be valid unless the assignment or novation expressly provides that the assignment of any of the Contractor's rights or benefits under the Contract is subject to a prior lien for labor performed, services rendered, and materials, tools, and equipment supplied for the performance of the work under this Contract in favor of all persons, firms, or corporations rendering such labor or services or supplying such materials, tools, or equipment.

11. Disputes

- (a) All disputes arising under this Contract or its interpretation except those disputes covered by FEDERAL LABOR STANDARDS PROVISIONS whether involving law or fact or both, or extra work, and all claims for alleged breach of contract shall, within ten (10) days of commencement of the dispute, be presented by the Contractor to the Owner for decision. Any claim not presented within the time limit specified in this paragraph shall be deemed to have been waived, except that if the claim is of a continuing character and notice of the claim is not given within ten (10) days of its commencement, the claim will be considered only for a period commencing ten (10) days prior to the receipt of the Owner.
- (b) The Contractor shall submit in detail his claim and his proof thereof.
- (c) If the Contractor does not agree with any decision of the Owner, he shall in no case allow the dispute to delay the work but shall notify the Owner promptly that he is proceeding with the work under protest.

12. Technical Specifications and Drawings

Anything mentioned in the Technical Specifications and not shown on the Drawings or vice versa, shall be of like effect as if shown on or mentioned in both. In case of difference between Drawings and

Technical Specifications, the Technical Specifications shall govern. In case of any discrepancy in Drawings, or Technical Specifications, the matter shall be immediately submitted to the Owner, without whose decision, said discrepancy shall not be adjusted by the Contractor, save only at his own risk and expense.

13. Shop Drawings

- (a) All required shop drawings, machinery details, layout drawings, etc. shall be submitted to the Engineer in 3 copies for approval sufficiently in advance of requirements to afford ample time for checking, including time for correcting, resubmitting and rechecking if necessary. The Contractor may proceed, only at his own risk, with manufacture or installation of any equipment or work covered by said shop drawings, etc. until they are approved and no claim, by the Contractor, for extension of the contract time shall be granted by reason of his failure in this respect.
- (b) Any drawings submitted without the Contractor's stamp of approval will not be considered and will be returned to him for proper resubmission. If any drawings show variations from the requirements of the Contract because of standard shop practice or other reason, the Contractor shall make specific mention of such variation in his letter of transmittal in order that, if acceptable, suitable action may be taken for proper adjustment of contract price and/or time, otherwise the Contractor will not be relieved of the responsibility for executing the work in accordance with the Contract even though the drawings have been approved.
- (c) If a shop drawing is in accordance with the contract or involves only a minor adjustment in the interest of the Owner not involving a change in contract price or time; the engineer may approve the drawing. The approval shall not relieve the Contractor from his responsibility for adherence to the contract or for any error in the drawing.

14. Requests for Supplementary Information

It shall be the responsibility of the Contractor to make timely requests of the Owner for any additional information not already in his possession which should be furnished by the Owner under the terms of this Contract, and which he will require in the planning and execution of the work. Such requests may be submitted from time to time as the need approaches, but each shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay. Each request shall be in writing, and list the various items and the latest date by which each will be required by the Contractor. The first list shall be submitted within two weeks after Contract award and shall be as complete as possible at that time. The Contractor shall, if requested, furnish promptly any assistance and information the Engineer may require in responding to these requests of the Contractor. The Contractor shall be fully responsible for any delay in his work or to others arising from his failure to comply fully with the provision of this section.

15. Materials and Workmanship

- (a) Unless otherwise specifically provided for in the technical specifications, all workmanship, equipment, materials and articles incorporated in the work shall be new and the best grade of the respective kinds for the purpose. Where equipment, materials, articles or workmanship are referred to in the technical specifications as "equal to" any particular standard, the Engineer shall decide the question of equality.
- (b) The Contractor shall furnish to the Owner for approval the manufacturer's detailed specifications for all machinery, mechanical and other special equipment, which he contemplates installing together with full information as to type, performance characteristics, and all other pertinent information as required, and shall likewise submit for approval full information concerning all other materials or articles which he proposes to incorporate.

- (c) Machinery, mechanical and other equipment, materials or articles installed or used without such prior approval shall be at the risk of subsequent rejection.
- (d) Materials specified by reference to the number or symbol of a specific standard, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the Invitation for Bids, except as limited to type, class or grade, or modified in the technical specifications shall have full force and effect as though printed therein.
- (e) The Owner may require the Contractor to dismiss from the work such employee or employees as the Owner or the Engineer may deem incompetent, or careless, or insubordinate.

16. Samples, Certificates and Tests

- (a) The Contractor shall submit all material or equipment samples, certificates, affidavits, etc., as called for in the contract documents or required by the Engineer, promptly after award of the contract and acceptance of the Contractor's bond. No such material or equipment shall be manufactured or delivered to the site, except at the Contractor's own risk, until the required samples or certificates have been approved in writing by the Engineer. Any delay in the work caused by late or improper submission of samples or certificates for approval shall not be considered just cause for an extension of the contract time.
- (b) Each sample submitted by the Contractor shall carry a label giving the name of the Contractor, the project for which it is intended, and the name of the producer. The accompanying certificate or letter from the Contractor shall state that the sample complies with contract requirements, shall give the name and brand of the product, its place of origin, the name and address of the producer and all specifications or other detailed information which will assist the Engineer in making a prompt decision regarding the acceptability of the sample. It shall also include the statement that all materials or equipment furnished for use in the project will comply with the samples and/or certified statements.
- (c) Approval of any materials shall be general only and shall not constitute a waiver of the Owner's right to demand full compliance with Contract requirements. After actual deliveries, the Engineer will have such check tests made as he deems necessary in each instance and may reject materials and equipment and accessories for cause, even though such materials and articles have been given general approval. If materials, equipment or accessories which fail to meet check tests have been incorporated in the work, the Engineer will have the right to cause their removal and replacement by proper materials or to demand and secure such reparation by the Contractor as is equitable.
- (d) Except as otherwise specifically stated in the Contract, the costs of sampling and testing will be divided as follows:
 - 1) The Contractor shall furnish without extra cost, including packing and delivery charges, all samples required for testing purposes, except those samples taken on the project by the Engineer;
 - 2) The Contractor shall assume all costs of re-testing materials which fail to meet contract requirements;
 - 3) The Contractor shall assume all costs of testing materials offered in substitution for those found deficient;
 - 4) The Owner will pay all other expenses.

17. Permits and Codes

- (a) The Contractor shall give all notices required by and comply with all applicable laws, ordinances, and codes of the Local Government. All construction work and/or utility installations shall comply with all applicable ordinances, and codes including all written waivers. Before installing any work, the Contractor shall examine the drawings and technical specifications for compliance with applicable ordinances and codes and shall immediately report any discrepancy to the Owner. Where the requirements of the drawings and technical specifications fail to comply with such applicable ordinances or codes, the Owner will adjust the Contract by Change Order to conform to such ordinances or codes (unless waivers in writing covering the difference have been granted by the governing body or department) and make appropriate adjustment in the Contract Price or stipulated unit prices.
- (b) Should the Contractor fail to observe the foregoing provisions and proceed with the construction and/or install any utility at variance with any applicable ordinance or code, including any written waivers (notwithstanding the fact that such installation is in compliance with the drawings and technical specifications), the Contractor shall remove such work without cost to the Owner.
- (c) The Contractor shall at his own expense, secure and pay for all permits for street pavement, sidewalks, shed, removal of abandoned water taps, sealing of house connection drains, pavement cuts, buildings, electrical, plumbing, water, gas and sewer permits required by the local regulatory body or any of its agencies.
- (d) The Contractor shall comply with applicable local laws and ordinances governing the disposal of surplus excavation, materials, debris and rubbish on or off the Project Area and commit no trespass on any public or private property in any operation due to or connected with the Improvements contained in this Contract.
- (e) The Contractor will be required to make arrangements for and pay the water, electrical power, or any other utilities required during construction.
- (f) During construction of this project, the Contractor shall use every means possible to control the amount of dust created by construction. Prior to the close of a day's work, the Contractor, if directed by the Owner, shall moisten the bank and surrounding area to prevent a dusty condition.

18. Care of Work

- (a) The Contractor shall be responsible for all damages to person or property that occur as a result of his fault or negligence in connection with the prosecution of the work and shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance.
- (b) The Contractor shall provide sufficient competent watchmen, both day and night, including Saturdays, Sundays, and holidays, from the time the work is commenced until final completion and acceptance.
- (c) In an emergency affecting the safety of life, limb or property, including adjoining property, the Contractor, without special instructions or authorization from the Owner is authorized to act at his discretion to prevent such threatened loss or injury, and he shall so act. He shall likewise act if instructed to do so by the Owner.
- (d) The Contractor shall avoid damage as a result of his operations to existing sidewalks, streets, curbs, pavements, utilities (except those which are to be replaced or removed), adjoining

property, etc., and he shall at his own expense completely repair any damage thereto caused by his operations.

- (e) The Contractor shall shore up, brace, underpin, secure, and protect as maybe necessary, all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be in any way affected by the excavations or other operations connected with the construction of the improvements included in this Contract. The Contractor shall be responsible for the giving of any and all required notices to any adjoining or adjacent property owner or other party before the commencement of any work. The Contractor shall indemnify and save harmless the Owner from any damages on account of settlements or the loss of lateral support of adjoining property and from all loss or expense and all damages for which the Owner may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.

19. Accident Prevention

- (a) No laborer or mechanic employed in the performance of this Contract shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety as determined under construction safety and health standards promulgated by the Secretary of Labor.
- (b) The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his prosecution of the work.
- (c) The Contractor shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the Contract. The Contractor shall promptly furnish the Owner with reports concerning these matters.
- (d) The Contractor shall indemnify and save harmless the Owner from any claims for damages resulting from property damage, personal injury and/or death suffered or alleged to have been suffered by any person as a result of any work conducted under this contract.
- (e) The Contractor shall provide trench safety for all excavations more than five feet deep prior to excavation. All OSHA Standards for trench safety must be adhered to by the Contractor.
- (f) The contractor shall at all times conduct his work in such a manner as to insure the least possible inconvenience to vehicular and pedestrian traffic. At the close of the work each day, all streets where possible in the opinion of the Owner, shall be opened to the public in order that persons living in the area may have access to their homes or businesses by the use of the streets. Barricades, warning signs, and necessary lighting shall be provided to the satisfaction of the Owner at the expense of the Contractor.

20. Sanitary Facilities

The Contractor shall furnish, install and maintain ample sanitary facilities for the workmen. As the needs arise, a sufficient number of enclosed temporary toilets shall be conveniently placed as required. Drinking water shall be provided from an approved source, so piped or transported as to keep it safe and fresh and served from single service containers or satisfactory types of sanitary drinking stands or fountains. All such facilities and services shall be furnished in strict accordance with existing and governing health regulations.

21. Use of Premises

- (a) The Contractor shall confine his equipment, storage of materials, and construction operations to the contract limits as shown on the drawings and as prescribed by ordinances or permits, or as may be desired by the Owner, and shall not unreasonably encumber the site or public rights of way with his materials and construction equipment.
- (b) The Contractor shall comply with all reasonable instructions of the Owner and all existing state and local regulations regarding signs, advertising, traffic, fires, explosives, danger signals, and barricades.

22. Removal of Debris, Cleaning, Etc.

The Contractor shall, periodically or as directed during the progress of the work, remove and legally dispose of all surplus excavated material and debris, and keep the Project Area and public rights of way reasonably clear. Upon completion of the work, he shall remove all temporary construction facilities, debris and unused materials provided for work, and put the whole site of the work and public rights of way in a neat and clean condition.

23. Inspection

- (a) All materials and workmanship shall be subject to inspection, examination, or test by the Owner and Engineer at any and all times during manufacture or construction and at any and all places where such manufacture or construction occurs. The Owner shall have the right to reject defective material and workmanship or require its correction. Unacceptable workmanship shall be satisfactorily corrected. Rejected material shall be promptly segregated and removed from the Project Area and replaced with material of specified quality without charge. If the Contractor fails to proceed at once with the correction of rejected workmanship or defective material, the Owner may by contract or otherwise have the defects remedied or rejected materials removed from the Project Area and charge the cost of the same against any Monies which may be due the Contractor, without prejudice to any other rights or remedies of the Owner.
- (b) The Contractor shall furnish promptly all materials reasonably necessary for any tests which may be required. All tests by the Owner will be performed in such manner as not to delay the work unnecessarily and will be made in accordance with the provisions of the technical specifications.
- (c) The Contractor shall notify the Owner sufficiently in advance of back filling or concealing any facilities to permit proper inspection. If any facilities are concealed without approval or consent of the Owner, the Contractor shall uncover for inspection and recover such facilities at his own expense, when so requested by the Owner.
- (d) Should it be considered necessary or advisable by the Owner at any time before final acceptance of the entire work to make an examination of work already completed by uncovering the same, the Contractor shall on request promptly furnish all necessary facilities, labor, and material. If such work is found to be defective in any important or essential respect, due to fault of the Contractor or his subcontractors, the Contractor shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, the actual cost of labor and material necessarily involved in the examination and replacement, shall be allowed the Contractor and he shall, in addition, if completion of the work of the entire Contract has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.
- (e) Inspection of materials and appurtenances to be incorporated in the improvements included in this Contract may be made at the place of production, manufacture or shipment, whenever the

quantity justifies it, and such inspection and acceptance, unless otherwise stated in the technical specifications, shall be final, except as regards (1) latent defects, (2) departures from specific requirements of the Contract, (3) damage or loss in transit, or (4) fraud or such gross mistakes as amount to fraud. Subject to the requirements contained in the preceding sentence, the inspection of materials as a whole or in part will be made at the Project Site.

- (f) Neither inspection, testing, approval nor acceptance of the work in whole or in part, by the Owner or its agents shall relieve the Contractor or his sureties of full responsibility for materials furnished or work performed not in strict accordance with the Contract.

24. Review by Owner

The Owner and its authorized representatives and agents shall have access to and be permitted to observe and review all work, materials, equipment, payrolls, personnel records, employment conditions, material invoices, and other relevant data and records pertaining to this Contract, provided, however that all instructions and approval with respect to the work will be given to the Contractor only by the Owner through its authorized representatives or agents.

25. Final Inspection

When the Improvements included in this Contract are substantially completed, the Contractor shall notify the Owner in writing that the work will be ready for final inspection on a definite date which shall be stated in the notice. The Owner will make the arrangements necessary to have final inspection commenced on the date stated in the notice, or as soon thereafter as is practicable.

26. Deduction for Uncorrected Work

If the Owner deems it not expedient to require the Contractor to correct work not done in accordance with the Contract Documents, an equitable deduction from the Contract Price will be made by agreement between the Contractor and the Owner and subject to settlement, in case of dispute, as herein provided.

27. Insurance

The Contractor shall not commence work under this contract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the Owner.

- (a) Compensation Insurance: The Contractor shall procure and shall maintain during the life of this contract Worker's Compensation Insurance as required by the State of Texas for all of his employees to be engaged in work at the site of the project under this contract and, in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Worker's Compensation Insurance.
- (b) Contractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall procure and shall maintain during the life of this contract Contractor's Public Liability Insurance, Contractor's Property Damage Insurance and Vehicle Liability Insurance in the following amounts:

- 1) Worker's Compensation

- a. State: Statutory

- b. Applicable Federal (e.g., Longshoreman's): Statutory

c. Employers' Liability

- Each Accident: \$1,000,000
- Disease - Each Employee: \$1,000,000
- Disease – Policy Limit \$1,000,000

2) Contractor's General Liability

- a. General Aggregate: \$2,000,000
- b. Products-Completed Operations Aggregate: \$2,000,000
- c. Personal and Advertising Injury: \$1,000,000
- d. Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
- e. Property Damage liability insurance will provide Explosion, Collapse, and Under-ground coverages where applicable.
- f. Excess or Umbrella Liability
 - General Aggregate: \$10,000,000
 - Each Occurrence: \$10,000,000

3) Automobile Liability

- Combined Single Limit (Each Accident) \$1,000,000

4) Contractual Liability

- a. Bodily Injury:
 - Each Person: \$1,000,000
 - Each Accident: \$1,000,000
- b. Property Damage:
 - Each Accident: \$1,000,000
 - Annual Aggregate: \$1,000,000

5) OWNER and ENGINEER shall be named as additional insureds.

(c) Proof of Insurance: The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificate will not be canceled or materially altered, except after ten (10) days written notice has been received by the Owner."

28. Warranty of Title

No material, supplies, or equipment to be installed or furnished under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale, lease-purchase or other agreement by which an interest is retained by the seller or supplier. The Contractor shall warrant good title to all materials,

supplies, and equipment installed or incorporated in the work and upon completion of all work, shall deliver the same together with all improvements and appurtenances constructed or placed by him to the Owner free from any claims, liens, or charges. Neither the Contractor nor any person, firm, or corporation furnishing any material or labor for any work covered by this Contract shall have any right to a lien upon any improvement or appurtenance. Nothing contained in this paragraph, however, shall defeat or impair the right of persons furnishing materials or labor to recover under any law permitting such persons to look to funds due the Contractor in the hands of the Owner. The provisions of this paragraph shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing materials for the work when no formal contract is entered into for such materials.

29. Warranty of Workmanship and Materials

Neither the final certificate of payment nor any provision in the Contract nor partial or entire use of the improvements included in this Contract by the Owner or the public shall constitute an acceptance of work not done in accordance with the Contract or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall promptly remedy any defects in the work and pay for any damage to other work resulting therefrom which shall appear within a period of twelve months from the date of final acceptance of the work.

30. Job Offices

- (a) The Contractor and his subcontractors may maintain such office and storage facilities on the site as are necessary for the proper conduct of the work. These shall be located so as to cause no interference to any work to be performed on the site. The Owner shall be consulted with regard to locations.
- (b) Upon completion of the improvements, or as directed by the Owner, the Contractors shall remove all such temporary structures and facilities from the site, and leave the site of the work in the condition required by the Contract.

31. Partial Use of Site Improvements

The Owner may give notice to the Contractor and place in use those sections of the improvements which have been completed, inspected and can be accepted as complying with the technical specifications and if in its opinion, each such section is reasonably safe, fit, and convenient for the use and accommodation for which it was intended, provided:

- (a) The use of such sections of the Improvements shall in no way impede the completion of the remainder of the work by the Contractor.
- (b) The Contractor shall not be responsible for any damages or maintenance costs due directly to the use of such sections.
- (c) The period of guarantee stipulated in the Section 29 hereof shall not begin to run until the date of the final acceptance of all work which the Contractor is required to construct under this Contract.

32. Contract Documents and Drawings

The City of Copperas Cove will furnish the Contractor, without charge, two (2) copies of the Contract Documents, including Technical Specifications and Drawings. Additional copies requested by the Contractor will be furnished at cost.

33. Contract Period

The work to be performed under this contract shall commence within the time stipulated by the Owner in the Notice to Proceed, and shall be substantially completed within 120 calendar days thereafter, and fully completed within 150 calendar days thereafter.

PROPOSAL FORM
(Competitive Sealed Proposal)

PROPOSAL OF:

(Name of Proposer)

TO: Andrea Gardner
City Manager
City of Copperas Cove
914 South Main, Suite H
or P.O. Box 1449
Copperas Cove, TX 76522

FOR: Parks Maintenance Building – Bid No. 2016-21-54

Dear Owner:

The Proposer named herein (hereinafter called "Proposer"), in compliance with the Invitation to Proposers and Instructions to Proposers for a Parks Maintenance Building ("Project") for the City of Copperas Cove, Texas ("Owner"), having inspected the Project site and carefully examined the Project Drawings, Specifications, Addenda Nos. _____, and all other Contract Documents (as such term is defined in the Instructions to Proposers), hereby offers to enter into a contract to furnish all labor, materials, tools, equipment, transportation, machinery, supplies, insurance, permits taxes and services necessary to complete the Work in accordance with the Contract Documents, within the time set forth herein, and at the prices stated herein. The Proposer fully understands the intent and purpose of the Contract Documents and the conditions of proposing as set forth herein and in the Invitation to Proposers and the Instructions to Proposers. The Proposer hereby covenants and agrees that claims for additional compensation or extensions of time because of Proposer's failure to familiarize itself with the Contract Documents or any condition at the Project site which might affect the Work will not be allowed.

1. Time for Completion: If awarded the Contract, the Proposer agrees to commence the Work (within ten (10) calendar days after Notice to Proceed) and to achieve Substantial Completion of the Work in 120 calendar days.
2. Proposal Security: Proposal security in the form of a certified check or bid bond in the amount of five percent (5%) of the Base Proposal, plus all additive alternates, if applicable, is attached hereto, as a guaranty that the Proposer will unconditionally execute a satisfactory contract and furnish the payment and performance bonds, insurance and satisfy all other requirements for execution and delivery of the Contract Documents and commencement of the Work.
3. Representations: By execution and submission of this Proposal, the Proposer hereby represents and warrants to the Owner as follows:
 - (a) The Proposer has prior experience on construction projects of the same or similar type, nature and class as the Work for the Project.

- (b) The Proposer has read and understands the Proposal Documents and the Contract Documents, and this Proposal is made in accordance with the Proposal Documents.
- (c) The Proposer has carefully inspected the Project site, and that from the Proposer's own investigation, the Proposer has satisfied itself as to the nature and location of the Work and the character, quality, quantities, materials and difficulties to be encountered; the kind and extent of equipment and other facilities needed for the performance of the Work; the general and local conditions and other items which may in any way affect the Work or its performance; and the Proposer has correlated the Proposer's site observations with the requirements of the Contract Documents. The Proposer understands and accepts the difficulties and costs associated with the Work and the Project site and the potential delays, disruptions in work and costs associated herewith and has included such considerations in its construction schedule and the Proposal amount.
- (d) To the fullest extent permitted by applicable law, the Proposer waives any claim it has or may have against the Owner, the Architect/Engineer, and their respective trustees, officers, shareholders, directors, partners, agents, contractors, consultants and employees arising out of or in connection with the administration, evaluation or recommendation of any bids; waiver of any requirements under the Proposal Documents or the Contract Documents; acceptance or rejection of any proposals; and the award of the Contract.

4. Attached Schedules: The following Schedules are attached to this Proposal Form and incorporated herein:

- Exhibit A - Bid Schedule
- Schedule 1 - Contractor's Qualification Statement (AIA Form A305)
- Schedule 2 - Certificate for Non-Asbestos Material
- Schedule 3 - Felony Conviction Notification
- Schedule 4 - Hold Harmless Agreement
- Schedule 5 - Specimen Form of Insurance Certificate

PROPOSER:

By: _____

Name: _____

Title: _____

EXHIBIT "A"
BID SCHEDULE
CITY OF COPPERAS COVE
PARKS MAINTENANCE BUILDING - BID NO. 2016-21-54

Item No.	Estimated Quantity	Unit	Description of Items with Bid Prices Written in Words	Unit Price in Figures	Total Amount
<u>BASE BID</u>					
1	100%	LS	Furnish and install all materials, labor, overhead, and profit required to provide Mobilization, Bonds, Permits and Insurance, per contract requirements, not to exceed 5% of bid, complete in place for the sum of	\$ _____	\$ _____
2	100%	LS	Furnish and install all materials, labor overhead, and profit required to provide Site Preparation, including but not limited to: miscellaneous site demolition, existing utility verification and protection, tree removal, and SWPPP as required, per project plans, specifications and details, complete in place for the sum of	\$ _____	\$ _____
3	100%	LS	Furnish and install all materials, labor, overhead, and profit required to install Maintenance Building, including but not limited to: building pad, concrete foundation, pre-engineered metal building, mechanical system, lighting and power, plumbing, interior finishes, and exterior flatwork, per project specifications and details, complete in place for the sum of	\$ _____	\$ _____
4	387	SY	Furnish and install all materials, labor, overhead, and profit required to Provide 6" Gravel Base Course, at location shown on plans, per project specifications and details, complete in place for the sum of	\$ _____	\$ _____
SUBTOTAL BASE BID:					\$ _____
<u>ADDITIVE ALTERNATE BID ITEM</u>					
1	100%	LS	Furnish and install all materials, labor overhead, and profit required to provide Demolition of Existing Parks Maintenance Facilities, per project plans, specifications and details, complete in place for the sum of	\$ _____	\$ _____
SUBTOTAL ADDITIVE ALTERNATE BID ITEM:					\$ _____
TOTAL BID:					\$ _____

SCHEDULE 1

PARKS MAINTENANCE BUILDING – BID NO. 2016-21-54

CONTRACTOR'S QUALIFICATION STATEMENT (AIA FORM A305)

SCHEDULE 2

PARKS MAINTENANCE BUILDING – BID NO. 2016-21-54

NON-ASBESTOS MATERIALS CERTIFICATION

This will certify that no asbestos containing materials were used in the construction of this project.

NAME OF PROJECT: _____

CONTRACTOR: _____

CERTIFIED BY: _____

TITLE: _____

DATE: _____

SCHEDULE 3

PARKS MAINTENANCE BUILDING – BID NO. 2016-21-54

FELONY CONVICTION NOTIFICATION

THIS NOTICE IS NOT REQUIRED OF A PUBLICLY-HELD CORPORATION

I, the undersigned agent for the firm named below, certify that the information concerning notification of felony convictions has been reviewed by me and the following information furnished is true to the best of my knowledge:

VENDOR'S NAME: _____

AUTHORIZED COMPANY OFFICIAL'S NAME (printed): _____

DATE: _____, 2016

- A. My firm is a publicly-held corporation, therefore, this reporting requirement is not applicable.

Signature of Company Official: _____

- B. My firm is not owned nor operated by anyone who has been convicted of a felony.

Signature of Company Official: _____

- C. My firm is owned or operated by the following individual(s) who has/have been convicted of a felony:

Name of Felon(s): _____

Details of Conviction(s): _____

Signature of Company Official: _____

SCHEDULE 4

PARKS MAINTENANCE BUILDING – BID NO. 2016-21-54

HOLD HARMLESS AGREEMENT

The Contractor shall defend, indemnify, and hold harmless, the City of Copperas Cove, Texas and all its agents, and employees from and against all suits, actions, or claims of any character brought for or on account of any injuries or damages (including death) received or sustained by any person or property on account of, arising out of, or in connection with, any negligent act or omission of Contractor or any agent, employee, subcontractor or supplier of Contractor in the execution or performance of the Contract for the Parks Maintenance Building ("Project").

The Contractor shall also defend, indemnify and hold harmless, the City of Copperas Cove, Texas and all its agents and employees, from and against claims by any subcontractor, supplier, laborer, material provider or mechanic for payment for work or materials provided on behalf of the Contractor in the performance of the Contract and all such claimants shall look solely to Contractor and not the City of Copperas Cove, Texas for satisfaction of such claims.

This Hold Harmless Agreement shall be binding upon the undersigned, and its successors, legal representatives, heirs and assigns.

DATED this _____ day of _____, 2016.

CONTRACTOR: _____

BY: _____

NAME: _____

TITLE: _____

STATE OF TEXAS §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2016, by _____ of _____, a Texas _____, on behalf of said _____.

Notary Public, State of Texas

SCHEDULE 5

PARKS MAINTENANCE BUILDING – BID NO. 2016-21-54

SPECIMEN FORM OF INSURANCE CERTIFICATE

CITY OF COPPERAS COVE

PARKS MAINTENANCE BUILDING – BID NO. 2016-21-54

**STANDARD FORM OF AGREEMENT
FOR OWNER-CONTRACTOR PROJECTS**

STATE of TEXAS §

CORYELL COUNTY §

THIS AGREEMENT, made and entered into this ___ day of _____, A.D. 2016, by and between City of Copperas Cove of the COUNTY of Coryell in the STATE OF TEXAS, thereunto duly authorized so to do, Party of the First Part, hereinafter termed OWNER, and _____ of the City of _____, County of _____ in the State of Texas, Party of the Second Part, hereinafter termed CONTRACTOR.

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Party of the First Part (OWNER) and under the conditions expressed in the bond bearing even date herewith, the said Party of the Second Part (CONTRACTOR), hereby agrees with the said Party of the First Part (OWNER) to commence and complete the construction of certain improvements generally described as follows:

The addition of a 5,560 square foot parks maintenance shop building, electrical upgrades to an existing shop building, and the conversion of an existing storage building to provide two offices, an employee breakroom, a storage room, and upgrades to an existing restroom to meet ADA compliance.

and all extra work in connection therewith, under the terms as stated in the General Conditions of the Agreement and at his (or their) own proper cost and expense to furnish all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said construction, in accordance with the Notice to Contractors, General and Special Conditions of Agreement, Plans and other drawings and printed or written explanatory matter thereof, and the Specifications and addenda therefore, as prepared by BSP Engineers, Inc., herein entitled the ENGINEER, each of which has been identified by the CONTRACTOR and the ENGINEER, together with the CONTRACTOR'S

written proposal, the General Conditions of the Agreement, the Performance and Payment Bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire contract.

The CONTRACTOR hereby agrees to commence work within ten (10) calendar days after the date written notice to do so shall have been given to him, and to substantially complete within 120 consecutive calendar days after issuance of the "Notice to Proceed" (if all alternates are selected) and to be at Final Completion within 150 consecutive calendar days after the issuance of the "Notice to Proceed", subject to such extensions of time as are provided by the General and Special Conditions.

The OWNER agrees to pay the CONTRACTOR in current funds the price or prices shown in the proposal, which forms a part of this contract, such payments to be subject to the General and Special Conditions of the contract.

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

CITY OF COPPERAS COVE
Party of the First Part (OWNER)

Party of the Second Part (CONTRACTOR)

By: _____

By: _____

ATTEST: _____

ATTEST: _____

TECHNICAL SPECIFICATIONS

PARKS MAINTENANCE BUILDING – BID NO. 2016-21-54

The technical specifications of this contract shall be as published in North Central Texas Council of Governments (NCTCOG) Standard Specifications for Public Works Construction, latest edition with all current amendments, herein referred to as “NCTCOG’S STANDARD SPECIFICATIONS” or as “STANDARD SPECIFICATIONS”.

NCTCOG’S Standard Specifications are hereby incorporated into these technical specifications and shall be binding to the contract, except where specifically modified in the plans or other contract documents.