



**INVITATION TO BID (“ITB”)**

**(Caustic Soda)**

**ITB NO. (22-001)**

Issuance of ITB	
1 <sup>st</sup> Publication Date	Thursday, October 7, 2021
2 <sup>nd</sup> Publication Date	Thursday, October 14, 2021
ITB Question Deadline (5:00 p.m.)	Tuesday, October 19, 2021
Deadline to Request Electronic Submission (2:00 p.m.)	Thursday, October 21, 2021
Bid Opening (2:00 p.m.)	Monday, October 25, 2021
City Council Consideration/Award	Thursday, November 4, 2021

***INTENT***

The City of Brenham requests bids for bulk water chemicals, specifically **Caustic Soda** to be delivered to location(s) identified herein. All bids must be submitted on the form provided by the City, and further must be properly executed in the space(s) provided.

**RECEIPT AND OPENING OF BIDS**

Bidders shall submit **one (1) original and one (1) copy** of their bid on the Bid Submission Form provided by the City. The original bid must be clearly marked “**Bid for ITB No. 22-001**” and include an original signature, in ink, in order to be accepted. Bids must be received in the City Secretary’s Office no later than **2:00 p.m. (CST) on Monday, October 25, 2021**. It is the Bidder’s sole responsibility to assure that the bid is delivered in a timely fashion. Bids received after this time will be rejected and returned unopened. There will be no public opening; however, the name of each bid received will be read aloud for public record. **Any bid received after 2:00 p.m. on Monday, October 25, 2021, shall not be considered.**

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

This is a FORMAL solicitation and Bids shall be delivered using one of the following methods:

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

The City does accept electronic bids via download into a secure electronic depository. Bids submitted by e-mail will not be accepted. If a bidder would like to submit electronically, they must notify the City no later than 2:00 p.m. on Thursday, October, 21, 2021.

Notifications for electronic submissions must be sent to Kyle Branham, Purchasing and Fleet Supervisor, P. O. Box 1059 (200 W. Vulcan St.), Brenham, Texas 77834, or e-mailed to [kbranham@cityofbrenham.org](mailto:kbranham@cityofbrenham.org). All e-mails must indicate “ITB No. 22-001 – Electronic Submission Request” in the subject line. It is the sender’s responsibility to verify receipt of email; read receipt is acceptable.

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

Any and all questions regarding this ITB must be submitted in writing and addressed to Kyle Branham, Purchasing and Fleet Supervisor, P.O. Box 1059 (200 W. Vulcan St.), Brenham, Texas 77834, or e-mailed to [kbranham@cityofbrenham.org](mailto:kbranham@cityofbrenham.org). All e-mails must indicate "ITB No. 22-001" in the subject line. It is the sender's responsibility to verify receipt of email. The deadline for submittal of questions regarding this ITB is **5:00 p.m. (CST) on Tuesday, October 19, 2021**.

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

## ***TERM OF CONTRACT***

The City requests bids with a one (1) year rate guarantee. The contract(s) will be for one (1) year with an option for two (2) annual renewals. Rates must be guaranteed for the one-year contract period. The sum of the original term and all renewals shall not exceed a total of three (3) years.

## ***INSTRUCTIONS TO BIDDERS***

### **1. INTENT**

The City of Brenham requests bids for bulk water chemicals, specifically **Caustic Soda** to be delivered to location(s) identified herein.

### **2. QUANTITY AND PRICING**

Quantities provided are estimates based on the best available information. The City will increase or decrease quantity as needed. In no way does any stated quantity obligate the City to purchase any minimum, maximum, or specific amount.

Bidder shall provide unit pricing with prices extended where practical. In case of conflict between unit and extended prices, the unit price shall prevail.

### **4. FORM**

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

## 5. ACCEPTANCE

The City of Brenham reserves the right to accept or reject any or all bids, to waive informalities, and to accept the offer considered most advantageous **in order to obtain the best value for the City**. Causes for rejection of a bid may include but are not limited to the bidder's current violation of any City ordinance, the bidder's current inability to satisfactorily perform the work or service, or the bidder's previous failure to timely perform the obligations under a contract with the city. Bidders may be disqualified and rejection of bids may be recommended for any of, but not limited to, the following causes: 1) Failure to use the bid form furnished by the Owner; 2) Lack or signature by an authorized representative on the bid form; 3) Failure to properly complete the proposal; 4) Evidence of collusion among bidders; 5) Omission of uncertified personal or company check as a bid guarantee (**if bid bond required**); or 6) Unauthorized alteration of bid form. Owner reserves the right to waive any minor informality or irregularity.

## 6. AWARD

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

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

## 7. CONTRACT

This Bid Document, including terms and conditions of bidding, Vendor's submitted Bid, Council Minutes approving award, City's Notice or Letter of Award, and Purchase Order shall comprise the full contract for purchase and performance. Any addition or revision to the contract terms and conditions must be submitted with Bid in order to receive consideration.

(5) working days of award of contract.

## 8. ADDENDA

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

## 9. CONTACT

If any further information is needed concerning these specifications, please contact:

Kyle Branham, Purchasing and Fleet Supervisor  
City of Brenham  
200 W. Vulcan St.  
Brenham, TX 77833

PO Box 1059  
Brenham, Texas 77834-1059

[kbranham@cityofbrenham.org](mailto:kbranham@cityofbrenham.org)

Phone: 979-337-7537

## II: CONTRACT TERMS AND CONDITIONS

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### 1. GENERAL TERMS AND CONDITIONS

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

### 2. INDEMNITY

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

### 3. H.B. 1295 COMPLIANCE

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

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

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

#### 4. **CHAPTER 220 COMPLIANCE**

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

1. Does not boycott Israel currently; and
2. Will not boycott Israel during the term of the contract the above-named Company, business or individual with the City of Brenham, Texas.  
Pursuant to Section 2270.001, Texas Government Code:
  1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and
  2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly- owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.

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

#### 4. **INSURANCE**

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

## **II. TECHNICAL SPECIFICATIONS**

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### 1. **ALTERNATES**

The following specifications are intended as minimum requirements for products to be bid and not to restrict bids to any brand, manufacturer or model so long as product bid satisfies requirements. Alternate items or variations from specifications must be marked as such on the bid form and additional information attached as needed to fully describe

the item bid and variations from specification. The City will be the sole and final judge on whether an alternate item or variation from specification is acceptable.

If any item bid does **NOT** meet specifications, bidder must provide detail as to the alternate being bid. Any additional features or options must also be listed. Additional pages may be added to bid Form if needed to provide sufficient information.

## **2. SUITABILITY**

Proof must be submitted that chemicals offered are a food grade and must be certified as suitable for contact with or treatment of drinking water and proof of certification that chemicals meet ANSI/NSF 60. Vendor must supply a current and complete material safety data sheet (MSDS) before their first delivery.

## **3. CAUSTIC SODA**

- 3.1 The product must be NSF Certified and shall be verified as certified on the NSF website (NSF.org) before the City of Brenham awards a contract.
- 3.2 Sodium hydroxide solution, Class 8, UN 1824, PG II, RQ (Sodium Hydroxide), ERG 154
- 3.3 Contains Sodium Hydroxide 50% Diaphragm, RM5136-1GBulk
- 3.4 MUL 100 mg/L

## **III. CONTRACT PERFORMANCE**

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### **1. DELIVERY INSTRUCTIONS AND REQUIREMENTS**

- 1.1 Shipments shall be FOB Brenham, Texas. No freight or delivery charges will be accepted unless shown on bid.
- 1.2 A delivery ticket must accompany each shipment.
- 1.3 Orders for delivery will be made by phone. Bidder is to provide, as part of the bid, the name and phone number of contact to receive orders. Deliveries are to be made within seven (7) working days from placement of order. For the purposes of this contract, working days are 8:00 A.M. – 3:00 P.M., Monday – Friday, excluding City holidays. Deliveries shall be made to the City's Water Treatment Plant, 1105 S. Austin and/or Wastewater Treatment Facility, 2005 Old Chappell Hill Rd., Brenham, TX 77833.
- 1.4 If delivery is not accomplished within the time frame specified, the City reserves the right to procure the product on the open market. It will also be the City's right to bill the supplier the difference between the contract price and the open-market price.
- 1.5 Vendor shall supply all material and equipment required to transfer chemicals from truck to customer's storage tank. No air supply will be provided by plant personnel.

## **2. SPILLAGE**

- 2.1 The supplier shall be held responsible for all spillage which may occur during transit and unloading operations and shall hold the City harmless. Supplier shall immediately report and clean up any such spillage. Failure to do so will result in corrective action by the City and any incurred costs, loss and/or legal fees and settlements for damage will be charged back to the supplier.

## **3. ADDITIONAL REQUIREMENTS**

- 3.1. Additional requirements are as follow:

- Supply a certificate for analysis for each load.
- Supply certified weight certificate at time of delivery.
- Delivering drivers must have and wear approved personal protective equipment (PPE) while off-loading product.
- Vendor's agent (delivering driver) shall provide samples for the plant operator. Plant operator will provide sample containers.
- City will retain one sample for each shipment. The sample will be held until the next shipment of product is received. Vendor agrees the content of each sample fairly represents the quality of the product delivered in that shipment.





## **BID SUBMISSION AUTHORIZATION**

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

The undersigned certifies that the information provided above is a true representation of its company's qualifications and agrees to comply with these assurances following award of the ITB.

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

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

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

City of Brenham  
Bid Form, Page 2

Bid No. 22-001

Item No.	Estimated Quantity	Description	Unit Price	Extended Total
1.	300 tons	Caustic Soda, per specifications.	\$ liquid ton	\$

State minimum order, if any. \_\_\_\_\_

\_\_\_\_\_

State any exceptions, variances or alternates: (additional sheets may be added as needed)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

State name and phone number of contact for receiving orders.

\_\_\_\_\_

\_\_\_\_\_

Name of Bidding Firm:

**NON-COLLUSION CERTIFICATE**

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

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

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

**ITB NO. 22-001 – Caustic Soda**

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

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

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

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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

NOTARY SEAL:

## EXHIBIT A

# **TERMS AND CONDITIONS FOR BIDS**

### **Definitions:**

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

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

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

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

### **Instructions:**

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

### **Form:**

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

### **Bid Return:**

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

### **Late Bids:**

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

### **Acceptance:**

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

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

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

Owner reserves the right to waive any informality or irregularity.

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

## EXHIBIT A

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

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

### **Award of Contract:**

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

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

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

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

### **Term of Contract:**

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

### **Extension of Contract:**

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

### **Assignment of Contract:**

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

### **Contract Termination:**

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

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

## EXHIBIT A

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

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

### **Reimbursements:**

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

### **Minority Owned Businesses:**

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

### **Error-Quantity:**

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

### **Quantities:**

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

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

### **Variations:**

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

### **F.O.B. – Damage**

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

### **Firm Prices:**

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

### **Cooperative Agreements:**

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

### **Authorized Signature:**

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

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

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

## EXHIBIT A

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

### **Lump Sum Bids:**

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

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

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

### **Payment Of Invoices:**

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

### **Cash Discounts:**

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

### **Taxes:**

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

### **Delivery:**

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

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

### **Liability:**

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

## EXHIBIT A

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

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

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

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

### **No Bids:**

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

### **Addenda:**

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

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

### **Fiscal Funding:**

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

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

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

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

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

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

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

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



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

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

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

### **Conflict of Interest:**

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

### **Applicable Law and Venue**

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

### **Insurance**

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

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

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

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written notice has been given to the City.

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

#### 4. Commercial General Liability

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

#### 5. Automobile Liability

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

#### 6. Worker's Compensation

- a) Statutory

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

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

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

#### **DEFINITIONS:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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