

**\$20.00**

# **CITY OF SAN ANGELO REQUEST FOR COMPETITIVE SEALED PROPOSALS**

**RFCSP No: OP-03-14**

**Operations Department  
Cell 11A Geosynthetic Installation**

**SUBMITTAL DEADLINE**

**June 6, 2014, No later than 2:00 P.M., Local Time**

**Contract Documents  
Specifications  
Submittal Forms**



**City of San Angelo  
72 West College Avenue  
San Angelo, Texas 76903**



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*This Table of Contents is intended as an aid and not as a comprehensive listing of the proposal package. Bidders are responsible for reading the entire proposal package and complying with all specifications.*

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## 1. INVITATION FOR PROPOSAL

### 1.1. Scope of Work

The City of San Angelo is seeking bids for the supply and installation of geosynthetic material for the construction of Cell 11A of the City of San Angelo Sanitary Landfill, located at 3002 Old Ballinger Highway. The contractor shall provide all labor for preparing the worksite and furnish all material, accessories, labor, and equipment necessary for completing the installation.

Engineer's Project Estimate: \$1,000,000.00

Estimated Time to Complete: 3 Weeks

### 1.2. Document, Plans and Specifications Availability

Proposal documents, plans, and specifications may be obtained at the Purchasing Department, Suite 330, City Hall at a cost of **\$20.00** per set. All documents are also available at <http://www.sanangelotexas.us> at no cost. No refunds will be made and no partial sets will be issued

### 1.3. Insurance and Indemnification Requirements

*Insurance and indemnification requirements applicable to this project are included within the draft Project Agreement Form included within this package. Please read the bold note at the top of the first page of the draft Project Agreement Form and review the insurance and indemnification requirements listed in Section 5 of that form with your insurance agent **prior** to submitting your proposal.*

### 1.4. Pre-Bid Conference

A Pre-proposal Conference will be held on May 29, 2014 at 2:00 PM, Local Time in the City Hall 2nd Floor Conference Room.

### 1.5. Delivery of Proposal

Sealed proposals will be received until June 6, 2014, 2:00pm, local time. The clock located in the Purchasing Department will be the office time. The proposal should be addressed as reflected below:

**USPS:** Purchasing Department, OP-03-14  
City of San Angelo  
72 West College Ave  
San Angelo, Texas 76903

**Mark Sealed Envelope:** "RFCSP NO. OP-03-14/San Angelo Landfill Cell 11A Geosynthetics"

**Delivery Service (UPS, FEDEX, etc):** Purchasing Department, OP-03-14  
72 West College Ave, Suite 330  
San Angelo, Texas 76903

- **Mark Delivery Envelope:** "Sealed RFCSP Enclosed"
- **Mark Sealed Envelope:** "RFCSP NO. OP-03-14/San Angelo Landfill Cell 11A Geosynthetics"

*It is the sole responsibility of the firm to ensure that the sealed submittal arrives at the above location by specified deadline regardless of method chosen by the company for delivery.*

**Faxed or electronically transmitted submittals will not be accepted**

### 1.6. Qualification Statement

Prospective respondents should be advised that a qualification statement may be required.

### 1.7. Proposal Withdrawal

No proposal may be withdrawn within a period of 90 days after the date fixed for opening proposals.

### 1.8. Rejection of Proposals

The City of San Angelo reserves the right to reject all proposals, to waive informalities or irregularities, and to

reject non-conforming, non-responsive, or conditional proposals.

#### **1.9. Confidentiality**

All proposals submitted shall remain confidential. If a contract is awarded, proposals will be made available for public inspection. The City shall not be responsible for the confidentiality of any trade secrets or other information contained or disclosed in the proposal unless clearly identified.

#### **1.10. Equal Opportunity Employers**

All contractors and subcontractors must be Equal Opportunity Employers. Disadvantaged and Minority Bidders are encouraged to participate.

#### **1.11. Points of Contact**

##### **Roger Banks, Manager**

Purchasing Division  
City of San Angelo  
72 West College Avenue  
San Angelo, Texas 76903  
Telephone: (325) 657-4220  
Email: [roger.banks@cosatx.us](mailto:roger.banks@cosatx.us)

##### **Shane Kelton, Director of Operations**

City of San Angelo  
72 West College  
San Angelo Texas, 76903  
Office: (325) 657-4206  
Email: [shane.kelton@cosatx.us](mailto:shane.kelton@cosatx.us)

##### **David Clark, P.E.**

Biggs & Mathews Environmental  
1700 Robert Road, Suite 100  
Mansfield, Texas, 76063  
Email: [dclark@biggsandmathews.com](mailto:dclark@biggsandmathews.com)  
Telephone: (817) 563-1144

## **2. INSTRUCTIONS TO RESPONDENTS**

### **2.1. Digital Format**

If a Respondent obtained the proposal specifications in digital format in order to prepare a proposal, the proposal must be submitted in hard copy according to the instructions contained in this proposal package. If, in its response, Bidders makes any changes whatsoever to the published specifications, the specification as published shall control. Furthermore, if an alteration of any kind to the specification is discovered after the contract is executed and is or is not being performed; the contract is subject to immediate cancellation without recourse.

### **2.2. Restrictions On Communication**

- A. Respondents should not communicate with: 1) elected City officials and their staff regarding the RFP or Proposals from the time the RFP has been released until the contract is posted as a City Council agenda item; and 2) City employees from the time the RFP has been released until the contract is awarded. These restrictions extend to "thank you" letters, phone calls, emails and any contact that results in the direct or indirect discussion of the RFP and/or Proposal submitted by Respondent. Violation of this provision by Respondent and/or its agent may lead to disqualification of Respondent's proposal from consideration.

Exceptions to the Restrictions on Communication with City employees include:

1. Conversations with the current contract holder concerning operations (if applicable);
2. Private (non-business) contacts with the City by the Proposer's employees acting in their personal capacity;
3. Casual social contacts that do not include mention of this RFP.
4. Respondents may submit written questions concerning this RFP to the Staff Contact Person listed below until **June 2, 2014, 1:00 p.m., local time**. Questions received after the stated deadline will not be answered. It is suggested that all questions be sent by email to:



Roger Banks, Purchasing Division Manager  
Email: [sapurch@cosatx.us](mailto:sapurch@cosatx.us)

***Please ensure the RFP Number and Title is in the Subject Line.***

Suppliers must submit their questions using the following format.

- Supplier's name, requester, and appropriate contact information
- Clearly state the question
- Include specific reference to the applicable Request for Proposal section(s)

Questions, if answered, will be posted in the form of an Addendum to the City's website at [www.cosatx.us](http://www.cosatx.us). Respondent is responsible for calling or checking the website City to determine if any addendums have been issued prior to their submittal.

5. Communications as allowed by the specifications outlined at the Pre-Proposal Conference (if applicable) and Site Tour
6. Respondents may provide responses to questions asked of them after responses are received and opened. During interviews, if any, verbal questions and explanations will be permitted. If interviews are conducted, Respondents shall not bring lobbyists. The City reserves the right to exclude any persons from interviews as it deems in its best interests;
7. Upon completion of the evaluation process, Respondents shall receive a notification letter indicating the recommended firm and anticipated City Council agenda date.
8. The City reserves the right to accept or reject any or all proposals, and to waive any informalities or irregularities in the RFP process.
9. City reserves the right to contact any Respondent to negotiate if such is deemed desirable by City. Such negotiations initiated by City staff persons, shall not be considered a violation by Respondent of this section.

### **2.3. Submission of Proposal**

Each proposal and accompanying data shall be enclosed in a sealed opaque envelope or wrapping, addressed to the City of San Angelo, Texas, marked PROPOSAL ENCLOSED and identified on the outside with the Respondent's name and with the proposal number and/or title as stated in the Invitation for Proposal. The Owner will not be responsible for the premature opening of any proposal which is not submitted in a satisfactory PROPOSAL ENVELOPE or which is not properly addressed and identified.

If the Proposal is sent by carrier (Fed Ex, UPS, etc), the sealed envelope shall be enclosed in the carrier's packaging with the notation "RFCSP ENCLOSED" on the face thereof.

Proposals shall be delivered to the designated location prior to the time and date for receipt of Proposals indicated in the Invitation for Proposal, or the modified time and date indicated by Addendum. Proposals received after the time and date for receipt of Proposals will be returned unopened.

Respondent shall assume full responsibility for timely delivery at the location designated for receipt of Proposals. No Respondent may submit more than one Proposal. Multiple Bids under different names will not be accepted from one firm or association.

### **2.4. Modifications – Corrections, Deletions or Additions**

No phone, fax, or email changes to bids will be accepted. Prices cannot be changed after bids are opened. Corrections, deletions, or additions shall be submitted in writing and delivered in a sealed envelope prior to proposal opening.

## **2.5. Price Proposal Form**

Proposal forms must be completed in ink. All blank spaces in the Proposal Form shall be filled. A proposal price shall be indicated for each item and alternative listed therein, or the words "No Proposal", "No Charge", or other appropriate phrase shall be entered. Bids received without all such items completed may be considered non-responsive.

The Respondent is not required to acknowledge receipt of Addenda but shall include all addenda in Respondent's response. No alterations in Bids or alterations made to the printed forms, by erasures, interpolations, or otherwise will be acceptable unless each such alteration is signed or initialed by the Respondent.

Bids by corporations must be executed in the corporate name by the president or vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal shall be affixed and attested by the secretary or an assistant secretary. The state of incorporation shall be shown below the corporate name. Bids by partnerships must be executed in the partnership name and signed by a partner; title and the official address of the partnership must be shown below the signature. Bids by joint ventures shall be signed by each participant in the joint venture or by an authorized agent of each participant.

The names of all persons signing must also be legibly printed below the signature. A Proposal by a person who affixes to his signature the word "president", "secretary", "agent", or other designation without disclosing his principle may be held to be the Proposal of the individual signing. When requested by Owner, evidence of the authority of the person signing shall be furnished.

## **2.6. Withdrawal of Bids**

Bids may be modified or withdrawn by contacting the Purchasing Department and requesting withdrawal any time prior to opening of Bids. Notice must be in writing. Notices by email, fax, or phone will not be accepted.

## **2.7. Rejection of Bids**

The Owner reserves the right to reject any and all proposals, and does not bind himself to accept the lowest price or any proposal for this work or any part thereof and shall have the right to ask for new proposals for the whole or parts, should he desire to do so.

## **2.8. Award and Execution of Documents**

It is not the policy of the City to purchase based on low bids alone. The award of the Proposal, if it is awarded, will be to the Respondent whose combination of qualifications, experience, reputation and price provides the best value as determined by the City.

In evaluating Proposals, the Owner shall consider the following criteria for determining the "best value":

- The overall purchase price,
- Respondent's reputation for their goods and/or services,
- Respondents past relationship with the municipality, and
- Respondents past experience on City projects or projects in the immediate area.

Contracts will not be awarded to companies who:

- Do not include a Bid Bond in their proposal documents
- Cannot comply with Performance Bond and Payment Bond Requirements
- Cannot comply with the Insurance Requirements

## **2.9. Evaluation Criteria**

All proposals will be evaluated and scored by an evaluation committee that will score each proposal based upon the following criteria and weighting as detailed below.

- **Cost (50%)**  
Respondent shall provide detailed cost information as outlined in the Request. In analyzing Proposals, the City may take into consideration alternates and unit prices.

- **Respondents Reputation for Products/ Services (30%)**  
Respondent shall provide a list of References for similar projects, including the identification of the owner and contact information, a description of the project, and any relevant information regarding the similarities of past project not otherwise readily apparent. (All references shall be for work completed in the last five (5) years). Additionally, respondent should identify whether any projects identified herein resulted in claims, litigation or arbitration.
- **Past Relationship with the City of San Angelo (10%)**  
Respondent shall provide a list of References for similar projects completed for the City of San Angelo, including a description of the project, and any relevant information regarding the similarities of past project not otherwise readily apparent. (All references shall be for work completed in the last five (5) years)
- **Experience with Projects in the City Of San Angelo Area (within 150 mile Radius) (10%)**  
Respondent shall provide a list of References for similar projects completed in the general area of City of San Angelo, including a description of the project, owner contact information, and any relevant information regarding the similarities of past project not otherwise readily apparent. (All references shall be for work completed in the last five (5) years)

#### **2.9.1. Evaluation Process**

1. The city will evaluate and rank the proposals in relation to the published selection criteria within 45 days after the opening.
2. The City reserves the right to revise the Request and the request "Best and Final Offers" from the top candidates following the initial evaluation.
3. The city then will select the proposal that offers the best value based on the published criteria and request authorization from the City Council to negotiate and execute a contract.
4. Following the selection, the contract negotiation process begins and the City will negotiate first with the highest ranked offer. At this stage, the City may discuss modifications to the proposed scope, time and price. Modifications are not required, and if they are discussed but not agreed to by the City and the offeror, a final contract may still be negotiated and agreed upon based on the original response to the RFCSP. If the two parties are unable to reach a final agreement, the City will inform that offeror in writing that negotiations are ended.
5. The City may then negotiate with the next ranked offeror. This continues in the order of the selection ranking until a contract is reached or all proposals are rejected.

#### **2.10. Bid Security**

Each proposal must be accompanied by a Bid Bond, Certified or Cashier's Check (on a solvent bank in the State of Texas), drawn to the order of the Owner in the sum of not less than five percent (5%) of the total amount of the proposal. The bid bond must be executed by a surety meeting the requirements set forth in Section 2, General Conditions. The bid security shall be made payable without condition to the City of San Angelo, Texas. Bid security must be in the name of the company submitting responses.

Checks furnished as security by Respondent will be returned within 30 days of the contract award.

#### **2.11. Return of Bid Security**

The bid security of the successful Respondent will be retained until he has executed the contract agreement and furnished the required Contract Security and insurance, whereupon checks furnished as bid security will be returned. The bid security of any Respondent whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the day after the required documents are delivered by the selected respondent.

#### **2.12. Taxes and Permits**

Attention is directed to the requirements of Section 2, General Conditions regarding payment of taxes and obtaining permits. All taxes that are lawfully assessed against Owner or contractor in connection with the Work shall be paid by the selected contractor. All prices proposed shall include all such taxes and the costs of all required permits. The Owner is exempt from State Sales Tax. Contractors may not use the City's Tax

Exemption for the purchase of materials, etc.

### **2.13. Examination of Contract Documents**

Each Respondent shall thoroughly examine and be familiar with the Contract Documents. The submission of a proposal shall constitute an acknowledgment that the Respondent has thoroughly examined and is familiar with the contract documents. The failure or neglect of a Respondent to receive or examine any of the contract documents shall in no way relieve him from any obligations with respect to his proposal or to the contract. No claim for extra or additional compensation will be allowed based upon a lack of knowledge of any contract document, and the Owner will in no case be responsible for any loss or for unanticipated costs that may be suffered by the selected Respondent as a result of conditions pertaining to the work.

### **2.14. Familiarization with the Type of Work**

Before submitting his Proposal, each prospective Respondent shall familiarize himself with the Work, local labor conditions and all laws, regulations, and other factors affecting performance of the Work. He shall carefully correlate his observations with requirements of the Contract Documents and otherwise satisfy himself of the expense and difficulties attending performance of the Work. The submission of a Proposal will constitute a representation of compliance by the Respondent. There will be no subsequent financial adjustment for lack of such familiarization.

### **2.15. Site Investigation**

The information contained in the Contract Documents concerning topography, subsurface soils, subsurface structures, and any quantities based thereon, is furnished solely for the convenience of the Contractor as information available at the time. The accuracy of this information is not guaranteed and the Contractor is fully and solely responsible to verify pertinent information prior to proposal time. Use of the information provided in no way relieves the Contractor or others of any responsibility for loss due to inaccuracies or deviations that may be encountered.

### **2.16. Soils Testing Specifications**

The Contractor will be allowed to conduct soils investigations within the alignment of the proposed Project if they can be coordinated with the Owner and appropriate landowners during the Proposal preparation phase. All such investigations must be coordinated through the Owner.

### **2.17. Subcontractors and Suppliers**

When requested by the Owner, within 24 hours of proposal opening, the apparent low Respondent, and any other Respondent so requested, shall submit a list of all Subcontractors he expects to use in the Work.

#### **2.17.1. Subcontractor Qualification**

Particular consideration will be given to the qualifications of each Subcontractor proposed to perform more than 5 percent (5%) of the Work.

The successful Respondent will submit to the Owner for acceptance a list of the names of subcontractors and such other persons and organizations (including those who are to furnish materials or equipment fabricated to a special design) identifying that portion of the Work to be performed by each subcontractor within fourteen (14) days of the issuance of Notice of Award.

Subcontractors will be evaluated utilizing "Criteria for Determining Lowest Responsible Bidder" as contained herein. The Owner will notify the successful Respondent in writing if, after due investigation, there is objection to any Subcontractor, person, or organization on such list.

If the apparent low Respondent declines to make any such substitution, the contract shall not be awarded to such Respondent, but his declining to make any such substitution will not constitute grounds for sacrificing his Bid Security. Additional requirements for subcontractors are contained within Section 2, entitled General Conditions, of this document.

The failure of the Owner to make any such objection prior to the execution and delivery of the Agreement shall constitute an acceptance of such Subcontractor, person, or organization. Such acceptance a Subcontractor, person or organization shall not: (1) constitute a waiver of any right of the Owner to reject defective Work, Material, or Equipment, or Work, Material, or Equipment not in conformance with the requirements of the Contract Documents; or (2) constitute a waiver of Contractor's complete and total

liability for any defective Work, Material, or Equipment, or Work Material or Equipment not in conformance with the requirements of the Contract Documents whether or not provided by or performed by any such Subcontractor.

If the Owner registers objection to and refuses to accept a Subcontractor, person, or organization list the successful Respondent may either (1) submit an acceptable substitute without an increase in his price or (2) withdraw his Proposal. If the Owner raises objection to a Subcontractor, person, or organization after the execution and delivery of the Agreement, the Contractor will submit an acceptable substitute and the Contract Price shall be increased or decreased by the reasonable difference in cost occasioned by such substitution and an appropriate Change Order shall be issued. In the event that prior objection is raised as described above, but the Contractor fails to submit an acceptable substitute prior to execution and delivery of the Agreement, no increase in Contract Price shall be allowed.

#### **2.17.2. Suppliers**

The list of Subcontractors shall also include the suppliers and manufacturers of the principal items of materials and equipment the Respondent expects to use in the Work.

#### **2.18. Copies of Contract Documents**

The selected Respondent to whom a contract is awarded will be furnished, without cost to him, five (5) copies of the specifications and five (5) sets of the drawings, together with all Addenda thereto. Additional copies of specifications and drawings may be obtained from the Owner at the cost stated in the Invitation to Proposal.

#### **2.19. Performance and Payment Bond**

(a) Having satisfied all conditions of award as set forth elsewhere in these documents, the successful Respondent shall furnish bond(s) each in a penal sum of at least the full amount of the contract as awarded in the form included in the specifications, which secures the faithful performance of the contract, and for the payment of all persons, firms or corporations to whom the selected Respondent may become legally indebted for labor, materials, tools, equipment, or service, of any nature, employed or used by him in performing the work. Such bond(s) shall bear the same date as or a date subsequent to, the date of the contract.

(b) On each such bond the rate of premium shall be stated, together with the total amount of the premium charged. The current power of attorney for the person who signs for any surety company shall be attached to such bond.

(c) The failure of the successful Respondent to supply the required bonds within thirty (30) days after the prescribed forms are presented for signature, or within such extended period as the Owner may grant based upon reasons determined adequate by the Owner, shall constitute a default, and the Owner may either award the contract to the next responsible Respondent or re-advertise for bids, and may charge against the contractor the difference between the submitted and the amount for which a contract for the work is subsequently executed, irrespective of whether the amount thus due exceeds the amount of the bond.

(d) Performance and Payment Bonds shall be delivered to the Purchasing Department.

#### **2.20. Waiver of Performance and Payment Bonds**

Performance and Payment Bonds may be waived under the following circumstances:

- 1) The Payment Bond is not required if the contract sum is twenty-five thousand (\$25,000.00) Dollars or less,
- 2) The Performance Bond is not required if the contract sum is less than one-hundred thousand (\$100,000.00) Dollars, and
- 3) The selected Respondent provides a current certificate of Insurance listing coverages in the amounts required herein.

#### **2.21. Quantities are Approximate**

The quantities named in the Proposal or separately listed are approximate only, but these are to be used as a basis for the comparison of proposals and to determine the amount of the bonds. However, if a unit price appears to the Owner to be unbalanced to such an extent that changes in actual quantities required under the contract might result in contract price adjustments which would increase payments to the selected contractor excessively, then the Owner may take such a condition under consideration in making the award of the contract.

## **2.22. Employment Requirements and Wage Rates**

### **2.22.1. General**

The award of this contract shall be based in part upon payment by the selected Respondent and his Subcontractors of wage rates not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

The selected Respondent shall comply with all requirements of the prevailing wage law of the State of Texas, Texas Government Code, Chapter 2258, including the latest amendments thereto.

The prevailing wage law does not prohibit payment of more than the general prevailing rate of wages.

### **2.22.2. Records**

The selected Respondent and each Subcontractor shall keep an accurate record showing the names and occupations of all laborers, workers, and mechanics employed, together with the actual wages paid to each worker. At all reasonable hours, such records shall be open to inspection by the representatives of Owner.

### **2.22.3. Penalty**

If the selected Respondent or any Subcontractor fails to comply with the prevailing wage law, he shall forfeit to Owner sixty dollars (\$60.00) per day for each laborer, workman, or mechanic who is paid less than the specified rate, pursuant to §2258.023 of the Texas Government Code.

### **2.22.4. Hours of Labor**

The selected Respondent shall comply with all requirements of the hours of work on public works defined by Texas Government Code §650.001, including the latest amendments thereto, as an eight (8) hour work day. Violation of this provision is punishable by fine and imprisonment pursuant to §650.003 of the Texas Government Code.

### **2.22.5. Veterans Preference**

Pursuant to Texas Government Code, §657.004, the selected Respondent shall give preference in employment to honorably discharged veterans who were engaged in the services of the United States in time of war or conflict and who are and have been citizens of Texas for not less than five (5) years.

## **2.23. Prevailing Wage and Hour Decision**

Chapter 2258 of the Texas Government Code requires contractors and subcontractors performing work on public works contracts to pay wages at a rate consistent with the rate prevailing in the area. Under federal law, the United State Department of Labor is required to maintain a prevailing Wage and Hour decision for each geographical area. Compliance with the published decision meets the requirements of the Texas Government Code.

1. If the Wage Decision lists fringe benefits, you must either provide the benefits or pay the hourly equivalent in cash in addition to the predetermined wage.
2. Labor classifications not appearing on the Wage Decision will be deferred to the U.S. Department of Labor (DOL) for approval.

Attached below is the latest Prevailing Wage and Hour Decision currently applicable. The selected Respondent will be responsible for compliance with the applicable portion of Davis-Bacon and Related Acts and any such decision applicable at the timework is performed.

### 2.23.1. Applicable Wages and Benefits

#### Prevailing Wage and Hour Decision

General Decision Number: TX140007 01/03/2014 TX7

Superseded General Decision Number: TX20130007

State: Texas

Construction Types: Heavy and Highway

Counties: Armstrong, Carson, Crosby, Ector, Irion, Lubbock, Midland, Potter, Randall, Taylor and Tom Green Counties in Texas.

#### HEAVY & HIGHWAY CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	01/03/2014

\* SUTX2011-002 08/02/2011

	Rates	Fringes
CEMENT MASON/CONCRETE		
FINISHER (Paving & Structures)...	\$ 13.55	
ELECTRICIAN.....	\$ 20.96	
FORM BUILDER/FORM SETTER		
Paving & Curb.....	\$ 12.36	
Structures.....	\$ 13.52	
LABORER		
Asphalt Raker.....	\$ 12.28	
Flagger.....	\$ 9.30	
Laborer, Common.....	\$ 10.30	
Laborer, Utility.....	\$ 11.80	
Work Zone Barricade		
Servicer.....	\$ 10.30	
POWER EQUIPMENT OPERATOR:		
Asphalt Distributer.....	\$ 14.87	
Asphalt Paving Machine.....	\$ 13.40	
Broom and Sweeper.....	\$ 11.21	
Crane, Lattice Boom 80		
Tons or Less.....	\$ 16.82	
Crawler Tractor Operator....	\$ 13.96	
Excavator, 50,000 lbs or		
less.....	\$ 13.46	
Front End Loader Operator,		
Over 3 CY.....	\$ 12.77	
Front End Loader, 3CY or		
less.....	\$ 12.28	

Loader/Backhoe.....	\$ 14.18
Mechanic.....	\$ 20.14
Milling Machine.....	\$ 15.54
Motor Grader, Rough.....	\$ 16.15
Motor Grader, Fine.....	\$ 17.49
Pavement Marking Machine....	\$ 16.42
Reclaimer/Pulverizer.....	\$ 12.85
Roller, Asphalt.....	\$ 10.95
Roller, Other.....	\$ 10.36
Scraper.....	\$ 10.61
Spreader Box.....	\$ 12.60

Servicer.....\$ 13.98

Steel Worker (Reinforcing).....\$ 13.50

#### TRUCK DRIVER

Lowboy-Float.....	\$ 14.46
Single Axle.....	\$ 12.74
Single or Tandem Axle Dump..	\$ 11.33
Tandem Axle Tractor with Semi.....	\$ 12.49

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

#### Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable , i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.



Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rates.

0000/9999: weighted union wage rates will be published annually each January.

#### Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007

5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator

(See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION



### 3. PERFORMANCE AGREEMENT-DRAFT

#### NOTICE

This is the City's standard form of agreement for projects of this type. The specified insurance requirements in Section 18 are applicable to this project. After bids are opened and City has determined its recommendation, a final contract for your signature will be prepared. The appropriate sections will be completed with an accurate summary of the description of work to be awarded and the bid price recommended to Council, including all alternates, options and addenda to be awarded. Any special provisions included in the bid documents will be added in Section 25 of this Contract. This Contract must be finalized by City, and signed by Contractor, prior to the award of the bid by the City Council.

#### CONTRACT FOR

#### CONSTRUCTION PROJECT RFCSP No. OP-03-14

This Contract is entered into this \_\_\_\_ day of \_\_\_\_\_, 2014 (but effective as of \_\_\_\_\_, 2014) ("effective date") by and between the City of San Angelo, a home-rule municipal corporation of the State of Texas ("City") and \_\_\_\_\_, a \_\_\_\_\_ ("Contractor").

#### RECITALS:

**A.** City has issued a Request for Competitive Sealed Proposal No. OP-03-14 Cell 11A Geosynthetic Installation ("RFCSP No. OP-03-14") for the supply and installation of geosynthetic material for the construction of Cell 11A of the City of San Angelo Landfill, located at 3002 Old Ballinger Highway, San Angelo ("Work").

**B.** Contractor's proposal, in response thereto, has been selected as the most qualified proposal for the provision of Work.

**C.** The Council of the City of San Angelo approved the selection of Contractor on \_\_\_\_\_, 2014, and authorized the City Manager to negotiate and execute a contract, under the terms and conditions set forth herein.

**NOW, THEREFORE,** in consideration of the mutual covenants and promises herein contained, City and Contractor agree as follows:

**TERMS:**

1. **RECITALS AND INCORPORATIONS:** The recitals are true and correct and are hereby incorporated into and made a part of this Contract. The RFCSP and Contractor's Proposal are sometimes referred to herein collectively as the Contract Documents ("Contract Documents"), which are by this reference incorporated herein and made a part of this Contract and attached hereto as Exhibit "\_\_\_".

2. **STATEMENT OF WORK:**

A. Contractor shall be responsible for completing Work as described in Contract Documents for the supply and installation of geosynthetic material for the construction of Cell 11A of the City of San Angelo Landfill, located at 3002 Old Ballinger Highway, San Angelo as specified in the Contract Documents.

B. Contractor shall provide all labor for preparing the worksite and furnish all material, accessories, labor, and equipment necessary for completing the construction, replacement and installation; and, all other Work specified in the technical specification documents and drawings included with the Contract Documents incorporated herein by reference in Section 7. of this Contract and in accordance with the terms and conditions set forth herein and within those Contract Documents.

3. **TIME OF PERFORMANCE:** Contractor agrees to substantially complete Work within twenty-one (21) consecutive calendar days ("Contract Time") after the date Work commences as established by the Notice to Proceed. Upon Contractor's receipt of the Notice to Proceed from City, Contractor will commence and complete Work in accordance with specifications as set out in Contract Documents. Contractor further agrees that approval for beginning Work on the project will not be given and that Work will not start until all required bonds and insurance certificates specified in the bid documents have been received and approved by City.

4. **LIQUIDATED DAMAGES:** City and Contractor recognize that the time of performance is of the essence in this Contract and that City will suffer financial loss if Work is not substantially complete within the time specified in Section 3. above, plus any extensions thereof allowed. Both parties hereto also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by City if

Work is not substantially complete on time. Accordingly, instead of requiring such proof, City and Contractor agree that a reasonable estimate of liquidated damages for any delay (but not as a penalty) would be for Contractor to pay City Four Thousand One Hundred Eighty-One and 52/100 Dollars (\$4,181.52) for each calendar day that expires after the time specified in Section 3. until Work is substantially complete. Therefore, Contractor shall pay City as liquidated damages Four Thousand One Hundred Eighty-One and 52/100 Dollars (\$4,181.52) for each calendar day that expires after the time specified in Section 3. until Work is substantially complete.

5. **CONTRACT PRICE:** City shall pay to Contractor for performance of Work embraced in this Contract, and Contractor shall accept as full compensation therefore, the bid price of \_\_\_\_\_ Dollars (\_\_\_\_\_) subject to adjustment only as provided by approved change order, for all Work covered by and included in the contract award; payment thereof to be made in current funds in the manner provided in Section 6. Payment Procedure.

6. **PAYMENT PROCEDURE:** Contractor shall submit Applications for Payment in accordance with the General Conditions as shown in Contract Documents and City shall process the Applications for Payment in accordance with the General Conditions, except that progress payments and the final payment under this Contract shall be made as set forth below:

A. Progress Payments. City shall make progress payments of the Contract Price on the basis of Contractor's Application for Payment on or about the thirtieth (30th) day after submittal of the Application for Payment each month as provided below. All progress payments shall be based upon the progress of Work measured as provided for in the General Conditions. Contractor shall subdivide Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Partial payment retainage shall not exceed five percent (5%) of the total price. Upon approval of the value by City, it shall be incorporated into the form of a Partial Payment Estimate furnished by Contractor.

B. Final Payment. Upon completion and acceptance of Work by City in accordance with the General Conditions, City shall pay the remainder of the Contract Price.

7. **CONTRACT DOCUMENTS:** The following documents from City are incorporated herein by

reference for all purposes, as if fully set out verbatim:

- Request for Competitive Sealed Proposal No. OP-03-14 Cell 11A Geosynthetic Installation (“RFCSP No. OP-03-14”)
- Contractor’s Bid
- All of the documents, conditions, specifications, technical data, drawings, requirements and addenda comprising said Bid Invitation Number as of the time this Contract is entered by Contractor and City.

8. **REPRESENTATIONS OF CONTRACTOR:** In order to induce City to enter into this Contract, Contractor makes the following representations to City:

A. Contractor has familiarized itself with the nature and extent of the Contract Documents, Work, and with all local conditions and federal, state and local laws.

B. Contractor has made, or caused to be made, examinations and investigations of information as it deems necessary for the performance of Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations or similar data are, or will be required by Contractor for such purposes.

C. Contractor has given City advanced written notice of all conflicts, errors, or discrepancies that it has discovered in the Contract Documents prior to bidding and the written resolution thereof by City is acceptable to Contractor.

D. Contractor is skilled and experienced to responsibly perform the type of Work described in the Contract Documents in a timely manner.

9. **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS:** Contractor understands that Contracts between private entities and local governments are subject to certain laws and regulations, including laws pertaining to public records, conflict of interest, recordkeeping, etc. City and Contractor agree to comply with and observe all applicable laws, codes and ordinances as they may be amended from time to time.

10. **OWNERSHIP OF DOCUMENTS:** Contractor understands and agrees that any information,

document, report or any other material whatsoever which is given by City to Contractor or which is otherwise obtained or prepared by Contractor pursuant to or under the terms of this Contract is and shall at all times remain the property of City. Contractor agrees not to use any such information, document, report or material for any other purpose whatsoever without the written consent of City, which may be withheld or conditioned by City in its sole discretion.

**11. AUDIT AND INSPECTION RIGHTS:**

**A.** City may, at reasonable times, and for a period of up to three (3) years following the date of final payment by City to Contractor under this Contract, audit, or cause to be audited, those books and records of Contractor which are related to Contractor's performance under this Contract. Contractor agrees to maintain all such books and records at its principal place of business for a period of three (3) years after final payment is made under this Contract.

**B.** City may, at reasonable times during the term hereof, inspect Contractor's facilities and perform such tests, as City deems reasonably necessary, to determine whether the goods or services required to be provided by Contractor under this Contract conform to the terms hereof, if applicable. Contractor shall make available to City all reasonable facilities and assistance to facilitate the performance of tests or inspections by City representatives. All tests and inspections shall be subject to, and made in accordance with, the provisions of the City of San Angelo Code of Ordinances, as same may be amended or supplemented from time to time.

**12. AWARD OF CONTRACT:** Contractor represents and warrants to City that it has not employed or retained any person or company employed by City to solicit or secure this Contract and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with the award of this Contract.

**13. PUBLIC RECORDS:** Contractor understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, and agrees to allow access by City and the public to all documents subject to disclosure under applicable law. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate cancellation of this Contract by City.

14. **DEFAULT:** If Contractor fails to comply with any term or condition of this Contract, or fails to perform any of its obligations hereunder, then Contractor shall be in default. Upon the occurrence of a default hereunder, City in addition to all remedies available to it by law, may immediately, upon written notice to Contractor, terminate this Contract whereupon all payments, advances, or other compensation paid by City to Contractor while Contractor was in default shall be immediately returned to City. Contractor understands and agrees that termination of this Contract under this section shall not release Contractor from any obligation accruing prior to the effective date of termination. Should Contractor be unable or unwilling to commence to perform Work within the time provided or contemplated herein, then, in addition to the foregoing, Contractor shall be liable to City for all expenses incurred by City in preparation and negotiation of this Contract, as well as all costs and expenses incurred by City in the re-procurement of Work, including consequential and incidental damages.

15. **TERMINATION RIGHTS OF CITY:**

A. City shall have the right to terminate this Contract, in its sole discretion, at any time, by giving written notice to Contractor at least five (5) business days prior to the effective date of such termination. In such event, City shall pay to Contractor compensation for Work rendered and expenses incurred prior to the effective date of termination. In no event shall City be liable to Contractor for any additional compensation, other than that provided herein, or for any consequential or incidental damages.

B. City shall have the right to terminate this Contract, without notice or liability to Contractor, upon the occurrence of an event of default hereunder. In such event, City shall not be obligated to pay any amounts to Contractor and Contractor shall reimburse to City all amounts received while Contractor was in default under this Contract.

16. **RESOLUTION OF CONTRACT DISPUTES:** Contractor understands and agrees that all disputes between Contractor and City based upon an alleged violation of the terms of this Contract by City shall be submitted to City Manager for his resolution, prior to Contractor being entitled to seek judicial relief in connection therewith. In the event that the amount of compensation hereunder exceeds Twenty Five Thousand Dollars (\$25,000.00), the City Manager's decision shall be approved or disapproved by the City



Council. Contractor shall not be entitled to seek judicial relief unless: (i) Contractor has first received City Manager's written decision, approved by the City Council if the amount of compensation hereunder exceeds Twenty Five Thousand Dollars (\$25,000.00); or (ii) a period of sixty (60) days has expired, after submitting to the City Manager a detailed statement of the dispute, accompanied by all supporting documentation (ninety (90) days if City Manager's decision is subject to City Council approval); or (iii) City has waived compliance with the procedure set forth in this section by written instruments, signed by the City Manager.

**17. INSURANCE:**

**A.** Contractor shall, at all times during the term hereof, maintain such insurance coverage as may be required by City. All such insurance, including renewals, shall be subject to the approval of City for adequacy of protection and evidence of such coverage shall be furnished to City on Certificates of Insurance indicating such insurance to be in force and effect and providing that it will not be canceled during the performance of Work under this Contract without thirty (30) calendar days prior written notice to City. Completed Certificates of Insurance shall be filed with City prior to the performance of services hereunder, provided however, that Contractor shall at any time upon request file duplicate copies of the policies of such insurance with City.

**B.** If in the judgment of City, prevailing conditions warrant the provision by Contractor of additional liability insurance coverage or coverage which is different in kind, City reserves the right to require the provision by Contractor of an amount of coverage different from the amounts or kind previously required and shall afford written notice of such change in requirements thirty (30) days prior to the date on which the requirements shall take effect. Should the Contractor fail or refuse to satisfy the requirement of changed coverage within thirty (30) days following City's written notice, this Contract shall be considered terminated on the date that the required change in policy coverage would otherwise take effect.

**18. INDEMNIFICATION:**

**A. GENERAL INDEMNIFICATION:** CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AND ITS OFFICIALS, EMPLOYEES AND AGENTS (COLLECTIVELY REFERRED TO AS "INDEMNITEES") AND EACH OF THEM FROM AND AGAINST ALL LOSS, COSTS, PENALTIES, FINES, DAMAGES, CLAIMS, EXPENSES

(INCLUDING ATTORNEY'S FEES) OR LIABILITIES (COLLECTIVELY REFERRED TO AS "LIABILITIES") ASSERTED BY ANY PERSON OR PERSONS, INCLUDING AGENTS OR EMPLOYEES OF CONTRACTOR OR CITY BY REASON OF ANY INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR DESTRUCTION OR LOSS OF ANY PROPERTY ARISING OUT OF, RESULTING FROM, OR IN CONNECTION WITH (I) THE PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES CONTEMPLATED BY THIS CONTRACT WHICH IS OR IS ALLEGED TO BE DIRECTLY OR INDIRECTLY CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION, DEFAULT OR NEGLIGENCE (WHETHER ACTIVE OR PASSIVE) OF CONTRACTOR OR ITS EMPLOYEES, AGENTS OR SUB-CONTRACTORS (COLLECTIVELY REFERRED TO AS "CONTRACTOR"), REGARDLESS OF WHETHER IT IS, OR IS ALLEGED TO BE, CAUSED IN WHOLE OR PART (WHETHER JOINT, CONCURRENT OR CONTRIBUTING) BY ANY ACT, OMISSION, DEFAULT OR NEGLIGENCE (WHETHER ACTIVE OR PASSIVE) OF THE INDEMNITEES, OR ANY OF THEM OR (II) THE FAILURE OF CONTRACTOR TO COMPLY WITH ANY OF THE PARAGRAPHS HEREIN OR THE FAILURE OF CONTRACTOR TO CONFORM TO STATUTES, ORDINANCES, OR OTHER REGULATIONS OR REQUIREMENTS OF ANY GOVERNMENTAL AUTHORITY, FEDERAL OR STATE, IN CONNECTION WITH THE PERFORMANCE OF THIS CONTRACT OR SUSTAINED IN OR UPON THE PREMISES, OR AS A RESULT OF ANYTHING CLAIMED TO BE DONE OR ADMITTED TO BE DONE BY CONTRACTOR HEREUNDER. CONTRACTOR EXPRESSLY AGREES TO INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES, OR ANY OF THEM, FROM AND AGAINST ALL LIABILITIES WHICH MAY BE ASSERTED BY AN EMPLOYEE OR FORMER EMPLOYEE OF CONTRACTOR, OR ANY OF ITS SUB-CONTRACTORS, AS PROVIDED ABOVE, FOR WHICH CONTRACTOR'S LIABILITY TO SUCH EMPLOYEE OR FORMER EMPLOYEE WOULD OTHERWISE BE LIMITED TO PAYMENTS UNDER STATE WORKERS' COMPENSATION OR SIMILAR LAWS. THIS INDEMNIFICATION SHALL SURVIVE THE TERM OF THIS CONTRACT AS LONG AS ANY LIABILITY COULD BE ASSERTED. NOTHING HEREIN SHALL REQUIRE CONTRACTOR TO INDEMNIFY, DEFEND, OR HOLD HARMLESS ANY INDEMNIFIED PARTY FOR THE INDEMNIFIED PARTY'S OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

**B. ENVIRONMENTAL INDEMNIFICATION:** CONTRACTOR AGREES TO INDEMNIFY, DEFEND AND HOLD CITY AND ITS COUNCIL MEMBERS, BOARD AND COMMISSION MEMBERS, OFFICIALS, AGENTS, GUESTS, INVITEES, CONSULTANTS AND EMPLOYEES FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, PROCEEDINGS, SUITS, JUDGMENTS, COSTS, PENALTIES, FINES, DAMAGES, LOSSES, ATTORNEYS' FEES, AND EXPENSES ASSERTED BY LOCAL, STATE OR FEDERAL

ENVIRONMENTAL AGENCIES OR PRIVATE INDIVIDUALS OR ENTITIES IN CONNECTION WITH OR RESULTING FROM OR ARISING OUT OF CONTRACTOR'S HANDLING, COLLECTION, TRANSPORTATION, STORAGE, DISPOSAL, TREATMENT, RECOVERY, AND/OR REUSE BY ANY PERSON UNDER CONTRACTOR'S DIRECTION OR CONTROL OF WASTE COLLECTED, TRANSPORTED OR LANDFILLED OR ANY CLEANUP ASSOCIATED WITH ENVIRONMENTAL CONTAMINATION, WHETHER SUCH CLEANUP IS OF AIR, SOIL, STRUCTURE, GROUND WATER OR SURFACE WATER CONTAMINATION. CONTRACTOR SPECIFICALLY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AGAINST ALL CLAIMS, DAMAGES AND LIABILITIES OF WHATEVER NATURE ASSERTED UNDER CERCLA CAUSED BY ACTS OR OMISSIONS OF CONTRACTOR REGARDLESS OF WHEN SUCH INCIDENT IS DISCOVERED. CONTRACTOR SHALL BE RESPONSIBLE AND LIABLE FOR ANY SPILL, UNDERGROUND POLLUTION OR ANY OTHER ENVIRONMENTAL IMPAIRMENT INCIDENT CAUSED BY ACTS OR OMISSIONS OF CONTRACTOR REGARDLESS OF WHEN SUCH INCIDENT IS DISCOVERED. IT IS THE INTENT OF THE PARTIES THAT THIS SECTION SHALL IN NO WAY LIMIT OTHER COVERAGE HEREIN AS IT MAY RELATE TO ANY ENVIRONMENTAL CLAIM, DAMAGE, LOSS OR LIABILITY OF ANY KIND.

**C. PROSPECTIVE APPLICATION:** ANY AND ALL INDEMNITY PROVIDED FOR IN THIS CONTRACT SHALL SURVIVE THE EXPIRATION OF THIS CONTRACT AND THE DISCHARGE OF ALL OTHER OBLIGATIONS OWED BY THE PARTIES TO EACH OTHER HEREUNDER AND SHALL APPLY PROSPECTIVELY NOT ONLY DURING THE TERM OF THIS CONTRACT BUT THEREAFTER SO LONG AS ANY LIABILITY COULD BE ASSERTED IN REGARD TO ANY ACTS OR OMISSIONS OF CONTRACTOR IN PERFORMING UNDER THIS CONTRACT.

**D. RETROACTIVE APPLICATION:** THE INDEMNITY PROVIDED FOR IN THIS CONTRACT SHALL EXTEND NOT ONLY TO CLAIMS AND ASSESSMENTS OCCURRING DURING THE TERM OF THIS CONTRACT BUT RETROACTIVELY TO CLAIMS AND ASSESSMENTS WHICH MAY HAVE OCCURRED DURING THE TERM OF PREVIOUS CONTRACTS BETWEEN CITY AND CONTRACTOR.

**E. APPLICATION TO SURROUNDING PROPERTY:** THE INDEMNIFICATION PROVISIONS OF THIS CONTRACT EXTEND TO CLAIMS AND ASSESMENTS RELATING TO RUNOFF, LEACHATE, OR OTHER INFILTRATION THAT MAY OCCUR OR HAS OCCURRED AT OR NEAR THE SITE OF LANDFILLS, TRANSFER STATIONS, OR OTHER SOLID WASTE FACILITIES AND SURROUNDING AREAS WHICH ARE OR WERE USED BY THE CONTRACTOR, DURING THE TERM OF THIS CONTRACT OR PREVIOUS CONTRACTS BETWEEN CITY AND CONTRACTOR. THIS SECTION DOES NOT MAKE CONTRACTOR

LIABLE FOR ANY SITE IT HAS NEVER USED, CLOSED, MANAGED OR MONITORED.

**19. INSURANCE REQUIREMENTS:**

**A. General Conditions.** The following conditions shall apply to all insurance policies obtained by Contractor for the purpose of complying with this Contract.

1) Satisfactory Companies. Coverage shall be maintained with insurers and under forms of policies satisfactory to City and with insurers licensed to do business in Texas.

2) Named Insureds. All insurance policies required herein shall be drawn in the name of Contractor, with City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees named as additional insureds, except on Workers' Compensation coverage.

3) Waiver of Subrogation. Contractor shall require its insurance carrier(s), with respect to all insurance policies, to waive all rights of subrogation against City, its council members, board and commission members, officials, agents, guests, invitees, consultants and employees.

4) Certificates of Insurance. At or before the time of execution of this Contract, Contractor shall furnish City's Risk Manager with certificates of insurance as evidence that all of the policies required herein are in full force and effect and provide the required coverage and limits of insurance. All certificates of insurance shall clearly state that all applicable requirements have been satisfied. The certificates shall provide that any company issuing an insurance policy shall provide to City not less than thirty (30) days advance notice in writing of cancellation, non-renewal, or material change in the policy of insurance. In addition, Contractor and insurance company shall immediately provide written notice to City's Risk Manager upon receipt of notice of cancellation of any insurance policy, or of a decision to terminate or alter any insurance policy. Certificates of insurance and notices of cancellations, terminations, or alterations shall be furnished to City's Risk Manager at City Hall, 72 W. College Ave., San Angelo, Texas 76903.

5) Contractor's Liability. The procurement of such policy of insurance shall not be construed to be a limitation upon Contractor's liability or as a full performance on its part of the indemnification provisions of this Contract. Contractor's obligations are, notwithstanding any policy of insurance, for the full and total amount of any damage, injury, or loss caused by or attributable to its activities conducted at or upon the premises. Failure of Contractor to maintain adequate coverage shall not relieve Contractor of any contractual responsibility or obligation.

6) Subcontractors' Insurance. Contractor shall cause each Subcontractor and Sub-Sub-Contractor of Contractor to purchase and maintain insurance of the types and in the amounts specified below. Contractor shall require Subcontractors and Sub-Subcontractors to furnish copies of certificates of insurance to City's Risk Manager evidencing coverage for each Subcontractor and

Sub-Subcontractor.

**B. Types And Amounts Of Insurance Required.** Contractor shall obtain and continuously maintain in effect at all times during the term hereof, at Contractor's sole expense, insurance coverage as follows with limits not less than those set forth below:

1) Commercial General Liability. This policy shall be occurrence-type policy and shall protect Contractor and additional insureds against all claims arising from bodily injury, sickness, disease or death of any person (other than Contractor's employees) and damage to property of City or others arising out of the act or omission of Contractor or its agents and employees. This policy shall also include protection against claims for the contractual liability assumed by Contractor under the paragraph of this Contract entitled "Indemnification," including completed operations, products liability, contractual coverage, broad form property coverage, explosion, collapse, underground, premises/operations, and independent contractors [to remain in force for two (2) years after final payment].

Coverage limits shall not be less than:

<b>\$ 2,000,000.00</b>	<b>General Aggregate</b>
<b>\$ 1,000,000.00</b>	<b>Products- Completed Operations</b>
<b>\$ 1,000,000.00</b>	<b>Personal &amp; Advertising Injury</b>
<b>\$ 1,000,000.00</b>	<b>Each Occurrence</b>
<b>\$ 100,000.00</b>	<b>Fire Damage (any one fire)</b>

2) Business Automobile Liability. This policy shall protect Contractor and the additional insureds against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles and shall cover operation on and off the premises of all motor vehicles licensed for highway use, whether they are owned, non-owned or hired. Coverage limits shall not be less than:

<b>\$ 1,000,000.00</b>	<b>Each Accident Limit</b>
------------------------	----------------------------

3) Workers' Compensation and Employer's Liability. If Contractor hires any employees, Contractor shall maintain Workers' Compensation and Employer's Liability insurance, which shall protect Contractor against all claims under applicable state workers' compensation laws and employer's liability. The insured shall also be protected against claim for injury, disease or death of employees which for any reason, may not fall within the provisions of a workers' compensation law. Coverage shall not be less than:

Statutory Amount	Workers' Compensation
<b>\$ 500,000.00</b>	<b>Employer's Liability, Each Accident</b>
<b>\$ 500,000.00</b>	<b>Employer's Liability, Disease - Each Employee</b>
<b>\$ 500,000.00</b>	<b>Employer's Liability, Disease - Policy Limit</b>

The foregoing requirement will not be applicable if, and so long as, Contractor qualifies as a self-insurer under the rules and regulations of the commission or agency administering the workers' compensation program in Texas and furnishes evidence of such qualification to City in accordance with the notice provisions of this Contract.

4) Environmental Liability. This insurance shall be maintained and in force for the full period of this Contract and cover losses caused by pollution conditions including, but not limited to, any spill, underground pollution or any other environmental impairment. It shall apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured; cleanup costs, including, but not limited to any costs required under CERCLA; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. If coverage is written on a claims made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract, and continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning from the time the Contract expired.

**\$ 1,000,000.00**  
**\$ 1,000,000.00**

**Per Loss**  
**Annual Aggregate**

If Contractor uses contract labor, Contractor shall require its subcontractor to maintain the above referenced coverage and furnish copies of certificates of insurance as required herein.

**20. INDEPENDENT CONTRACTOR:** Nothing contained in this Contract is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. Contractor shall at all times remain an independent contractor with respect to the services to be performed under this Contract. City shall be exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and workers' compensation insurance on Contractor's employees.

**21. NONDISCRIMINATION:** Contractor represents and warrants to City that Contractor does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with Contractor's performance under this Contract on account of race, color, sex, religion, age, handicap, marital status or national origin. Contractor further covenants that no otherwise qualified individual shall, solely by reason of his/her race, color, sex, religion, age, handicap, marital status or national origin, be excluded from participation in, be denied services, or be subject to discrimination under any provision of this Contract.

22. **VERIFICATION OF EMPLOYMENT ELIGIBILITY:** Contractor must comply with the Immigration Reform and Control Act (IRCA) and may not knowingly obtain labor or services of an unauthorized alien. Contractor -- not City -- must verify eligibility for employment as required by IRCA.

23. **AMENDMENTS:** This Contract may be modified or amended only by a written instrument signed by City and Contractor, without further approval of City Council, unless such approval is otherwise required by law, subject to availability and appropriation of funds. Such amendments shall not invalidate this Contract, nor relieve or release City or Contractor from their respective obligations under this Contract.

24. **ASSIGNMENT:** No assignment by a party hereto of any rights under, or interest in, the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, moneys that may become due, and moneys that are due, may not be assigned without such prior consent (except to the extent that this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

25. **SUCCESSORS AND ASSIGNS:** This Contract shall be binding upon the parties hereto, their heirs, executors, legal representatives, successors, or assigns.

26. **NOTICES:** Communication and details concerning this Contract shall be directed to the following representatives:

**CITY:**

City of San Angelo  
Attn: Shane Kelton  
72 W. College Ave.  
San Angelo, Texas 76903

**CONTRACTOR:**

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Before City shall be liable to Contractor or any of its successors or assigns for any alleged breach of this Contract, notice must first be given City within six (6) months of the date Contractor alleges the breach occurred. Such notice shall be in accordance with and provide substantially the same information as required for notice of tort claims as specified in Article 1.500 of the City of San Angelo Code of Ordinances.

**27. MISCELLANEOUS PROVISIONS:**

**A. Remedies:** In the event of default by Contractor under the Contract Documents, City shall have all rights and remedies afforded to it at law or in equity to enforce the terms of the Contract Documents; however, arbitration is not an available remedy to resolve any disputes arising under this Contract unless City and Contractor mutually agree to such remedy in a separate written Contract. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity.

**B. Attorneys' Fees:** If any action at law or in equity is necessary by either City or Contractor to enforce or interpret the terms of the Contract Documents, the party prevailing on the majority of issues shall be entitled to reasonable attorneys' fees and costs and any necessary disbursements in addition to any other relief to which the prevailing party is entitled.

**C. Conflicts:** This Contract, the documents required to be provided, and the Contract Documents constitute the entire Contract between the parties hereto and supersede any prior written or oral Contracts and understandings between the parties. If any provision of this Contract, the General Conditions, the Specifications or any other provision contained within the Contract Documents conflicts, or is inconsistent with any other provision of the Contract Documents, then the conflict or inconsistency will be resolved first by reference to the terms of this Contract, then to the General Conditions to this Contract and then finally to the Specifications therein, unless a federal law, regulation or restriction would require otherwise, in which case the federal provision would control.

**D. Severability:** If any provision of this Contract is held invalid or unenforceable, the remainder of the Contract shall not be affected thereby and all other parts of this Contract shall nevertheless be in full force and effect.

**E. Venue:** This Contract, including the Contract Documents, is governed by the laws of the State of Texas. Venue for any suit or claim or cause of action arising out of or related to Work covered by this Contract shall be in Tom Green County, Texas.

**F. Counterparts:** This Contract may be executed in two or more counterparts, each of which



shall constitute an original but all of which, when taken together, shall constitute one and the same Contract.

**G.     Enforcement:** This Contract shall be construed and enforced according to the laws of the State of Texas.

**H.     Headings:** Titles and paragraphs are for convenient reference and are not a part of this Contract.

**I.     No Waiver:** No waiver or breach of any provision of this Contract shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

**J.     Governing Laws:** Should any provision, paragraph, sentence, word or phrase contained in this Contract be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Texas or the City of San Angelo, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Contract shall remain unmodified and in full force and effect or limitation of its use.

**K.     Applicable Law:** This Contract and the Contract Documents are subject to all applicable federal and state laws, statutes, codes, rules and regulations and local ordinances, rules and regulations.

**28.    CONTINGENCY CLAUSE:** Funding for this Contract is contingent on the availability of funds and continued authorization for program activities and the Contract is subject to amendment or termination due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) days notice.

**29.    ENTIRE CONTRACT:** This Contract constitutes the sole and entire Contract between the parties hereto. No modification or amendment hereto shall be valid unless in writing and executed by properly authorized representatives of the parties hereto.

**30.    REAFFIRMATION OF REPRESENTATIONS:** Contractor hereby reaffirms all of the representations contained in Contract Documents.

[Signature Page to Follow]

**IN WITNESS WHEREOF**, the parties hereto have caused this instrument to be executed by their respective officials thereunto duly authorized, this the day and year above written.

ATTEST:

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

(SEAL)

ATTEST:

\_\_\_\_\_  
Alicia Ramirez, City Clerk

(SEAL)

**CONTRACTOR:**

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_

**CITY:**

City of San Angelo

By: \_\_\_\_\_

Daniel Valenzuela, City Manager

**CONTRACT FOR PROJECT  
BETWEEN CITY OF SAN ANGELO & \_\_\_\_\_  
RFCSP No. OP-03-14**

Approved as to Content:

Approved as to Form:

\_\_\_\_\_  
Shane Kelton, Director of Operations

\_\_\_\_\_  
Lysia H. Bowling, City Attorney

Approved as to Content:

Approved as to Insurance Requirements:

\_\_\_\_\_  
Roger Banks, Purchasing Manager

\_\_\_\_\_  
John Seaton, Risk Manager

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## 4. GENERAL CONDITIONS

### 4.1. General

The conditions contained herein are generally applicable to the Work described. Contractor and Owner agree to interpret and enforce the terms and conditions contained within this section only insofar as they are applicable to the Work.

### 4.2. Definitions

Wherever used in these General Conditions or in the other Contract Documents, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:

#### **Agreement**

The written agreement between the Owner and the Contractor covering the Work to be performed, including the Request for Complete Sealed Proposals, the Contractor's Proposal, and the Bonds.

#### **Architect**

The "Architect" shall be the Owner or any individual, partnership, firm or corporation duly authorized by Owner to be responsible for the architectural aspects of the Work.

#### **Award**

The acceptance, by the Owner, of the successful Contractor's Proposal.

#### **Bid**

The written offer of the Offeror setting forth the prices to perform the contemplated Work and furnish the necessary labor, Equipment, Materials and other incidentals necessary to perform the contemplated Work in accordance with the provisions of the Plans and Specifications.

#### **Bidder or Respondent**

Any individual, partnership, firm, or corporation, acting directly or through a duly authorized representative, who submits a proposal for the work contemplated.

#### **Bond(s)**

The approved form(s) of security furnished by the Contractor and his/her surety in accordance with the terms set forth in the Proposal and as may otherwise be requested of the Contractor in the Contract Documents.

#### **Calendar Day**

A "Calendar Day" is any day of the week or month, no days being excepted.

#### **Change Order**

A written order to the Contractor signed by the Owner covering changes in the plans, specifications, or proposal quantities and establishing the basis of payment and contract time adjustment, if any, for the work affected by such changes. The work, covered by a change order, shall be within the scope of the contract.

#### **Contract Documents**

The Agreement, Plans, Specifications, Drawings, and Field Changes, or any related addenda to the Agreement, Supplemental Agreement(s), Plans, Specifications, or Field Changes.

#### **Contract Price**

The total monies payable to the Contractor under the Contract Documents.

#### **Contract Time**

The number of calendar days or completion date stated in the Contract for the completion of the Work.

#### **Contractor**

The individual, partnership, firm, or corporation primarily liable for the acceptable performance of the Work and for the payment of all legal debts pertaining to the Work who act as directly or through lawful agents or

employees to complete the Work.

**Engineer**

The "Engineer" shall be the Owner or any individual, partnership, firm or corporation duly authorized by the Owner to be responsible for the engineering aspects of the Work.

**Equipment**

All machinery, together with the necessary supplies for upkeep and maintenance, and also all tools and apparatus necessary for the proper construction and acceptable completion of the Work.

**Extra Work**

An item of work not provided for in the Contract Documents as previously modified by Change Order or Supplemental Agreement, but which is found by the Owner to be necessary to complete the Work within the intended scope of the Contract Documents as previously modified.

**Field Change**

A Field Change may be issued in the form of:

- (a) A written amendment of the Contract Documents signed by both parties,
- (b) A Change Order,
- (c) A written clarification or interpretation issued by the Owner, or
- (d) A written order for a minor change or alteration in the Work issued by the Owner

A Field Change may only be issued after execution of the Agreement.

**Field Order**

A written order issued by the Owner which clarifies or interprets the Contract Documents in accordance with or minor changes in the Work

**Materials**

Any substance specified for use in the construction of the Work.

**Owner**

A public body or authority, corporation, association, partnership, or individual for whom the Work is to be performed. For this Agreement, the "Owner" is the City of San Angelo.

**Partial Payment Estimate**

A form detailing the amount of Work done to date and covering previous payments, retainage, etc. This estimate is usually issued on a monthly basis.

**Plans**

The official drawings or exact reproductions which show the location, character, dimensions and details of the Work to be done and which are to be considered as a part of the Contract Documents, supplementary to the Specifications.

**Project**

All duties and Work to be performed as provided in the Contract Documents.

**Resident Project Representative**

The "Resident Project Representative" shall be the Owner or any individual, partnership, firm or corporation duly authorized by the Owner who is assigned to the Project, or any part thereof, and who shall be responsible for observing the progress and quality of the Work, or any portion of the Work, on the behalf of the Owner.

**Shop Drawings**

All drawings, diagrams, illustrations, brochures, schedules, and other data which are prepared by the Contractor, a Subcontractor, manufacturer, supplier, or distributor which illustrate the Equipment, Material, or some portion of the Work.

**Specifications**

A part of the Contract Documents containing the written directions and requirements for completing the Work. Standards for specifying materials or testing which are cited in the Contract Documents by reference shall have the same force and effect as if included in the Contract Documents physically.

**Subcontractor**

An individual, firm, or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work.

**Substantial Completion**

The date as certified by the Owner, when the construction of the Project or a specified part thereof is sufficiently completed, in accordance with the Contract Documents, so that the Project or specified part can be utilized for the purposes for which it was intended.

**Supplemental Agreement**

A written agreement between the Contractor and the Owner covering (1) work that would increase or decrease the total amount of the Agreement as awarded or (2) work that is not within the scope of the Contract Documents.

**Work**

Any and all obligations, duties, and responsibilities necessary to the successful completion of the Project assigned to or undertaken by the Contractor under the Contract Documents, including the furnishing of all labor, Materials, Equipment, and other incidentals necessary or convenient to the Contractor's performance of all duties and obligations imposed by the Contract Documents.

**Work Day**

A "Work Day" is defined as a calendar day excluding Saturdays, Sundays, and legal holidays authorized in the list prepared for the City of San Angelo for use of its employees, in which weather or other conditions not under the control of the Contractor will permit the performance of the principal units of work underway for a continuous period of not less than 7 hours between 8:00 a.m. and 5:00 P.M.

**Work Week**

The "Work Week" shall consist of a period of seven (7) successive calendar days to begin and end as specified by the Contractor.

**4.3. Notice to Proceed and the Preconstruction Conference**

No work shall be performed until issuance of a written notice to proceed by the Owner. The Notice to Proceed shall be issued only upon completion of the Preconstruction Meeting and all related requirements are complete.

**4.4. Ownership, Copies of Documents, and Record Documents**

All Specifications, Plans, and copies thereof furnished by the Owner shall remain the property of the Owner. They shall not be used on another project.

The Contractor will keep one record copy of all Specifications, Plans, Field Changes, Shop Drawings, and any addenda thereto at the site in good order and annotated to show all changes made during the construction process. These shall be available to the Owner and shall be delivered to the Owner upon completion of the Project.

**4.5. Cooperation Between Contractors**

When separate contracts are let within the limits of any one project, each Contractor shall conduct the work so as not to interfere with or hinder the progress or completion of the work being performed by other contractors. The Contractor will afford the other contractors who are parties to such direct contracts (or the Owner, if he is performing the additional work himself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of work, and shall properly connect and coordinate his Work with theirs. If any part of the Contractor's Work depends upon the work of any such other contractor or the Owner for proper execution or results, the Contractor will inspect the work and promptly report any defects or deficiencies in writing to the Owner. Failure to make such a report shall constitute an acceptance of the other work as fit and proper for the Work, except as to defects and deficiencies which may appear in the other work after the execution of his Work.

The Contractor will do all cutting, fitting, and patching of his Work that may be required to make its several parts come together properly and fit it to receive or be received by such other work. The Contractor will not endanger

any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of the Owner.

Each Contractor involved shall assume all liability, financial or otherwise, in connection with the Agreement with Owner and shall protect and hold harmless the Owner from any and all damages or claims that may arise because of inconvenience, delays, or loss experienced by the Contractor because of the presence and operations of other contractors working within the limits of the same project.

If the performance of additional work by other contractors or the Owner is not noted in the Contract Documents prior to the Award of the Agreement, written notice thereof shall be given to the Contractor prior to starting any such additional work. If the Contractor believes that the performance of such additional work by the Owner or others involves him in additional expense or entitles him to an extension of the Contract Time, he may make a claim therefore as provided for herein.

#### **4.6. Subcontracts**

The Contractor will not employ any Subcontractor (whether initially or as a substitute) against whom the Owner may have objection, nor will the Contractor be required to employ any Subcontractor against whom he has objection.

The Contractor will be fully responsible for all acts and omissions of his Subcontractors and of persons directly or indirectly employed by them and of persons for whose acts any of them may be liable to the same extent that he is responsible for the acts and omissions of persons directly employed by him. Nothing in the Contract Documents shall create any contractual relationship between any Subcontractor and the Owner or any obligation on the part of the Owner to pay or to see to the payment of any moneys due any Subcontractor, except as may otherwise be required by law. The Owner may furnish to any Subcontractor, to the extent practicable, evidence of amounts paid to the Contractor on account of specific work done.

#### **4.7. Patent Fees and Royalties**

The Contractor will pay all license fees and royalties and assume all costs incident to the use of any invention, design, process, or device which is the subject of patent right or copyrights held by others.

CONTRACTOR WILL INDEMNIFY AND HOLD HARMLESS THE OWNER AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE OWNER FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES (INCLUDING ATTORNEY'S FEES) ARISING OUT OF ANY INFRINGEMENT OF SUCH RIGHTS DURING OR AFTER COMPLETION OF THE WORK, AND SHALL DEFEND ALL SUCH CLAIMS IN CONNECTION WITH ANY ALLEGED INFRINGEMENT OF SUCH RIGHTS.

#### **4.8. Permits, Laws, Taxes, and Regulations**

The Contractor will secure and pay for all construction permits and licenses and will pay all governmental and public utility charges and inspection fees necessary for the prosecution of the Work. The Contractor will give all notices and comply with all laws, ordinances, rules, and regulations applicable to the Work. If the Contractor observes that the Specifications or Plans are at variance therewith, he will give prompt written notice thereof to the Owner and any necessary changes shall be adjusted by an appropriate Field Change. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules, and regulations, and without such notice to the Owner, he will bear all costs arising therefrom.

The Contractor will pay all sales, consumer, and other similar taxes required by the law of the place where the Work is to be performed, or of the place from which any portion of the Equipment or Materials is obtained.

#### **4.9. Availability of Lands**

The Owner will provide, as indicated in the Contract Documents and not later than the date when needed by the Contractor, the lands upon which the Work is to be done, rights-of-way for access thereto, and such other lands which are designated for the use of the Contractor. Easements for permanent structures or permanent changes in existing facilities will be secured and paid for by the Owner, unless otherwise specified in the Contract Documents. If the Contractor believes that any delay in the Owner's furnishing these lands or providing such easements entitles him to an extension of the Contract Time, he may make a claim therefore as provided herein. The Contractor will provide all additional lands and access thereto that may be required for temporary construction facilities or storage of Materials and Equipment.

#### **4.10. Use of Premises**

The Contractor will confine his equipment, the storage of materials and equipment, and the operations of his workers to areas permitted by law, ordinances, permits, or the requirements of the Contract Documents, and



shall not unreasonably encumber the premises with materials or equipment.

#### **4.11. Owner's Status During Construction**

All instructions of the Owner, or its duly appointed representative, to the Contractor shall be issued directly to the Contractor.

The Owner will make periodic visits to the site to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The efforts of the Owner will be directed toward providing assurance that the completed Project will conform to the requirements of the Contract Documents, but Owner will not be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents. On the basis of on-site observations, the Owner, or its duly appointed representative, will keep informed of the progress of the Work and will endeavor to guard it against defect and deficiencies.

The Owner will have authority to disapprove of or reject Work which is unsatisfactory, faulty, or defective, or does not conform to the requirements of the Contract Documents or does not meet the requirements of any inspection, test, or approval set forth herein. The Owner will also have authority to require special inspection or testing of the Work as provided herein, whether or not the Work is fabricated, installed, or completed.

Neither the Owner's authority to act under this subsection, nor any decision made by him in good faith, either to exercise or not exercise such authority, shall give rise to any duty or responsibility of the Owner to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

#### **4.12. Owner's Interpretations and Decisions**

The Owner will issue with reasonable promptness such clarifications or interpretations (in the form of drawings or otherwise) as may be determined necessary for the proper execution of the Work, such clarifications and interpretations to be consistent with or reasonably inferable from the overall intent of the Contract Documents. If the Contractor believes that a written clarification and interpretation entitles him to an increase in the Contract Price, he may make a claim therefore as provided herein. The Owner will be the interpreter of the terms and conditions of the Contract Documents and the judge of the performance thereunder.

#### **4.13. Shop Drawings and Samples**

After checking and verifying all field measurements, the Contractor will submit five (5) copies of all Shop Drawings to the Owner. The Shop Drawings shall have been checked and stamped with the approval of the Contractor and otherwise identified as required by the Owner. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction, and the like. The Contractor will also submit to the Owner for his file, all samples required by the Contract Documents. All samples will have been checked and stamped with the approval of the Contractor, identified clearly as to material, manufacturer, any pertinent catalog numbers, and the use for which it is intended.

At the time of each submission, the Contractor will provide written notification to the Owner concerning any deviations that the Shop Drawing or sample may have from the requirements of the Contract Documents. The Owner will review the Shop Drawings and samples, but this review shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents.

No Work requiring a Shop Drawing or sample submission shall be initiated until the submission has been delivered to the Owner. The review of Shop Drawings or samples by the Owner shall not relieve the Contractor from his responsibility for any deviations at the time of submission unless the Owner has given written approval to the specific deviation, nor shall any review or approval by the Owner, relieve the Contractor from responsibility for errors or omissions in the Shop Drawings.

#### **4.14. Tests and Inspections Required by Law**

If the Contract Documents, laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction require any Work to be inspected, tested, or approved by someone other than the Owner, the Contractor will give prompt and timely notice of readiness to the Owner. The Contractor will furnish the required certificates of inspection, testing, or approval to the Owner. All such tests will be in accordance with the methods prescribed by the American Society for Testing and Materials or such other applicable organization as may be required by law or the Contract Documents. If any such Work required to be inspected, tested, or approved is covered up without written approval or consent of the Owner, it must be uncovered for observation at the Contractor's expense, if so directed by the Owner. The costs directly attributable to such uncovering, exposure,

observation, inspection, testing, approvals and reconstruction shall be borne in full by the Contractor.

Any Work which fails to meet the requirements of any such test, inspection, or approval, and any Work which meets the requirements of any such test or approval but does not meet the requirements of the Contract Documents shall be considered defective.

Observations by the Owner shall not relieve the Contractor from his obligations to perform the Work in accordance with the requirements of the Contract Documents.

#### **4.15. Contractor's Supervision and Superintendence**

The Contractor will supervise and direct the Work efficiently and with his best skill and attention. He will be solely responsible for the means, methods, techniques, safety, sequences, and procedures of construction. Before undertaking the Work, he will carefully study and compare the Contract Documents and check and verify all figures shown thereon and all field measurements. He will immediately file a written report to the Owner concerning any conflict, error, or discrepancy which he may discover. The Contractor will be responsible for seeing that the finished Work complies accurately with the Contract Documents. The Contractor shall give constant attention to the Work to facilitate the progress thereof, and he shall cooperate with the Owner and its authorized representatives, including, but not limited to, the Engineer, Resident Project Representative, inspectors, and with other Contractors in every way possible.

The Contractor shall have a competent superintendent on the Work at all times who is fully authorized as his/her agent on the Work. All communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor, or his superintendent, shall be capable of reading and thoroughly understanding the Plans and Specifications and shall receive and fulfill instructions from the Owner or its authorized representative.

The Contractor will provide competent, suitably qualified personnel to lay out the Work and perform construction as required by the Contract Documents. He will at all times maintain good discipline and order among his employees at the site.

#### **4.16. Safety and Protection**

The Contractor will be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. He will take all necessary safety precautions and will provide the necessary protection to prevent damage, injury, or loss to:

- (a) all employees on the Work and other persons who may be affected thereby,
- (b) all Work and all Materials or Equipment to be incorporated into the Work, whether in storage on or off the site, and
- (c) other property at the site or adjacent thereto, including but not limited to shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor will erect and maintain all necessary safeguards as required by the conditions and progress of the Work, including posting danger signs and other warnings against hazards and promulgating safety regulations. He will notify Owners of adjacent utilities, in writing, when prosecution of the Work may affect them. When the use or storage of explosives or other hazardous materials is necessary for the prosecution of the Work, the Contractor will exercise the utmost care and will carry on such activities under the supervision of properly qualified personnel. All damage, injury, or loss to any person or property caused, directly or indirectly, in whole or in part, by the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, will be remedied by the Contractor. The Contractor shall comply with the requirements of the Occupational Safety Standards and any other applicable standards that may be set forth by federal, state, municipal, or any other governmental or regulatory agency.

The Contractor will designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the Owner.

In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the Owner, is obligated to act, at his discretion, to prevent threatened damage, injury, or loss. He will give the Owner prompt written notice of any significant changes in the Work or deviations involved. If the Contractor believes that additional emergency work by him,

which arose from causes beyond his control, entitles him to an increase in the Contract Price or an extension of the Contract Time he may make a claim therefore as provided herein.

#### **4.17. Access to the Work and Uncovering Finished Work**

The Owner and his representatives will at all times have access to the Work. The Contractor will provide proper facilities for such access and observation of the Work and also for any inspection or testing thereof by others.

If any Work is covered contrary to the request of the Owner, it must be uncovered for observation and replaced at the Contractor's expense, if requested by the Owner.

Except as set forth in other sections, if any Work has been covered which the Owner has not specifically requested to observe prior to its being covered, or if the Owner considers it necessary or advisable that covered Work be inspected or tested by others, the Contractor, at the Owner's request, will uncover, expose, or otherwise make available for observation, inspection or testing that portion of the Work in question. The Contractor will furnish all necessary labor, material, and equipment.

If it is found that such Work is defective or does not meet the requirements of the Contract Documents, the Contractor will bear all the expenses of such uncovering, exposure, observation, inspection, testing, and professional services. An appropriate Change Order shall be issued deducting all such costs from the Contract Price. If, however, such Work is found not to be defective and meets the requirements of the Contract Documents, the Contractor may request and will be granted an increase in the Contract Price or extension of the Contract Time as compensation, but only for the amount or time directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction.

#### **4.18. Changes in the Work**

Without invalidating the Agreement, the Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work as may be necessary or desirable to complete the work originally intended in an acceptable manner. These alterations that are for work within the general scope of the Contract Documents shall be covered by Change Orders issued by the Owner. Upon receipt of a Change Order, the Contractor will proceed with the Work involved. All such Work shall be executed under the applicable conditions of the Contract Documents and as directed by the Owner. If any Change Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, an equitable adjustment may be made at the discretion of the City.

The Owner may authorize minor changes or alterations in the Work not involving extra cost and not inconsistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order. If the Contractor believes that any minor change or alteration authorized by the Owner entitles him to an increase in the Contract Price, he may make a claim.

Additional work performed by the Contractor without authorization of a Change Order will not entitle him to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency as provided herein.

The Owner will execute any appropriate Change Order covering changes in the Work the Owner determines to be reasonably necessary.

#### **4.19. Changes of Contract Price**

The Contract Price constitutes the total compensation payable to the Contractor for performing the Work. All duties, responsibilities, and obligations assigned to or undertaken by the Contractor shall be at his expense without change in the Contract Price.

The Contract Price may only be authorized by a Change Order. If the Contractor is entitled by the Contract Documents to make a claim for an increase in the Contract Price, his claim shall be made in writing and delivered to the Owner within 15 days of the occurrence of the event giving rise to the claim.

The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined by the Owner in one of the following ways:

(a) Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of items involved.

(b) By mutual acceptance of a lump sum.

(c) By cost and a mutually acceptable fixed amount for overhead and profit, or

(d) If required by the Owner, the Contractor shall submit an itemized cost breakdown together with supporting data.

The amount of credit to be allowed by the Contractor to the Owner for any such change which results in a net decrease in cost will be the amount of the actual net decrease as determined by the Owner. When both additions and credits are involved in any one change, the approved overhead and profit shall be figured on the basis of the net increase, if any.

#### **4.20. Extra Work**

Should acceptable completion of the Work require the Contractor to perform an item of work for which no basis of payment has been provided in the original Contract Documents or previously issued Change Orders or supplemental agreements, then same shall be called "Extra Work". Extra Work that is within the general scope of the Contract shall be covered by written Change Order. Change Orders for such Extra work shall contain agreed unit prices for performing the Change Order work in accordance with the requirements specified in the Change Order, and shall contain any adjustment to the Contract Time that, in the Owner's opinion, is necessary for completion of such Extra Work.

Extra Work that is necessary for acceptable completion of the Project, but is not within the general scope of the Work covered by the original Contract Documents shall be covered by a "Supplemental Agreement". Any claim for payment of Extra Work that is not covered by written agreement (Change Order or Supplemental Agreement) shall be rejected by the Owner.

#### **4.21. Unauthorized Work**

**WORK DONE CONTRARY TO THE INSTRUCTIONS OF THE OWNER, WORK DONE BEYOND THE LINES SHOWN OR AS GIVEN IN THE CONTRACT DOCUMENTS, OR ANY EXTRA WORK DONE WITHOUT AUTHORITY, WILL BE CONSIDERED AS UNAUTHORIZED AND WILL NOT BE PAID FOR UNDER THE PROVISIONS OF THE AGREEMENT. WORK SO DONE MAY BE ORDERED REMOVED OR REPLACED AT THE CONTRACTOR'S EXPENSE.**

#### **4.22. Neglected Work**

If the Contractor should neglect to prosecute the Work in accordance with the Contract Documents and progress schedule, the Owner, after three (3) days written notice to the Contractor, may make good such deficiencies, and the cost thereof including compensation for additional professional services shall be charged against the Contractor. A Change Order shall be issued incorporating the necessary revisions in the Contract Documents and including an appropriate reduction in the Contract Price. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor will pay the difference to the Owner.

#### **4.23. Conformity with Contract Documents**

All Work, Materials, and Equipment furnished shall be in reasonably close conformity with the lines, grades, grading sections, cross sections, dimensions, material requirements, and testing requirements that are specified (including specified tolerances) in the Contract Documents.

If the Owner finds the Materials or Equipment furnished, Work performed, or the finished product not within reasonably close conformity with the Contract Documents but that the portion of the Work affected will, in Owner's opinion, result in a finished product having an acceptable level of safety, economy, durability, and workmanship, the Owner shall determine, in its sole discretion, whether the affected Work will be accepted and remain in place. The Owner will determine the basis of acceptance and will provide for an adjustment in the Contract Price for the affected portion of the Work. The Owner's determination and recommended Contract Price adjustments will be based on good engineering judgment and such tests or retests as are, in Owner's opinion, needed. Changes in the Contract Price shall be covered by a Change Order or Supplemental Agreement as applicable.

If the Owner finds the Materials and Equipment furnished, Work performed, or the finished product are not in reasonably close conformity with the Contract Documents and have resulted in an unacceptable finished product, the affected Work, Materials or Equipment shall be removed and replaced or otherwise corrected by and at the expense of the Contractor in accordance with the Owner's written orders.

For the purpose of this subsection, the term "reasonably close conformity" shall not be construed as waiving the

Contractor's responsibility to complete the Work in strict compliance with the requirements of the Contract Documents.

#### **4.24. Change of Contract Time**

The Contract Time may only be changed by a Change Order. If the Contractor is entitled by the Contract Documents to make a claim for an extension in the Contract Time, his claim shall be in writing delivered to the Owner within ten (10) days of the occurrence of the event giving rise to the claim. All claims for adjustment in the Contract Time shall be determined by the Owner. Any change in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of the Contractor. Such delays shall include, but not be restricted to, acts or neglect by any separate Contractor employed by the Owner, fires, floods, labor disputes, epidemics, abnormal weather conditions, or acts of God.

Time limits stated in the Contract Documents are the essence of the Agreement. The provisions of this Section shall not exclude recovery for damages (including compensation for additional professional services) for delay by either the Contractor or the Owner.

#### **4.25. Warranty and Guarantee Regarding Defective Work**

The Contractor warrants and guarantees to the Owner that all Materials or Equipment will be new unless otherwise specified and that all Work will be of good quality and free from faults or defects and in accordance with the requirements of the Contract Documents and of any inspections, test, or approvals referred to herein. All unsatisfactory or faulty Work and all Work not conforming to the requirements of the Contract Documents or of such inspections, tests, or approvals shall be considered defective. Prompt notice of all defects shall be given to the Contractor. All defective Work, whether or not in place, may be rejected.

If required by the Owner prior to approval of final payment, the Contractor will promptly, without cost to the Owner, either correct any defective Work, whether or not fabricated, installed, or completed, or remove it from the site and replace it with non-defective Work. If the Contractor does not correct such defective Work or remove and replace such rejected Work within a reasonable time, as required by written notice from the Owner, the Owner may have the deficiency corrected or the rejected Work removed and replaced. All direct or indirect costs of such correction or removal and replacement, including compensation for additional professional services shall be paid by the Contractor, and an appropriate Change Order shall be issued deducting all such costs from the Contract Price. The Contractor will also bear the expenses of making good all work of others destroyed or damaged by his correction, removal, or replacement of his defective Work.

Prior to the expiration of one (1) year after the date of Substantial Completion (or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents), if any Work is found to be defective, the Contractor will, promptly without cost to the Owner and in accordance with the Owner's written instruction, either correct such defective Work, or, if it has been rejected by the Owner, remove it from the site and replace it with non-defective Work. If the Contractor does not promptly comply with the terms of such instructions, the Owner may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, will be paid by the Contractor. In such case, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Contract Price. If the acceptance occurs after approval of final payment, an appropriate amount shall be paid by the Contractor.

#### **4.26. Waivers of Claims and Continuing Obligations**

The Contractor's obligation to perform the Work and complete the Project in accordance with the Contract Documents shall be absolute. Neither approval of any progress or final payment by the Owner, nor the issuance of a certificate of Substantial Completion, nor any payment by the Owner to the Contractor under the Contract Documents, nor any use or occupancy of the Project or any part thereof by the Owner, nor any act of acceptance by the Owner nor any failure to do so, nor any correction of faulty or defective Work by the Owner shall constitute an acceptance of Work not in accordance with the Contract Documents.

The Acceptance of Final Payment by the Contractor shall constitute a waiver of all claims by the Contractor against the Owner other than those previously made in writing and still unsettled.

#### **4.27. Owner's Right to Stop or Suspend Work**

The Owner may order the Contractor to stop the Work, or any portion thereof, if the Work is defective, the Contractor fails to supply sufficient skilled workmen or suitable Materials or Equipment or to provide adequate



supervision, or if the Contractor fails to make prompt payment to Subcontractors or for labor, Materials or Equipment or for any other similar cause when necessary to protect the integrity of the Work. The Owner may suspend the Work until the cause for the order has been eliminated. No additional Contract Time and no increase in Contract Price will be awarded in this case.

The Owner may, at any time and without fault of the Contractor, suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to the Contractor and the Owner shall fix the date on which Work shall be resumed. The Contractor will resume the Work on the date so fixed. The Contractor will be allowed an increase in the Contract Price or an extension of the Contract Time directly attributable to any suspension if he makes a claim therefore as provided in this Section.

#### **4.28. Owner's Right to Terminate**

Owner may, by written notice, terminate this contract in whole or in part at any time, either for the Owner's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice, services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract shall be delivered to the Owner.

**(a)** If the termination is for the convenience of the Owner, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

**(b)** If the termination is due to failure to fulfill the contractor's obligations, the Owner may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Contractor shall be liable to the Owner for any additional cost occasioned to the Owner thereby.

**(c)** If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor has not so failed, the termination shall be deemed to have been effected for the convenience of the Owner. In such event, adjustment in the contract price shall be made as provided in subsection (a) of this clause.

**(d)** The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

#### **4.29. Contractor's Right to Stop Work or Terminate**

If, through no act or fault of the Contractor, the Work is suspended for a period of more than ninety (90) days, or the Owner fails to act as directed in the Contract Documents or fails to pay the Contractor any authorized amount, then the Contractor may, upon seven (7) days written notice to the Owner, terminate the Agreement and recover from the Owner payment for all Work executed, reasonable expenses and profit. In lieu of terminating the Agreement, if the Owner has acted in the aforesaid manner, the Contractor may upon seven (7) days notice to the Owner stop the Work until he has been paid all amounts then due.

#### **4.30. Assignment and Subletting**

The Contractor agrees to retain personal control and will give personal attention to the fulfillment of this Agreement and will not sublet or assign, by power of attorney or otherwise, said Agreement without the written consent of the Owner. No part or feature of the Work will be sublet to anyone objectionable to the Owner. The subletting of any portion or feature of the Work, or Materials required in the performance of this Agreement, shall not relieve the Contractor from full obligation to the Owner.

#### **4.31. Abandonment by Contractor**

In case the Contractor should abandon the Work and fail or refuse to resume the Work within ten (10) days after written notification from the Owner or if the Contractor fails to comply with the orders of the Owner, when such orders are consistent with the Contract Documents, then, where performance and payment bonds exist, the Surety on the Bonds shall be notified in writing and directed to complete the Work, and a copy of said notice shall be delivered to the Contractor.

After receiving said notice of abandonment, the Contractor shall not remove from the Work any machinery, Equipment, tools, Materials, or supplies then on the job, but the same, together with any Materials and Equipment under contract for the Work, may be held for use on the Work by the Owner or the Surety on the performance and payment bonds, or another Contractor in completion of the Work, and the Contractor shall not receive any rental or credit therefore (except when used in connection with Extra Work, where credit shall be allowed as provided in this Agreement), it being understood that the use of such Equipment and Materials will ultimately reduce the cost to complete the Work and be reflected in the final settlement. Where there is no performance and payment bond provided or in case the Surety should fail to commence compliance with the notice for completion provided for, within ten (10) days after service of such notice, the Owner may provide for

completion of the Work in either of the following elective manners:

(a) The Owner may employ such labor and use such Equipment, tools, Materials, and supplies as the Owner deems necessary to complete the Work and charge the expense of such labor, machinery, Equipment, tools, Materials and supplies to the Contractor. The expense(s) so charged shall be deducted and paid by the Owner out of such moneys as may be due, or that may thereafter become due by virtue of this Agreement. In case such expense is less than the sum which would have been due had the Work been completed by the Contractor, then said Contractor shall receive the difference. In case such expense is greater than the sum which would have been payable under this Agreement, then the Contractor or his Surety shall pay the amount of such excess to the Owner;

or

(b) The Owner may let the Agreement for the completion of the Work under substantially the same terms and conditions provided for in this Agreement. In case of any increase in cost to the Owner under the new agreement, such increase shall be charged to the Contractor and the Surety. However, should the cost to complete be less, the Contractor and his Surety shall be credited with the difference. When the Work shall have been Substantially Completed a complete itemized statement of the contract amounts certified to by the Owner, shall be prepared, and delivered to the Contractor and his Surety, whereupon the Contractor or his Surety shall pay the balance due if any within fifteen (15) days of the date of such Certificate of Completion.

In the event the statement of accounts shows that the cost to complete the Work is less than the Contract Price; or when the Contractor or his Surety shall pay the balance shown to be due by them to the Owner, then all machinery, Equipment, tools, Materials or supplies left on the site of the Work shall be turned over to the Contractor or his Surety. Should the cost to complete the Work exceed the Contract Price, and the Contractor or his Surety fail to pay the amount due the Owner within the time designated hereinabove, and there remains any machinery, equipment, tools, materials, or supplies on the site of the Work, notice, together with an itemized list of such equipment and materials, shall be mailed to the Contractor and his Surety. Such property shall be held at the risk of the Contractor and his Surety. After fifteen (15) days from the date of said notice, the Owner may sell such machinery, equipment, tools, materials, or supplies and apply the net sum derived from such sale to the credit of the Contractor and his Surety. Such sale may be made at either public or private sale, with or without notice, as the Owner may elect. The Owner shall release any machinery, equipment, tools, materials, or supplies, which remain on the Work and belong to persons other than the Contractor or his Surety, to their proper Owners.

#### **4.32. Abandonment by Owner**

In case the Owner shall fail to comply with the terms of this Agreement, and should fail or refuse to comply with said terms after the expiration of ten (10) days of receipt of written notification, the Contractor may suspend or wholly abandon the Work, and may remove there from all machinery, tools, and equipment, and all materials that have not been included in payments to the Contractor and have not been wrought into the Work. Thereupon, the Owner shall make an estimate of the total amount earned by the Contractor, which estimate shall include the value of all Work actually completed (at the prices stated in the attached proposal where unit prices are used), the value of all partially completed Work at a fair and equitable price, and the amount of all Extra Work performed at the prices agreed upon, or provided for by the terms of this Agreement, and a reasonable sum to cover the cost of any provisions made by the Contractor to carry the whole Work to completion and which cannot be utilized. The Owner shall then make final statement of the balance due by deducting from the above estimate all previous payments, and all other sums that may be retained by the Owner. Owner shall pay on or before thirty (30) days after the date of notification the balance shown by said final statement as due.

#### **4.33. Worker's Compensation Insurance Requirements**

##### **Definitions**

Certificate of Coverage ("Certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-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 Owner. Persons providing services on the Project ("Subcontractor" in Texas Labor Code, Section 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 limitation, independent Contractor, Subcontractors, leasing companies, motor carriers, Owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering Equipment or Materials, or providing labor, transportation, or other service 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.

#### **4.33.1. Workers' Compensation Insurance Coverage**

The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, meeting the statutory requirements of Texas Workers' Compensation Act, Title 5 Subchapter A of the Texas Labor Code for all employees of the Contractor providing services on the Project, for the duration of the Project.

**A.** The Contractor must provide a certificate of coverage to the Owner prior to issuance of Notice to Proceed.

**B.** 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 Owner showing that coverage has been extended.

**C.** The Contractor shall obtain from each person or entity providing services on a Project, and provide to the Owner:

**(1)** a certificate of coverage, prior to that person beginning work on the Project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the Project; and

**(2)** no later than seven 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.

**D.** The Contractor shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

**E.** The Contractor shall notify the Owner in writing by certified mail or personal delivery, within ten (10) 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.

**F.** The Contractor shall post on each Project site a notice, in the text, form and manner prescribed by the Division of Workers' Compensation, 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.

**G.** By providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner 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 self-insured, with the 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.

**H.** The Contractor's failure to comply with any of these provisions is a breach of contract which entitles the Owner to declare the contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach.

#### **4.33.2. Failure to Maintain Adequate Insurance Coverage**

In the event that Owner learns that Contractor has workers (whether employees, volunteers or contract labor) present at the site or working in any manner on this Project who are not covered at all times by the required coverages for workers' compensation, Contractor shall be assessed a penalty of \$500.00 per day, per worker, until Contractor provides a certificate of coverage which documents the required coverage for such workers. Contractor shall further immediately remove any such workers from the job site.



In the event that Owner learns that Contractor has failed to maintain any of the insurance coverages required herein such failure to maintain required coverage shall be taken into account in determining whether Contractor is a responsible Respondent for purposes of future proposals made on projects let by Owner. The foregoing remedies shall be in addition to and not in lieu of any other remedies available at law or in equity to Owner.

#### **4.34. Contract Measurement And Payment**

##### **4.34.1. Quantities and Measurements**

No extra or customary measurements of any kind will be allowed, but only the actual measured or computed length, area, solid contents, number, and weight shall be considered, unless otherwise specifically provided.

##### **4.34.2. Estimated Quantities**

The Contract Documents are intended to show clearly all Work to be done and Material and Equipment to be furnished hereunder. Where the evaluation quantities are shown for the various classes of the Work, they are to be used only as a basis for comparing the proposals offered for the Work. It is understood and agreed that the actual amount of the Work to be done and Material and Equipment to be furnished under this Agreement will not be reflected by these evaluation quantities. The basis for payment shall be for the actual amount of the Work done and the Material and Equipment furnished. Where payment is based on the unit price method, the Contractor agrees that he will make no claim for damages, or anticipated profits on account of any differences which may be found between the quantities of the Work actually done, the Material and Equipment actually furnished under this Agreement and the evaluation quantities provided.

##### **4.34.3. Price of Work**

In consideration of the furnishing of all the necessary labor, Equipment, and Material, and the completion of all Work by the Contractor, and on the completion of all Work and of the delivery of all Material and Equipment embraced in this Agreement in full conformity with the Specifications and stipulations contained within the Contract Documents, the Owner agrees to pay the Contractor the prices set forth in the proposal hereto attached, which has been made a part of this Agreement. The Contractor hereby agrees to receive such prices in full for furnishing all Material, Equipment and all labor required for the aforesaid Work, also for all expense incurred by him, and for well and truly performing the same and the whole thereof in the manner and according to this Agreement and the Contract Documents. The unit prices provided in the proposal shall be the actual unit price for each item when considering the cost of providing all labor, material, equipment, resources, and profit to be recovered by the Contractor for such Work and without consideration of association with any other item of Work.

##### **4.34.4. Partial Payment Estimates**

The Contractor shall subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. No payment shall be made for material not installed.

##### **4.34.5. Deadline**

On or before the 10th day of each month the Contractor shall prepare a statement showing as completely as practicable the total value of the Work done by the Contractor up to and including the last day of the preceding month. The statement shall be deemed complete and received once all corrections to the Work required by Owner, if any, have been made. The Owner shall submit a recommendation for approval upon completion of all corrections. Failure by the Owner to note corrections prior to payment does not constitute acceptance of the Work nor waive any remedy provided for in the Contract Documents or under law.

##### **4.34.6. Payment**

The Owner shall pay the total amount of the Contractor's Payment Request within 30 days upon receipt of a valid payment request.

##### **4.34.7. Warranty of Title**

The Contractor warrants and guarantees that clear ownership title to all Work, Materials, and Equipment covered by a Partial Payment Estimate, whether incorporated in the Project or not, will have passed to the Owner prior to making the Partial Payment Estimate free and clear of all liens, claims, security interests, and encumbrances (hereinafter in these General Conditions referred to as "Liens"); and that no Work, Materials, or Equipment covered by a Partial Payment Estimate will have been acquired by the Contractor or by any other person performing the Work at the site or furnishing materials and equipment for the Project subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

Partial payment retainage by the Owner shall be at the maximum rate prescribed by the laws, rules, or regulations established by the State of Texas and shall in no case exceed five percent (5%). See Contract Measurement and Payment, Section for specific payment methods.

#### **4.34.8. Approval of Payments**

The Partial Pay Estimate shall be based on on-site observations of the Work in progress, and shall verify that the Work has progressed to the point indicated; that the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning Project upon Substantial Completion, to the results of any subsequent test called for in the Contract Documents and any qualifications stated in the approval); and that the Contractor is entitled to payment of the amount approved. However, by such payment, the Owner shall not thereby be deemed to have represented that he made exhaustive or continuous on-site inspections to check the quality or the quantity of the Work, or that he has reviewed the means, methods, techniques, sequences, and procedures of construction or that he has made any examination to ascertain how or for what purpose the Contractor has used the moneys paid or to be paid to him on account of the Contract Price.

The Owner may nullify any such payment previously requested to such extent as may be necessary to provide protection from loss because:

- (a) the Work is defective, neglected, or omitted,
- (b) claims have been filed or there is reasonable evidence indicating the probable filing thereof,
- (c) the Contract Price has been reduced because of Change Orders or Field Changes,
- (d) the Owner has been required to correct defective Work or complete neglected Work.
- (e) unsatisfactory prosecution of the Work, including failure to clean up as required herein.
- (f) material installation has not been tested as required by the terms of the Contract Documents.

#### **4.34.9. Substantial Completion**

Prior to final payment, the Contractor may provide the Owner with written certification that the entire Project is substantially complete and request that the Owner issue a certificate of Substantial Completion. Within a reasonable time thereafter, the Owner and Contractor will make an inspection of the Project to determine the status of completion.

If the Owner does not consider the Project substantially complete, the Contractor will be notified in writing of the reasons.

If the Owner does consider the Project substantially complete, he will prepare a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion and the responsibilities between the Owner and the Contractor for maintenance, etc. Attached to the certificate, there shall be a tentative list of items to be completed or corrected before final payment, and the certificate shall fix the time within which such items shall be completed or corrected, said time to be within the Contract Time.

The Owner shall have the right to exclude the Contractor from the Project after the date of Substantial Completion, but the Owner will allow the Contractor reasonable access to complete or correct items on the tentative list.

#### **4.34.10. Partial Utilization**

Prior to final payment, the Owner shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding the time for completing the entire Work of such portions may not have expired, but such taking possession and use shall not be deemed an acceptance of any Work not completed in accordance with the Contract Documents. If such prior use increases the cost or delays the Work, the Contractor may request in writing, in accordance with the process set forth in these General Conditions, an increase in the Contract Price or extension of the Contract Time, or both as the Owner may determine to be reasonable.

#### **4.34.11. Final Payment**

Upon written notice from the Contractor that the Project is complete, the Owner and the Contractor will make a final inspection and the Owner will notify the Contractor in writing of any particulars in which this inspection reveals that the Work is defective. The Contractor shall immediately make such corrections as are necessary to remedy such defects.

After the Contractor has completed any such corrections to the satisfaction of the Owner and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection and other documents, he may request final payment. The final estimate shall be accompanied by such supporting data as the labor and services performed and the material and equipment furnished. In lieu thereof and as approved by the Owner, the Contractor may furnish receipts or releases in full, including an affidavit of the Contractor showing that releases and receipts for all labor, services, Material, and Equipment for which a Lien could be connected with the Work have been paid or otherwise satisfied; and showing consent of the surety, if any, to final payment. If any Subcontractor or supplier fails to furnish a release or receipt in full, the Contractor may furnish a bond satisfactory to the Owner in an amount sufficient to cover any Lien.

If, on the basis of observation and review of the Work during construction and the final inspection, the Owner is satisfied that the Work has been completed and the Contractor has fulfilled all of his obligations under the Contract Documents the Owner will issue written approval and the final estimate will be processed for payment. Otherwise, the Owner will indicate in writing his reasons for refusing to issue payment of the final estimate.

If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor, the Owner shall make payment of the balance due for that portion of the Work fully completed and accepted if the remaining balance for Work not fully completed or corrected is less than the retainage, and, if Bonds have been furnished in accordance with the Contract Documents, the written consent of the surety to the payment of the balance due shall be submitted to the Owner. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

#### **4.34.12. Payments Withheld**

The Owner may, on account of subsequently discovered evidence, withhold or nullify payment to such extent as may be necessary for protection from loss on account of:

- (a) Defective Work not remedied.
- (b) Claims filed or reasonable evidence that the filing of a claim is likely.
- (c) Failure of the Contractor to make payments properly to sub-contractors for Material, Equipment or labor.
- (d) Damage to another Contractor.
- (e) Failure to carry out testing of material installation, if required.

When the above grounds are removed, or the Contractor provides a Surety bond satisfactory to the Owner, which will protect the Owner in the amount withheld, payment shall be made.

#### **4.34.13. Delayed Payments**

Should the Owner fail to make payment to the Contractor of the sum named in any statement when payment is due, or should the Owner fail to issue any statement on or before the date required, then the Owner shall pay to the Contractor, in addition to the sum shown as due by such statement, interest at the rate of six (6%) percent per annum until fully paid. Payment of interest on the amount owed shall fully liquidate any injury to the Contractor growing out of such delay in payment. The right is expressly reserved to the Contractor in the event payments are not promptly made to treat the Agreement as abandoned and recover compensation unless such payments are withheld as otherwise authorized in the Contract Documents.

#### **4.35. Project Requirements**

##### **4.35.1. Line and Grade**

Lines and grades for construction are as directed in the Contract Documents. Any questions, alterations, or adjustments must be directed through the Owner.

##### **4.35.2. Working Day**

Work on the site shall be done only during the normal business hours of the landfill, except for emergencies or as otherwise approved by the Owner. This Agreement is established with the intent that no Work shall be permitted on legal holidays except in cases of extreme emergency and then only with the written permission of the Owner.

After Hours Inspection Costs. Work performed outside of the normal business hours of the landfill, will require the permission of the Owner. The Contractor agrees to pay \$25.00 per hour for overtime inspection services when work is performed outside the normal business hours of the landfill with a minimum of \$50.00 per occurrence to compensate Owner for after hour inspection costs.

Weekend or Holiday Inspection Costs. Contractor agrees to compensate Owner \$25.00 per hour with a minimum of \$100.00 per daily occurrence against the next payment application for costs associated with after hour inspection services when Work is performed on a holiday.

#### **4.36. Character of Employees**

The Contractor agrees to employ only orderly and competent employees, skillful in the performance of the type of Work required under this Agreement, to do the Work; and agrees that whenever the Owner shall inform the Contractor in writing that any employee or employees are, in its opinion, incompetent or disorderly, such employee or employees shall be discharged from the Work and shall not again be employed on the Work without the written consent of the Owner.

#### **4.37. Physical and Subsurface Conditions**

The Contractor will promptly notify the Owner in writing of any subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents. The Owner will promptly investigate those conditions and determine if further surveys or subsurface tests are necessary. Promptly thereafter, the Owner will obtain the necessary additional surveys and tests and furnish copies to the Contractor. If the Owner finds that the results of such surveys or tests indicate subsurface or latent physical conditions differing significantly from those indicated in the Contract Documents, a Change Order shall be issued incorporating the necessary revisions.

#### **4.38. Reference Points**

The Owner will establish such general reference points as will enable the Contractor to proceed with the Work. The Contractor will be responsible for the layout of the Work and will protect and preserve the established reference points and will make no changes or relocations without the prior written approval of the Owner. He will report to the Owner whenever any reference point is lost or destroyed

or requires relocation because of necessary changes in grades or locations. The Contractor will replace and accurately relocate all reference points so lost, destroyed, or moved. All utilities shown on drawings are schematic only. The Contractor is solely responsible for verification of existence and location of all utilities within the Project site prior to construction.

#### **4.39. Materials**

##### **4.39.1. Materials and Equipment**

The Contractor shall furnish and pay for all labor, Materials, Equipment, tools, transportation, construction equipment, fuel, power, light, heat, telephone, water, sanitary facilities, and all other incidentals required to complete the Work in accordance with the Contract Documents. All Materials and Equipment used in the construction of the Work shall conform fully to the Contract Documents and be approved by the Owner. Any Materials or Equipment placed before approval of the Owner shall be removed, if directed by the Owner, and replaced with approved Materials or Equipment, at the expense of the Contractor.

If required the Contractor will furnish satisfactory evidence as to the kind and quality of Materials and Equipment to be used. If authorized by Owner, the Contractor may use a substitute that is equal to any Material or Equipment specified. No substitute shall be ordered or installed without the written approval of the Owner.

All Materials and Equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, or processors, except as otherwise specifically provided in the Contract Documents. The Contractor shall provide startup services for all major equipment.

##### **4.39.2. Right of the Owner to Modify Equipment and/or Methods**

If at any time the methods or Equipment used by the Contractor are found to be inadequate to secure the quality of Work or the rate of progress required under this Agreement, or the working force of the Contractor is inadequate for securing the progress herein specified, the Owner may order the Contractor in writing to improve their character and efficiency, or to increase force or Equipment or both, and the Contractor shall comply with such order. Such authority of the Owner, however, is for the sole benefit of the Owner in order to secure completion in conformity with this Agreement. It shall remain the sole duty and responsibility of the Contractor to take adequate precautions in his operation for the safety of persons and property. No failure of the Owner to notify the Contractor of deficient or negligent methods or Equipment shall excuse or relieve the Contractor of sole liability for damage to the property or improvements of the Owner by reason of his neglect or omission.

##### **4.39.3. Owner Furnished Materials**

The Contractor shall furnish all Materials required to complete the Work, except those specified herein (if any) to be furnished by the Owner. Owner-furnished Materials shall be made available to the Contractor at the location specified in the Contract Documents. All costs of handling, transportation from the specified location to the site of Work, storage, and installing Owner furnished Materials shall be included in the unit price for the contract item in which such Owner-furnished Material is used.

After any Owner furnished Material has been delivered to the location specified, the Contractor shall be responsible for any demurrage, damage, loss, or other deficiencies that may occur during the Contractor's handling, storage, or use of such Owner-furnished Material. The Owner will deduct from any monies due or to become due the Contractor any cost incurred by the Owner in making good such loss due to the Contractor's handling, storage, or use of Owner-furnished Materials.

##### **4.39.4. Material Storage**

Materials shall be so stored as to assure the preservation of their quality and fitness for the Work.

When considered necessary by the Owner, Materials shall be placed on wooden platforms or other hard, clean, and dry surfaces and not in contact with the ground, and shall be placed under cover. Stored materials, even though approved before storage, may again be inspected prior to their use in the Work. Stored materials shall be located to facilitate their prompt inspection. The Contractor shall coordinate the storage of all materials with the Owner or its Resident Project Representative. Materials to be stored on the site of the Work shall not create an obstruction to the public, nor shall they interfere with the free and unobstructed movement of vehicular traffic associated with the site. The storage of the Materials and the location of the Contractor's plant and parked equipment or vehicles shall be as directed by the Owner or its representative. Private property shall not be used for storage purposes without written permission of the Owner. The Contractor shall make all arrangements and bear all expenses for the storage of Materials on private property.

All storage sites shall be restored to their original condition by the Contractor at his/her entire expense, except as otherwise agreed to by the Owner.

#### **4.39.5. Sources of Supply and Quality of Materials**

The source of supply of each of the Materials shall be approved by the Owner before delivery is started and may be sampled and tested to determine compliance with the specifications before delivery is started. If it is found that sources of supply previously approved do not produce uniform and satisfactory products, or if the product from any source proves unacceptable at any time, the Contractor shall furnish Materials from other approved sources. Only Materials conforming to the requirements of the Contract Documents and approved by the Owner shall be used in the Work. No material which after approval has in any way become unfit for use shall be incorporated in the Work.

Throughout the specifications where reference is made to ASTM, AASHTO, or bulletins of the Texas Department of Transportation for the quality of Materials or sampling and testing, the latest standard, tentative standard, or bulletin issued prior to the date of the proposal shall govern.

#### **4.39.6. Samples and Tests**

All Materials shall be inspected, tested, and approved by the Owner, and any Work in which Materials are used without prior test and approval may be ordered removed and replaced at the Contractor's expense. The Contractor shall furnish a complete written statement of the origin, composition, and manufacture of any or all Materials that are to be used in the Work.

#### **4.39.7. Defective Materials**

All Materials not conforming to the requirements of the Contract Documents will be rejected and shall be removed immediately from the site of the Work. Rejected Materials in which the defects have been subsequently corrected, shall have the status of new Material. Upon failure on the part of the Contractor to comply with the provisions of this item, the Owner will have authority to remove and replace defective Material and to deduct the cost of removal and replacement from any payment due or to become due to the Contractor.

### **4.40. Project Meetings**

#### **4.40.1. Pre-construction Meeting**

Prior to the commencement of Work at the site, a pre-construction conference will be held with the Owner at a mutually agreed upon time and location. The conference shall be attended by:

- Contractor and his superintendent
- Principal Subcontractors
- Representatives of principal suppliers and manufacturers as appropriate
- Representatives of Owner
- Others as requested by the Contractor or the Owner



Unless previously submitted to the Owner, the Contractor shall bring to the conference each of the following:

- Material Sources
- Materials Test Results and Certification
- List of Equipment to be Utilized
- Description of Procedures and Work Crews

The agenda will include:

- Contractor's tentative schedules
- Critical Work sequencing
- Transmittal, review, and distribution of Contractor's submittals
- Field decisions and Change Orders
- Use of premises, office and storage areas, security, housekeeping, and Owner's needs
- Major equipment deliveries and priorities
- Maintaining record documents
- Processing applications for payment
- Contractor's assignments for safety and first aid

The sequence of operations to be followed shall be prepared by the Contractor for approval by the Owner. The sequence shall meet the job requirements for Completion Time and shall conform to the requirements set forth in the Contract Documents.

#### **4.41. Progress Meetings**

The Contractor shall schedule and hold regular progress meetings at least monthly and at other times as requested by the Owner or required by progress of the Work. The Contractor, the Owner, and all Subcontractors active on the site shall be represented at each meeting. The Contractor may, at his discretion, request attendance by representatives of his suppliers, manufacturers, and other Subcontractors.

The Contractor shall preside at the meetings and provide for keeping of the minutes and provide the Owner with a copy of the minutes. The purpose of the meetings will be to prepare statements of payment, review the progress of the Work, maintain coordination of efforts, discuss changes in procedures and personnel, and resolve problems.

#### **4.42. Construction Administration**

##### **4.42.1. Notices to Owners and Authorities**

The Contractor shall notify Owners of adjacent property and utilities in writing and sufficiently in advance when prosecution of the Work may affect them. When it is necessary to temporarily deny access by Owners or tenants to their property, or when any utility service connection must be interrupted, the Contractor shall give notices in writing and sufficiently in advance to enable the affected persons to provide for their needs. Notices will conform to any applicable local ordinance, shall be provided in writing, and will include appropriate information concerning the interruption and instructions on how to limit their inconvenience.

##### **4.42.2. Notification of Street Closing**

Where the Contractor has cause to close a street or thoroughfare for purposes of construction, the Owner shall be provided reasonable advance notice, in writing, prior to such actions for approval and coordination with appropriate agencies.

##### **4.42.3. Detours and Barricading**

The Contractor shall be responsible for providing barricading for all work areas during the construction of this Project. Unless provided by Owner in the Technical Specifications contained within the contract documents, the Contractor shall prepare and submit a barricading plan to the

Owner for Owner's approval. Owner's approval shall be for routing and for length of time of barricading only. Plans shall be prepared by a Professional Engineer, Registered in the State of Texas, and show all necessary barricades, signs, etc., required to provide a safe work site. Plans shall be based on the recommendations in the Manual of Uniform Traffic Control Devices for control of traffic in a construction area. It shall be the total responsibility of Contractor to maintain the barricades, lights, signs, and all other items involved in the detouring of traffic.

Contractor shall provide appropriate barricades for use at night, and shall maintain all lighted barricades for the duration of the project. Contractor shall designate an employee who will be responsible for the maintenance of the barricades and lighting system on a twenty four (24) hour basis, and shall provide a phone number where the responsible party can be reached on a twenty four (24) hour basis.

#### **4.42.4. Convenience to Traffic**

When the Agreement requires the maintenance of vehicular traffic on an existing road, street, or highway during the Contractor's performance of the Work, the Contractor shall keep such road, street, or highway open to all traffic as provided herein and shall provide such maintenance as may be required to accommodate traffic. The Contractor shall furnish, erect, and maintain barricades, warning signs, flag persons, and other traffic control devices in reasonable conformity with the manual of Uniform Traffic Control Devices for Streets and Highways (published by the United States Government Printing Office), unless otherwise specified herein. The Contractor shall also construct and maintain in a safe condition any temporary connections necessary for ingress to and egress from abutting property or intersecting roads, streets, or highway.

The Contractor shall make his own estimate of all labor, Materials, Equipment, and incidentals necessary for providing the maintenance of vehicular traffic as specified in this subsection. The cost of maintaining vehicular traffic specified in this subsection shall not be measured or paid for directly, but shall be included in the various contract items.

One-half of the traveled portions of the road must be open to traffic at all times unless otherwise approved by the Owner. Work that will require less than one day to complete shall not be performed on major or collector streets between 7:00 a.m. to 9:00 a.m., 4:00 P.M. to 6:00 P.M., or other peak congestion periods as determined by the Owner.

#### **4.42.5. Unfavorable Construction Conditions**

During unfavorable weather, wet ground, or other unsuitable construction conditions, the Contractor shall confine his operations to Work which will not be affected adversely by such conditions. No portion of the Work shall be constructed under conditions which would affect adversely the quality or efficiency thereof unless special means or precautions are taken by the Contractor to perform the work in a proper and satisfactory manner.

#### **4.42.6. Cleaning Up**

The Contractor shall keep the premises free at all times from accumulations of waste materials, rubbish, and other debris resulting from the Work. The Contractor will restore to their original or better condition those portions of the site not designated for alteration by the Contract Documents.

The Contractor shall provide adequate trash receptacles about the work site, and shall promptly empty the containers when filled. Construction materials, such as concrete forms and scaffolding shall be neatly stacked by the Contractor when not in use. The Contractor shall promptly remove splattered concrete, asphalt, oil, paint, corrosive liquids, and cleaning solutions from surfaces to prevent marring or other damage.

Volatile wastes shall be properly stored in approved containers and removed daily. Wastes shall not be buried or burned on the site or disposed of into storm drains, sanitary sewers, streams, or waterways. All wastes shall be removed from the site and disposed of in a manner complying



with local, state, and federal laws. Adequate cleanup will be condition for recommendation of progress payment applications.

Upon completion of the Work and before acceptance and final payment will be made, the Contractor shall remove from and about the site all machinery, equipment, tools, surplus and discarded and waste materials, debris, rubbish, temporary structures, and stumps or portions of trees. He shall cut all brush and woods within the limits indicated and shall leave the site in a neat and presentable condition, ready for occupancy by the Owner.

#### **4.42.7. Restoration of Work Site**

In the event that a work site is closed, the Contractor shall immediately commence operations to restore the Work site to its proper conditions; such work to be completed within twenty-four (24) hours. In the event such restoration is not done, the Owner shall be authorized to take charge of the Work and restore the premises to its proper condition and shall be entitled to recover from the Contractor the actual expenses incurred by the Owner in restoring the premises, including, but not limited to, cost of labor, materials, overhead, rental of any equipment used by the Owner in restoring the site, and attorney's fees for such purposes.

#### **4.42.8. Site Administration**

The Contractor shall be responsible for all areas of the work site, and all Subcontractors in the performance of the Work. The Contractor will exert full control over the actions of all employees and other persons with respect to the use and reservation of property and existing facilities, except such controls as may be specifically reserved to Owner or others. The Contractor has the right to exclude from the site all persons who have no purpose related to the Work or its inspection, and may require all persons on the site (except the Owner's employees) to observe the same regulations as he requires of his employees.

#### **4.42.9. Load Restrictions**

The Contractor shall comply with all legal load restrictions in the hauling of materials on public roads beyond the limits of the Work. A special permit will not relieve the Contractor of liability for damage that may result from the moving of material or equipment. The operation of equipment of such weight or so loaded as to cause damage to structures or to any other type of construction will not be permitted. Hauling of materials over the base course or surface course under construction shall be limited as directed. No loads will be permitted on a concrete pavement, base or structure before the expiration of the curing period. The Contractor shall be responsible for all damage done by his/her hauling equipment and shall correct such damage at his/her own expense.

#### **4.43. Applicable Codes**

References in the Contract Documents to local codes mean codes used, required, or adopted by the City of San Angelo, Texas, the State of Texas or the federal government.

### **5. SPECIAL PROVISIONS**

None

### **6. TECHNICAL SPECIFICATIONS**

The specifications documents contained in the manual, entitled "Cell 11A Construction, Geosynthetics Construction, Prepared by Biggs & Mathews Environmental, April 2014" are part of this Request.

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## **7. PROPOSAL FORMS**

### **6.1. Copies**

Please submit:

- one (1) unbound signed original (Binder Clips acceptable),
- two (2) copies, (Staples/Binder Clips acceptable) and
- one (1) copy in PDF format of all required forms.

### **6.2. Required Proposal Forms**

Please submit Proposal forms in the following order:

- ☐ Price Proposal Form
- ☐ Bid Security Bond
- ☐ Past City Experience with the City of San Angelo
- ☐ Local Area References
- ☐ Contractor References
- ☐ Conflict of Interest
- ☐ Debarment and Suspension Certification
- ☐ IRS Form W-9

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