



**ITB 26-19711-AE**  
**Construction & Maintenance Raw Materials**

**1. INSTRUCTIONS TO BIDDERS**

- 1.1. Bidders may submit bids electronically by uploading required documents at the City of Lubbock's partner website, Bonfire. This Invitation to Bid is for your convenience in submitting an offer for the specified services. If submitting electronically, do not submit paper documents. If you choose to submit in hard copy, submit one original paper copy of your submittal to the office of the Director of Purchasing and Contract Management:

Physical: Marta Alvarez, Director of Purchasing and Contract Management  
City of Lubbock  
13 14 Avenue K, 9th Floor  
Lubbock, Texas 79401

Mailing: Marta Alvarez, Director of Purchasing and Contract Management  
City of Lubbock  
P.O. Box 2000  
Lubbock, Texas 79457

**MARK ENVELOPE WITH THE SOLICITATION NUMBER, TITLE, AND DUE DATE/TIME**

**The City of Lubbock appreciates your time and effort in preparing your bid. All bidders should familiarize themselves with the following instructions to bidders, general conditions, and attached specifications.**

Sealed bids or electronic submittals through the Bonfire portal, shall be received until:

**July 9, 2026 prior to 3:00 P.M.**

Please allow time to upload required documentation. **24hrs in advance is recommended.**

It is the bidder's responsibility to be thoroughly familiar with all requirements and specifications. Be sure you understand the requirements before you return your bid/offer package.

- 1.2 Bidders are responsible for making certain bid and proposed contracts are delivered to the Purchasing and Contract Management Department. Mailing of a bid does not ensure that the bid will be delivered on time or delivered at all. If bidder does not hand deliver a bid, we suggest that he/she use some sort of delivery service that provides a receipt. The City of Lubbock assumes no responsibility for errant delivery of a bid, including those relegated to a courier agent who fails to deliver in accordance with the time and receiving point specified.
- 1.3 Bids will be accepted in person, by United States Mail, by United Parcel Service, or by private courier service. **THE CITY WILL NOT ACCEPT FAX BIDS.**

- 1.4 Bids may be withdrawn prior to the above scheduled time set for closing. Alteration made before ITB opening must be initialed by Bidder guaranteeing authenticity.
- 1.5 The City of Lubbock reserves the right to postpone the date and time for accepting bids through an addendum.
- 1.6 Bids will be opened via teleconference if date/time stamped on or before the deadline stated at the office listed above. The Zoom meeting information is as follows:

Website: <https://us02web.zoom.us/j/9759171012?pwd=bkFtRTNlcXV1SkhWdkZiMDk4MXh2dz09&omn=84493657506>

Meeting ID: 975 917 1012

Passcode: 1314

Bids may be withdrawn prior to the above scheduled time set for closing of the bids. Bids CANNOT be withdrawn, altered or amended after bid closing.

## 2. PRE-BID MEETING

- 2.1. For the purpose of familiarizing bidders with the requirements, answering questions, and issuing addenda as needed for the clarification of the Invitation to Bid (ITB) documents, a non-mandatory pre-bid meeting will be held June 30, 2026, at 11:00 a.m., via teleconference. The Zoom meeting information is as follows:

Website: <https://us02web.zoom.us/j/9759171012?pwd=bkFtRTNlcXV1SkhWdkZiMDk4MXh2dz09&omn=85663693598>

Meeting ID: 975 917 1012

Passcode: 1314

- 2.2. All persons attending the conference will be asked to identify themselves and the prospective bidder they represent.
- 2.3. It is the bidder's responsibility to attend the pre-bid meeting though the meeting is not mandatory. The City will not be responsible for providing information discussed at the pre-bid meeting to bidders who do not attend the pre-bid meeting.

## 3. CLARIFICATION OF REQUIREMENTS

- 3.1. It is the intent and purpose of the City of Lubbock that this request permits competitive bids. It is the bidder's responsibility to advise the City of Lubbock Director of Purchasing and Contract Management if any language, requirements, etc., or any combinations thereof, inadvertently restricts or limits the requirements stated in this ITB to a single source. Such notification must be submitted in writing and must be received by the Director of Purchasing and Contract Management no later than five (5) calendar days prior to the bid closing date. A review of such notifications will be made.
- 3.2. **ALL REQUESTS FOR ADDITIONAL INFORMATION OR CLARIFICATION CONCERNING THIS INVITATION TO BID (ITB) MUST BE SUBMITTED IN WRITING NO LATER THAN FIVE (5) CALENDAR DAYS PRIOR TO THE BID CLOSING DATE AND ADDRESSED TO:**

Alfredo Esparza, Buyer III

City of Lubbock

1314 Ave. K, Floor 9

Lubbock, TX 79401

Fax: (806) 775-2129

Email : [AlfredoEsparza@mylubbock.us](mailto:AlfredoEsparza@mylubbock.us)

#### 4. CONTRACT TERM

- 4.1. The contract shall be for a term of one (1) year, with the option of four (4), one-year extensions, said date of term beginning upon formal approval. This Contract will renew automatically for the additional terms, unless either Party gives 90-day written notice to terminate the Contract. All stated annual quantities are approximations of usage during the time period to be covered by pricing established by this bid. Actual usage may be more or less. Order quantities will be determined by actual need. The City of Lubbock does not guarantee any specific amount of compensation, volume, minimum, or maximum amount of services under this bid and resulting contract. The Contractor must maintain the insurance coverage required during the term of this contract including any extensions. It is the responsibility of the Contractor to ensure that valid insurance is on file with the Purchasing and Contract Management Department as required by contract or contract may be terminated for non-compliance.

#### 5. PRICE INCREASE

- 5.1. Prices quoted shall be guaranteed for a period for six (6) months upon City approval. The rate may be adjusted at the City's discretion for the effective change in Consumer Price Index (CPI) or Product Price Index (PPI) as appropriate.
- 5.2. Further, if the Contractor can provide documentation for actual charges for material, labor, etc. that demonstrates that the change in CPI or PPI is not sufficient, the Contractor shall provide such documentation to the City, and at the City's sole discretion, the contractual rate may be further adjusted. If agreement regarding a new rate cannot be reached, the City shall terminate at the end of the current contract period.
- 5.3. If an adjustment to pricing is granted under this section, the Contractor must provide the Director of Purchasing and Contract Management written, quarterly documentation to justify the ongoing adjustment. If no such documentation is timely received, the rate will automatically revert to the initial, awarded rate.

#### 6. TERMINATION OF CONTRACT

- 6.1. This contract shall remain in effect until the first of the following occurs: (1) the expiration date, (2) performance of services ordered, or (3) termination of by either party with a 90-day written notice. The City of Lubbock reserves the right to award the canceled contract to the next lowest and best bidder as it deems to be in the best interest of the city.

#### 7. ADDENDA & MODIFICATIONS

- 7.1. The City of Lubbock reserves the right to postpone the date and time for opening bids through an addendum.
- 7.2. Any changes, additions, or clarifications to the ITB are made by **ADDENDA** information available over the Internet at <https://ci-lubbock-tx.bonfirehub.com/portal/>. **We strongly suggest that you check for any addenda a minimum of forty-eight hours in advance of the response deadline. BUSINESSES WITHOUT INTERNET ACCESS** may use computers available at most [public libraries](#).
- 7.3. Any bidder in doubt as to the true meaning of any part of the ITB or other documents may request an interpretation thereof from the Purchasing and Contract Management Department. At the request of the bidder, or in the event the Purchasing and Contract Management Department deems the interpretation to be substantive, the interpretation will be made by written addenda issued by the Purchasing and Contract Management Department. Such addenda issued by the Purchasing and Contract Management Department will be available over the Internet at [https://ci-lubbock-](https://ci-lubbock-tx.bonfirehub.com/portal/)

[tx.bonfirehub.com/portal/](http://tx.bonfirehub.com/portal/) and will become part of the proposal package having the same binding effect as provisions of the original ITB. No verbal explanations or interpretations will be binding. In order to have a request for interpretation considered, the request must be submitted in writing and must be received by the City of Lubbock.

- 7.4. All addenda, amendments, and interpretations of this solicitation shall be in writing. The City of Lubbock shall not be legally bound by any amendment or interpretation that is not in writing. Only information supplied by the City in writing or in this ITB should be used in preparing bid responses. All contacts that a bidder may have had before or after receipt of this ITB with any individuals, employees, or representatives of the City and any information that may have been read in any news media or seen or heard in any communication facility regarding this bid should be disregarded in preparing responses.

- 7.5. The City does not assume responsibility for the receipt of any addendum sent to bidders.

## **8. EXAMINATION OF DOCUMENTS AND REQUIREMENTS**

- 8.1. Each bidder shall carefully examine all ITB documents and thoroughly familiarize itself with all requirements prior to submitting a bid to ensure that the goods and/or services being bid meet the intent of these specifications.
- 8.2. Before submitting a bid, each bidder shall be responsible for making all investigations and examinations that are necessary to ascertain conditions and requirements affecting the requirements of this Invitation to Bid. Failure to make such investigations and examinations shall not relieve the bidder from obligation to comply, in every detail, with all provisions and requirements of the Invitation to Bid.

## **9. BID SUBMITTAL**

- 2.1. The Bidder must complete the bid table line items, and sign and date their bid on the provided Bid Submission Information form. Identify the item bid, including brand name and model number, if applicable. Enter unit price, extended cost, and delivery days in the columns provided. In the event of discrepancies in extension, the unit price shall govern. A bid will be subject to being considered irregular and may be rejected if it shows omissions, alterations, conditional alternate bids, additions or alternates in lieu of the items specified, if the unit prices are obviously unbalanced (either in excess of or below reasonably expected values), or irregularities of any kind.
- 9.1. The City is exempt from Federal Excise, State Sales and Transportation taxes. **TAX MUST NOT BE INCLUDED IN BID.** Tax exemption certificates will be executed by the Director of Purchasing and Contract Management upon request.
- 9.2. Any information regarding warranties and/or maintenance agreements pertaining to said bid item(s) are to be included in the bid.
- 9.3. Bids will not be considered unless bid F.O.B. delivered and include all delivery and packaging costs. The number of calendar days required to place the materials in the City's receiving point under normal conditions must be shown on the Bid Form. **DO NOT** quote shipping dates. Failure to indicate delivery days on the Bid Form will obligate Bidder to complete delivery in two weeks. A minimum of five days better delivery will automatically break a tie bid. Unrealistically short or undue long delivery promises may cause bid to be disregarded. Consistent failure of a bidder to meet delivery promises without a valid reason may cause removal from the bid list.
- 9.4. Bid prices must be firm for a minimum period of **sixty (60) days**. Bids subject to price increases will not be considered.
- 9.5. All bids, responses, inquiries, or correspondence relating to or in reference to this ITB, and all reports, charts, and other documentation submitted by bidders shall become the property of the

City of Lubbock when received.

- 9.6. If there are any additional charges of any kind, other than those mentioned above, specified or unspecified, bidder MUST indicate the items required and attendant costs or forfeit the right to payment for such items.
- 9.7. **LABEL THE OUTSIDE OF YOUR SEALED BID WITH THE ITB NUMBER, THE CLOSING DATE AND TIME, AND YOUR COMPANY NAME AND ADDRESS.**

## **10. BID PREPARATION COSTS**

- 10.1. Issuance of this ITB does not commit the City of Lubbock, in any way, to pay any costs incurred in the preparation and submission of a bid. Also, should a bidder bid an alternate, any test costs to prove equality of product will be at the expense of the bidder, not the City of Lubbock.
- 10.2. The issuance of this ITB does not obligate the City of Lubbock to enter into contract for any services or equipment.
- 10.3. All costs related to the preparation and submission of a bid shall be paid by the bidder.

## **11. TRADE SECRETS, CONFIDENTIAL INFORMATION AND THE TEXAS PUBLIC INFORMATION ACT**

- 11.1. If you consider any portion of your bid to be privileged or confidential by statute or judicial decision, including trade secrets and commercial or financial information, clearly identify those portions.
- 11.2. The City of Lubbock will honor your notations of trade secrets and confidential information and decline to release such information initially, but please note that the final determination of whether a particular portion of your bid is in fact a trade secret or commercial or financial information that may be withheld from public inspection will be made by the Texas Attorney General or a court of competent jurisdiction. In the event a public information request is received for a portion of your bid that you have marked as being confidential information, you will be notified of such request and you will be required to justify your legal position in writing to the Texas Attorney General pursuant to Section 552.305 of the Government Code. In the event that it is determined by opinion or order of the Texas Attorney General or a court of competent jurisdiction that such information is in fact not privileged and confidential under Section 552.110 of the Government Code and Section 252.049 of the Local Government Code, then such information will be made available to the requester.
- 11.3. Marking your entire bid CONFIDENTIAL/PROPRIETARY is not in conformance with the Texas Public Information Act.
- 11.4. Pursuant to Section 552.234(c) of the Texas Government Code, submit your open records request using the link provided below:  
[https://lubbocktx.govqa.us/WEBAPP/\\_rs/\(S\(quiyrflbtihahjnycegwpcs\)\)/SupportHome.aspx](https://lubbocktx.govqa.us/WEBAPP/_rs/(S(quiyrflbtihahjnycegwpcs))/SupportHome.aspx)
- 11.5. For more information, please see the City of Lubbock Public Information Act website at:  
<https://ci.lubbock.tx.us/pages/public-information-act>

## **12. LICENSES, PERMITS, TAXES**

- 12.1. The price or prices for the work shall include full compensation for all taxes, permits, etc. that the bidder is or may be required to pay.

### 13. HISTORICALLY UNDERUTILIZED BUSINESS (HUB) REQUIREMENTS

- 13.1. The City of Lubbock hereby notifies all bidders that in regard to any contract entered into pursuant to this ITB, Historically Underutilized Businesses (HUB's) will be afforded equal opportunities to submit bids and will not be discriminated against on the grounds of race, color, sex, disability, or national origin in consideration of an award.
- 13.2. A HUB is defined as a small business concern which is at least 51% owned and controlled by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more socially and economically disadvantaged individuals. Socially and economically disadvantaged include Women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans.

### 14. CONFLICT OF INTEREST

- 14.1. The bidder shall not offer or accept gifts or anything of value nor enter into any business arrangement with any employee, official or agent of the City of Lubbock.
- 14.2. By signing and executing this bid, the bidder certifies and represents to the City the bidder has not offered, conferred or agreed to confer any pecuniary benefit or other thing of value for the receipt of special treatment, advantage, information, recipient's decision, opinion, recommendation, vote or any other exercise of discretion concerning this bid.
- 14.3. ***It is not necessary to fill out the CIQ Form unless you have a business relationship that might cause a conflict of interest with the City of Lubbock***
- 14.4. Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity disclose in the Questionnaire, Form CIQ, the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, the questionnaire must be filed with the records administrator of the City of Lubbock not later than the Seventh business day after the date the person becomes aware of the facts that require the statement to be filed. The questionnaire can be found at:

<https://www.ethics.state.tx.us/forms/conflict/>

For the City of Lubbock, these forms should be filed with the City Secretary's Office, P.O. Box 2000, Lubbock, Texas, 79457

See Section 176.006, Local Government Code:

<http://www.statutes.legis.state.tx.us/SOTWDocs/LG/htm/LG.176.htm>.

A person commits an offense if the person violates Section 176.006, Local Government Code.  
An offense under this section is a Class C misdemeanor.

### 15. CERTIFICATE OF INTERESTED PARTIES

- 15.1. Effective January 1, 2016, Section 2252.908, as amended, of Chapter 2252 of the Texas Government Code requires certain business entities to submit an electronic disclosure form to the Texas Ethics Commission before entering into a contract with a local government entity when any of the following apply:
  - 1) Contract requires an action or vote by the City Council (governing body); **OR**
  - 2) Contract value is \$1 Million or greater; **OR**
  - 3) Contract is for services that would require a person to register as a lobbyist under Chapter 305 of the Government Code.



This must be done before executing the contract. The disclosure form may be found at [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm). You must log in and create an account the first time you fill out the form. Tutorial videos on how to log in for the first time and how to fill out the form can be found through the link above. After you electronically submit the disclosure form, a screen will come up confirming the submission and assigning a certificate number. Then, you must print the form, have an authorized agent complete the declaration and sign, and provide it to the City (scanned email copy is acceptable).

A contract described by Subsection (b) of Government Code Section 2252.908 entered into by a governmental entity or state agency is voidable for failure to provide the disclosure of interested parties required by this section only if: (1) the governmental entity or state agency submits to the business entity written notice of the business entity's failure to provide the required disclosure; and (2) the business entity fails to submit to the governmental entity or state agency the required disclosure on or before the 10th business day after the date the business entity receives the written notice under Subdivision (1).

## **16. AUTHORIZATION TO BIND SUBMITTER OF BID**

- 16.1. Bids must show vendor name and address of bidder. Bids must be manually signed by an officer of the company authorized to bind the submitter to its provisions. Person signing bid must show title or AUTHORITY TO BIND THEIR FIRM IN A CONTRACT. Failure to manually sign bid will disqualify it.
- 16.2. The bid submitted by the bidder shall become an integral part of the contract between the City and the Bidder and the representations, covenants, and conditions therein contained shall be binding upon the person, firm or corporation executing the same.

## **17. BID AWARD**

- 17.1. 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 of Lubbock. In determining the best value for the City of Lubbock, the City may consider:
  - a) The purchase price;
  - b) The reputation of the 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 non-profit organizations employing persons with disabilities;
  - g) The total long-term cost to the City to acquire goods or services; and
  - h) Any relevant criteria specifically listed in the Invitation to Bid.
- 17.2. The City of Lubbock reserves the right to reject any or all bids, reject any particular item on a bid, and to waive immaterial formalities and to accept the offer most advantageous to the City of Lubbock in its sole discretion. Unless otherwise specified herein, the City may award the bid either item-by-item or on an all-or-none basis for any item or group of items shown on the Bid Form.
- 17.3. All bids are evaluated for compliance with specifications before the bid price is considered. Failure to comply with the listed General Conditions may result in disqualification of bid.

- 17.4. In case of tie bids, preference will be given to local bidders. Consistent and continued tie bidding on any commodity could be cause for rejection of bids by the City of Lubbock and/or investigation by the Attorney General to determine possible Anti-Trust violations.
- 17.5. Before the City may award a bid to a nonresident bidder, the nonresident bidder's bid must be lower than lowest bid submitted by a responsible Texas bidder by the same margin or amount that a Texas bidder would be required to underbid the nonresident bidder in the nonresident bidders' home state.
- 17.6. Any contract made, or purchase order issued, as a result of this Invitation to Bid, shall be entered into the State of Texas and under the laws of the State of Texas. In connection with the performance of work, the Bidder agrees to comply with the Fair Labor Standard Act, Equal Opportunity Employment Act, and all other applicable Federal, State, and Local laws, regulations, and executive orders to the extent that the same may be applicable.
- 17.7. NO INDIVIDUAL OF ANY USING DEPARTMENT HAS THE AUTHORITY TO LEGALLY AND/OR FINANCIALLY COMMIT THE CITY TO ANY CONTRACT, AGREEMENT OR PURCHASE ORDER FOR GOODS OR SERVICES, UNLESS SPECIFICALLY SANCTIONED BY THE REQUIREMENTS OF THIS INVITATION TO BID.
- 17.8. Responsible Bidder Criteria: The City shall consider only responsible Bidders. Responsible Bidders are those that have, in the sole judgment of the City, the financial ability, experience, resources, skills, capability, reliability and business integrity necessary to perform the requirements of the contract. The City may also consider references and financial stability in determining a responsible Bidder.
- 17.9. The successful bidder will be expected to sign a contract substantially like that in the example provided.

## **18. EQUAL EMPLOYMENT OPPORTUNITY**

- 18.1. Bidder agrees that it will not discriminate in hiring, promotion, treatment, or other terms and conditions of employment based on race, sex, national origin, age or disability, or in any way in violation of Title VII of 1964 Civil Rights Act and amendments, except as permitted by said laws.

## **19. SPECIFICATIONS**

- 19.1. Any catalog, brand name or manufacturer's reference in the specifications is descriptive and NOT restrictive, and is used to indicate type and quality level desired. Bids on brands of like nature and quality may be considered unless specifically excluded.
- 19.2. If bidding on other than reference or specifications, bid must show manufacturer, brand, trade name, catalog and/or lot number, etc., on article offered and certify article offered is equivalent to specifications. If other than specified brand of items are offered, specifications, catalog sheets, illustrations and complete descriptive literature must be submitted with bid.
- 19.3. Minor deviations from written specifications shall not necessarily disqualify a vendor's bid. The City of Lubbock specification committee will be the sole determiner of what constitutes a minor deviation.
- 19.4. The City may deem it necessary to specify Approved Brands after conclusive testing, prior to usage or standardization. The City may test any sample(s), supplied free of charge, to qualify for the Approved Brand list. Each sample must be marked with bidder's name and address. At bidder's request and expense, the sample(s) not destroyed or used in examinations and testing will be returned.
- 19.5. When specifications call for samples to be submitted, samples shall be delivered by the bidder, at bidder's expense, five days prior to the opening of bids. Each sample shall be clearly tagged to



show bidder's name and address and item number.

- 19.6. The City of Lubbock reserves the right to determine which specific items on any specification requirements require strict adherence, or are most important, and those that are not, or requiring a lesser degree of importance (i.e., the shade of paint is far less important than the horsepower of a motor). Such determination can and will be a basis for evaluating, recommending and making award. The City will, at its sole discretion, assess warranty offered, and utilize life-cycle costing and/or performance factors as the evaluation method and basis for award. The low bid most closely meeting specifications is usually the bid given the award, although delivery time is sometimes a necessary factor (i.e., a low bid that best meets specifications will not do us much good if delivery is two years from now). Should a requested specification sheet not be submitted with a bid, this is considered non-responsive and therefore may not be considered. PLEASE READ AND RESPOND TO SPECIFICATION REQUIREMENTS CAREFULLY.

## **20. CONSIDERATION OF LOCATION OF BIDDER'S PRINCIPAL PLACE OF BUSINESS**

- 20.1. Pursuant to Texas Local Government Code §271.9051, in purchasing under this title any real property, personal property that is not affixed to real property, or services, if a municipality receives one or more competitive sealed bids from a bidder whose principal place of business is in the municipality and whose bid is within five percent of the lowest bid price received by the municipality from a bidder who is not a resident of the municipality, the municipality may enter into a contract for construction services in an amount of less than \$100,000 or a contract for other purchases in an amount of less than \$500,000 with:
- (1) the lowest bidder;
  - (2) the bidder whose principal place of business is in the municipality if the governing body of the municipality determines, in writing, that the local bidder offers the municipality the best combination of contract price and additional economic development opportunities for the municipality created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality.
- 20.2. This section does not prohibit a municipality from rejecting all bids.
- 20.3. This section does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153.

## **21. QUALIFICATIONS OF BIDDERS**

- 21.1. The Bidder may be required before the award of any contract to show to the complete satisfaction of the City of Lubbock that the Bidder or his Subcontractor has the necessary facilities, ability, and financial resources to provide the service specified therein in a satisfactory manner. The Bidder may also be required to give a past history and references in order to satisfy the City of Lubbock in regard to the Bidder's or his Subcontractor's qualifications.
- 21.2. The City of Lubbock may make reasonable investigations deemed necessary and proper to determine the ability of the Bidder or his Subcontractor to perform the work, and the Bidder shall furnish to the City of Lubbock all information for this purpose that may be requested. The City of Lubbock reserves the right to reject any bid if the evidence submitted by, or investigation of, the Bidder fails to satisfy the City of Lubbock that the Bidder or his Subcontractor is properly qualified to carry out the obligations of the contract and to complete the work described therein. Evaluation of the Bidder's or his Subcontractor's qualifications shall include:
- a) The ability, capacity, skill, and financial resources to perform the work or provide the service required;
  - b) The ability of the Bidder or his Subcontractor to perform the work or provide the service promptly or within the time specified, without delay or interference;

- c) The character, integrity, reputation, judgment, experience, and efficiency of the Bidder or his Subcontractor;
- d) The quality of performance of previous contracts or services.

## **22. ANTI-LOBBYING PROVISION**

- 22.1. DURING THE PERIOD BETWEEN BID CLOSE DATE AND THE CONTRACT AWARD, BIDDERS, INCLUDING THEIR AGENTS AND REPRESENTATIVES, SHALL NOT DIRECTLY DISCUSS OR PROMOTE THEIR BID WITH ANY MEMBER OF THE LUBBOCK CITY COUNCIL OR CITY STAFF EXCEPT UPON REQUEST OF THE CITY OF LUBBOCK PURCHASING DEPARTMENT IN THE COURSE OF CITY-SPONSORED INQUIRIES, BRIEFINGS, INTERVIEWS, OR PRESENTATIONS.
- 22.2. This provision is not meant to preclude bidders from discussing other matters with City Council members or City staff. This policy is intended to create a level playing field for all potential bidders, assure that contract decisions are made in public, and to protect the integrity of the bid process. Its purpose is to stimulate competition, prevent favoritism and secure the best work and materials at the lowest practicable price, for the best interests and benefit of the taxpayers and property owners. Violation of this provision may result in rejection of the bidder's proposal.

## **23. UTILIZATION OF LOCAL BUSINESS RESOURCES**

- 23.1. The City desires, as much as practicable, to stimulate growth in all sectors of the local business community. Firms are strongly encouraged to explore and describe methods for the utilization of local resources.

## **24. PROTEST**

- 24.1. All protests regarding the ITB process must be submitted in writing to the City Director of Purchasing and Contract Management within 5 working days after the protesting party knows of the occurrence of the action which is protested relating to advertising of notices deadlines, proposal opening and all other related procedures under the Local Government Code, as well as any protest relating to alleged improprieties with the ITB process. This limitation does not include protests relating to staff recommendations as to award of contract. Protests relating to staff recommendations may be directed to the City Manager. All staff recommendations will be made available for public review prior to consideration by the City Council as allowed by law.

**FAILURE TO PROTEST WITHIN THE TIME ALLOTTED SHALL CONSTITUTE A  
WAIVER OF ANY PROTEST.**

## **25. BIDDING ITEMS WITH RECYCLED CONTENT**

- 25.1. In addressing environmental concerns, the City of Lubbock encourages Bidders to submit bids or alternate bids containing items with recycled content.
- 25.2. When submitting bids containing items with recycled content, Bidder shall provide documentation adequate for the City to verify the recycled content. The City prefers packaging consisting of materials that are degradable or able to be recycled.

## **26. HOUSE BILL 2015**

- 26.1. House Bill 2015, signed by the Governor on June 14, 2013 and effective on January 1, 2014, authorizes a penalty to be imposed on a person who contracts for certain services with a governmental entity and who fails to properly classify their workers. This applies to subcontractors as well. Contractors and subcontractors who fail to properly classify individuals performing work under a governmental contract will be penalized \$200 for each individual that has been misclassified (Texas Government Code Section 2155.001).

## **27. ASSIGNING OR SUBLETTING THE CONTRACT**

- 27.1. The Contractor shall not assign or sublet the contract, or any portion of the contract, without written consent from the Director of Purchasing and Contract Management. Should consent be given, the Contractor shall insure the Subcontractor or shall provide proof on insurance from the Subcontractor that complies with all contract Insurance requirements.

## **28. TEXAS GOVERNMENT CODE SECTION 2252.152**

- 28.1. Contracts with Companies Engaged in Business with Iran, Sudan, or Foreign Terrorist Organization Prohibited. Pursuant to Section 2252.152 of the Texas Government Code, prohibits the City from entering into a contract with a vendor that is identified by The Comptroller as a company known to have contracts with or provide supplies or service with Iran, Sudan or a foreign terrorist organization.

## **29. TEXAS GOVERNMENT CODE SECTION 2271.002**

- 29.1. Pursuant to Section 2271.002 of the Texas Government Code, a) This section applies only to a contract that: (1) is between a governmental entity and a company with 10 or more full-time employees; and (2) has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity. (b) A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

## **30. TEXAS PUBLIC INFORMATION ACT**

- 30.1. The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter. To the extent Subchapter J, Chapter 552, Government Code applies to this agreement, Contractor agrees to: (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the governmental body for the duration of the contract; (2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the governmental body; and (3) on completion of the contract, either: (A) provide at no cost to the governmental body all contracting information related to the contract that is in the custody or possession of the entity; or (B) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the governmental body.

## **31. CONFIDENTIALITY**

- 31.1. The Contractor shall retain all information received from or concerning the City and the City's business in strictest confidence and shall not reveal such information to third parties without prior written consent of the City, unless otherwise required by law.

## **32. INDEMNITY**

- 32.1. The Contractor shall indemnify and save harmless the city of Lubbock and its elected officials, officers, agents, and employees from all suits, actions, losses, damages, claims, or liability of any kind, character, type, or description, including without limiting the generality of the foregoing, all expenses of litigation, court costs, and attorney's fees, for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, to the extent arising out of, related to or occasioned by, the negligent acts of the Contractor, its agents, employees, and/or subcontractors, related to the performance, operations or omissions under this agreement and/or the use or occupation of city owned property. The indemnity obligation provided herein shall survive the expiration or termination of this agreement.

### 33. INSURANCE REQUIREMENTS

- 33.1. Prior to the approval of this contract by the City, the Contractor shall furnish a completed Insurance Certificate to the City, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverages, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. THE CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE SHALL HAVE BEEN DELIVERED TO THE CITY.
- 33.2. The City reserves the right to review the insurance requirements of this section during the effective period of the contract and to require adjustment of insurance coverages and their limits when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor.
- 33.3. Subject to the Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, the Contractor shall obtain and maintain in full force and effect for the duration of this contract, and any extension hereof, at Contractor's sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to the City, in the following type(s) and amount(s):

**Commercial General Liability Requirements:** \$1M occurrence / \$2M aggregate (can be combined with an Excess Liability to meet requirement). CGL is required in ALL contracts. It is perhaps the most important of all insurance policies in a contractual relationship. It insures the Contractor has broad liability coverage for contractual activities and for completed operations. Commercial General Liability to include Products – Completion/OP, Personal and Advertising Injury, Contractual Liability, Fire Damage (any one fire), and Medical Expenses (any one person).

**Automobile Liability Requirements:** \$1M combined single limit.

**Workers Compensation and Employer Liability Requirements:** Statutory. If the vendor is an independent contractor with no employees and are exempt from providing Workers' Compensation coverage, they must sign a waiver (obtained from COL Purchasing) and include a copy of their driver's license. Employer Liability (\$1M/occurrence) is required with Workers Compensation.

\* The City of Lubbock (including its officials, employees and volunteers) shall be afforded additional insured status on a primary and non-contributory basis on all liability policies except professional liabilities and workers' comp.

\* Waivers of Subrogation are required for CGL, AL, and WC.

\* To Include Products of Completed Operations endorsement.

\* Carrier will provide a 30-day written notice of cancellation, 10-day written notice for non-payment.

\* Carriers must meet an A.M. Best rating of A- or better

\* Subcontractors must carry same limits as listed above.

## **IMPORTANT: POLICY ENDORSEMENTS**

The Contractor will provide copies of the policies without expense, to the City and **all endorsements** thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by the City, the Contractor shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof. Any costs will be paid by the Contractor.

## **REQUIRED PROVISIONS**

The Contractor agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate or its attachment, the following required provisions:

- a. Name the City of Lubbock and its officers, employees, and elected representatives as additional insureds, (as the interest of each insured may appear) as to all applicable coverage;
- b. Provide for 30 days' notice to the City for cancellation, nonrenewal, or material change;
- c. Provide for notice to the City at the address shown below by registered mail;
- d. The Contractor agrees to waive subrogation against the City of Lubbock, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance;
- e. Provide that all provisions of this contract concerning liability, duty, and standard of care together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

## **NOTICES**

The Contractor shall notify the City in the event of any change in coverage and shall give such notices not less than 30 days prior the change, which notice must be accompanied by a replacement CERTIFICATE OF INSURANCE.

All notices shall be given to the City at the following address:

Marta Alvarez, Director of Purchasing & Contract Management  
City of Lubbock  
1314 Avenue K, Floor 9  
Lubbock, Texas 79401

- 33.4. Approval, disapproval, or failure to act by the City regarding any insurance supplied by the Contractor shall not relieve the Contractor of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency, or denial of liability by the insurance company exonerate the Contractor from liability.

## II. GENERAL CONDITIONS

\*\*\*\* PLEASE READ CAREFULLY \*\*\*\*

These General Conditions apply to all bids and become a part of the terms and conditions of any bid submitted. The City shall mean the City of Lubbock.

- 1 **QUANTITIES**: The quantities appearing in this Invitation to Bid are approximate only and the City reserves the right to increase, decrease or delete any or all items. If the quantities of materials to be furnished are increased, such increase shall be paid for according to the unit prices established for the item. In making its bid hereunder, the Seller expressly recognizes the rights of the City provided herein, and further recognizes that the Seller shall have no claims against the City for anticipated profits for the quantities called for, diminished or deleted.
- 2 **PRODUCT GUARANTEE**: Seller guarantees equipment or product offered will meet or exceed specifications identified in this bid invitation. The Seller shall, upon request, replace any equipment or product proved to be defective and make any and all adjustments necessary without any expense to the City. If at any time, the equipment or product cannot satisfactorily meet the requirements of the specifications, the Seller shall upon written request from the City, promptly remove such equipment or product without any further expense to the City. At the City's request, Seller will provide evidence sufficient to demonstrate such equipment or product meets the foregoing.
- 3 **INVOICES**: Seller shall submit separate invoices, in duplicate, on each purchase order or purchase release after each delivery. Invoices shall indicate the purchase order or purchase release number and the supply agreement number if applicable. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading, and the freight waybill when applicable, shall be attached to the invoice. Mail to Accounts Payable, City of Lubbock, P.O. Box 2000, Lubbock, Texas 79457. Payment shall not be due unless and until the Seller shall not be in default under the terms of the contract, and until the above instruments are submitted after delivery. CITY MAY MAKE PAYMENTS FOR PURCHASES UNDER THIS CONTRACT USING THE CITY'S MASTERCARD PURCHASING CARD (PCARD). THE SELLER AGREES TO ACCEPT PCARD PAYMENTS WITHOUT ANY ADDITIONS OR SURCHARGES.
- 4 **DELIVERY DELAY**: When delivery delay can be foreseen, the Seller shall give prior notice to the Purchasing Director, who shall have the right to extend the delivery date if reasons for delay appear acceptable. The Seller must keep the Purchasing Director informed at all times of the status of the order.
- 5 **DAMAGE ASSESSMENT**: Default in any manner under the contract, including, but not limited to default on promised delivery, without acceptable reasons, or failure to meet specifications hereunder authorizes the Purchasing Director to purchase goods elsewhere and charge any increase in cost and handling to the defaulting Seller, and/or exercise any and all rights available to it by law, equity and/or under the terms of the contract. Every effort will be made by the Purchasing Office to locate the goods at the same or better price as than originally contracted.
- 6 **LATE DELIVERY FEE**: The City will also have the option to charge the vendor a fee of \$50.00 per vehicle per day for late delivery. Late fee applies when vendor has not requested and received prior written permission and approval from the ordering entity to make delivery after the number of days established by the contract or the purchase.
- 7 **PACKAGING**: Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently marked as follows: (a) Seller's name and address. (b) Consignee's name, address and purchase order or purchase release number and the supply agreement number if applicable, (c) Container number and total number of containers, e.g., box 1 of 4 boxes, and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
- 8 **DELIVERY TIME**: Deliveries will be accepted only during receiving hours: 9:00 A.M. - 3:30 P.M., Monday through Friday, except on City holidays, at the designated location.
- 9 **DAMAGE**: The City assumes no liability for goods delivered in damaged or unacceptable condition. The Seller must handle all claims with carriers, and in case of damaged goods, shall ship replacement goods immediately upon notification by the City.



- 10 NO WARRANTY BY THE CITY AGAINST INFRINGEMENTS: As part of the contract for sale, Seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to the contract will give rise to the rightful claim of any third person by way of infringement of the like. The City makes no warranty that the production of goods according to the specification will not give rise to such a claim, and in no event shall The City be liable to Seller for indemnification in the event that Seller is sued on the grounds of infringement or the like. If Seller is of the opinion that an infringement or the like will result, he will notify the City to this effect in writing within two weeks after the signing of the contract. If the City does not receive notice and is subsequently held liable for the infringement or the like, Seller will save The City harmless. If Seller in good faith ascertains the production of the goods in accordance with the specifications will result in infringement or the like, the contract shall be null and void.
- 11 MATERIAL SAFETY DATA SHEETS: Seller shall provide the City of Lubbock with current Material Safety Data Sheets (MSDS) for each chemical defined as hazardous under the Texas Hazard Communication Act (every chemical bearing any manner of warning label on the container) to comply with provisions of the Texas Hazard Communication Act, Title 6, Subchapter D, Chapter 502, Texas Health and Safety Code Ann. (This Act is corollary to OSHA Standard 29 CFR 1910.1200, which is generally known as the Right to Know Law.)
- 12 SHIPMENT UNDER RESERVATION PROHIBITED: Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.
- 13 TITLE & RISK OF LOSS: The title and risk of loss of the goods shall not pass to the City until the City actually receives and takes possession of the goods at the point or points of delivery as provided herein.
- 14 NO REPLACEMENT OF DEFECTIVE TENDER: Every tender of delivery of goods must fully comply with all provisions of the contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach of the contract and Seller shall not have the right to substitute a conforming tender, provided, where the time for performance has not yet expired, the Seller may reasonably notify the City of his intention to cure and may then make a conforming tender within the Contract time but not afterward.
- 15 GRATUITIES: The City may, by written notice to the Seller, cancel the contract or purchase order without liability to Seller if it is determined by the City that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Seller, or any agent or representative of the Seller, to any officer or employee of the City of Lubbock with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such a contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.
- 16 SPECIAL TOOLS & TEST EQUIPMENT: If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by Seller for the purpose of filing this order, such special tooling or equipment and any process sheets related thereto shall become the property of the City and to the extent feasible shall be identified by the Seller as such.
- 17 NON-ARBITRATION: The City reserves the right to exercise any right or remedy available to it by law, contract, equity, or otherwise, including without limitation, the right to seek any and all forms of relief in a court of competent jurisdiction. Further, the City shall not be subject to any arbitration process prior to exercising its unrestricted right to seek judicial remedy. The remedies set forth herein are cumulative and not exclusive, and may be exercised concurrently. To the extent of any conflict between this provision and another provision in, or related to, this document, this provision shall control.
- 18 WARRANTY-PRICE: a. The price to be paid by the City shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on orders by other parties for products of the kind and specification covered by the contract for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on orders by other, or in the alternative. The City may cancel the contract without liability to Seller for breach or Seller's actual expenses. b. The Seller warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for commission, percentage brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this warranty the City shall have the right in addition to any other right or rights to cancel the contract without liability and to deduct from the Contract price, or otherwise recover the full amount of such claimed commission, percentage, brokerage, or contingent fee.

- 19 **SAFETY WARRANTY:** Seller warrants that the product sold to the City shall conform to the standards promulgated by the U. S. Department of Labor under the Occupational Safety and Health Act of 1970 and/or any other governmental agency standards or regulations. In the event the product does not conform to each OSHA or other standards, Seller shall be in default hereunder, and the City may exercise and of the remedy provided for herein, including but not limited to return of the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by the City will be at the Seller's expense
- 20 **RIGHT OF INSPECTION:** The City shall have the right to inspect the goods at delivery before accepting them.
- 21 **VENDOR RETRIEVAL OF VEHICLES:** Vendor shall remove noncompliant vehicles (s) form City premises within five working days after receiving written notification from the ordering entity. If vehicle is not removed by vendor within the five working days' time frame, the city may arrange for vehicles to be removed and secured by a local towing and storage facility. Vendor will be responsible for payment of all related towing and storage charges. The City will not be responsible for payment of all related towing and storage charges. The City will not be responsible for liable for damage or loss of noncompliant vehicles with remain on City premises, or which are removed by towing company, five working days after vendor is notification.
- 22 **CANCELLATION:** The City shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breaches any of the terms hereof including warranties of Seller or if the Seller becomes insolvent and/or files bankruptcy or has bankruptcy filed against it. Such right to cancellation is in addition to and not in lieu of any other remedies which the City may have in law, equity or hereunder.
- 23 **TERMINATION:** the City may terminate the contract or purchase order in whole, or in part. Termination hereunder shall be effected by the delivery to the Seller of a "Notice of Termination" specifying the extent to which the contract or purchase order is terminated and the date upon which such termination becomes effective. In the event of said termination, in whole or in part, provided that Seller shall not be in default under the Contract, the Seller shall be entitled to payment only for goods actually delivered, and/or services actually performed under and in compliance with the terms of the contract or purchase order.
- 24 **FORCE MAJEURE:** Neither party shall be held responsible for losses or damages hereunder, if the fulfillment of any terms of provisions of the contract is delayed or prevented by strike, walkouts, acts of God, or public enemy, fire, or flood.
- 25 **ASSIGNMENT-DELEGATION:** No right or interest in the contract shall be assigned or delegation of any obligation made by Seller without the written permission of the City. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
- 26 **WAIVER:** No claim or right arising out of a breach of the contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.
- 27 **INTERPRETATION-PAROLE EVIDENCE:** This writing, plus any specifications for bids and performance provided by the City in its advertisement for bids and any other document provided by Seller as part of his bid, is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. Whenever a term defined by the Uniform Commercial Code is used in the contract, the definition contained in the Code is to control.
- 28 **APPLICABLE LAW:** The Contract shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of the contract.
- 29 **RIGHT TO ASSURANCE:** Whenever one party to the contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of this intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
- 30 **INDEMNIFICATION:** Seller shall indemnify, defend, keep and save harmless the City, its agents, officials and employees, against all injuries, deaths, loss, damages, claims, patent claims, suits, liabilities, judgments, costs and expenses, which may in anywise arise or accrue against the City in consequence of the granting of the contract or which may anywise result there from, whether or not it shall be alleged or determined that the act was caused through negligence or omission of the Seller or its employees, or of the subcontractor or assignee or its employees, if any, and the Seller shall, at his own expense, appear, defend and pay all charges of attorneys and all costs and

other expenses arising there from or incurred in connection therewith, and, if any judgment shall be rendered against the City in any such action, the Seller shall, at its own expenses, satisfy discharge the same. Seller expressly understands and agrees that any bond required by the contract, or otherwise provided by Seller, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City as herein provided.

31 NON-APPROPRIATION: All funds for payment by the City under this contract are subject to the availability of an annual appropriation for this purpose by the City. In the event of non-appropriation of funds by the City Council of the City of Lubbock for the goods or services provided under the contract, the City will terminate the contract, without termination charge or other liability, on the last day of the then-current fiscal year or when the appropriation made for the then-current year for the goods or services covered by this contract is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this contract, cancellation shall be accepted by the Seller on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the City shall not be obligated under this contract beyond the date of termination.

32 TIME: It is hereby expressly agreed and understood that time is of the essence for the performance of the contract, and failure by Seller to meet the time specifications of the contract will cause Seller to be in default of the contract.

33 SILENCE OF SPECIFICATION: The apparent silence of specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial products and practices are to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of the specifications in this bid shall be made on the basis of this statement. The items furnished under this contract shall be new, unused, of the latest product in production to commercial trade, and shall be of the highest quality as to materials used and workmanship. Manufacturer furnishing these shall be experienced in design and construction of such items and shall be an established supplier of the item bid.

#### 34 ENVIRONMENTAL STEWARDSHIP

The City of Lubbock is fully committed to environmental excellence. It is the policy of the City to demonstrate sound environmental performance by controlling and mitigating the environmental impact of City activities, operations, and services. This commitment extends to the procurement and contracting process. Contractors and suppliers selected to provide services and materials to the City are required to uphold an equally high standard. To that end all contractors and suppliers hired by the City agree to maintain full compliance with any and all applicable environmental regulations. In addition, contractors and suppliers agree to implement whatever processes and procedures necessary to reduce and eliminate pollution and wastes and conserve natural resources while under contract with the City. To the greatest extent possible, while still delivering the highest quality service or material, City contractors and suppliers, as well as any sub-contractors under their supervision, will:

- minimize waste and pollution generation;
- conserve natural resources and energy;
- minimize the use of hazardous materials by choosing the least toxic - yet effective - materials and products;
- use the highest available post-consumer content materials and products;
- recycle and/or reuse as much as is possible, waste materials; and
- incorporate into project design energy efficient fixtures, appliances and mechanical equipment.

#### 35 THE CITY RIGHT TO AUDIT

At any time during the term of the contract, or thereafter, the City, or a duly authorized audit representative of the City or the State of Texas, at its expense and at reasonable times, reserves the right to audit Contractor's records and books relevant to all services provided to the City under this Contract. In the event such an audit by the City reveals any errors or overpayments by the City, Contractor shall refund the City the full amount of such overpayments within thirty (30) days of such audit findings, or the City, at its option, reserves the right to deduct such amounts owing the City from any payments due Contractor.

#### 36 CONTRACTOR ACKNOWLEDGES

Contractor acknowledges by supplying any Goods or Services that the Contractor has read, fully understands, and will be in full compliance with all terms and conditions and the descriptive material contained herein and any additional associated documents and Amendments. The City disclaims any terms and conditions provided by the Contractor unless agreed upon in writing by the parties. In the event of conflict between these terms and

conditions and any terms and conditions provided by the Contractor, the terms and conditions provided herein shall prevail. The terms and conditions provided herein are the final terms agreed upon by the parties, and any prior conflicting terms shall be of no force or effect.

37 CONFIDENTIALITY

The Contractor shall retain all information received from or concerning the City and the City's business in strictest confidence and shall not reveal such information to third parties without prior written consent of the City, unless otherwise required by law.

38 INDEMNITY

The Contractor shall indemnify and save harmless the city of Lubbock and its elected officials, officers, agents, and employees from all suits, actions, losses, damages, claims, or liability of any kind, character, type, or description, including without limiting the generality of the foregoing, all expenses of litigation, court costs, and attorney's fees, for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, to the extent arising out of, related to or occasioned by, the negligent acts of the Contractor, its agents, employees, and/or subcontractors, related to the performance, operations or omissions under this agreement and/or the use or occupation of city owned property. The indemnity obligation provided herein shall survive the expiration or termination of this agreement.