

PUBLIC NOTICE

The City of Aransas Pass is soliciting sealed bids from qualified contactors for the following work:

Project Name: 2014 Aquatic Center Management Services
Bid Opening: Wednesday, December 10 2014 @ 2:00 PM CST

The scope of work is to provide pool management services for the Aransas Pass Aquatic Center Located at 300 E. Johnson Avenue in Aransas Pass, Texas. Bid packages may be obtained from City of Aransas Pass Parks & Recreation (361-758-2441 or mcamarillo@aransaspasstx.gov).

Bids must be sealed and returned to the City of Aransas Pass (By Mail – P.O. Box 2000, Aransas Pass, TX 78335; or in Person – 600 W. Cleveland), by the stated deadline at which time they will be publicly opened and read aloud. All bids must have the project name clearly marked.

The City of Aransas Pass reserves the right to reject any and all submittals and wave informalities.

GENERAL INFORMATION
2014 AQUATIC CENTER MANAGEMENT SERVICES REQUEST FOR PROPOSALS

1.0 GENERAL

It is the intent of this section to provide Bidders with information necessary to prepare and submit proposals for the management of the City owned Aransas Pass Aquatic Center in Aransas Pass, San Patricio County, Texas. Proposals are to meet or exceed the specifications listed herein.

2.0 COMPLIANCE WITH LAWS

Proposals must observe and comply with all regulations, laws, ordinances, etc. of local, state, and federal governments, as applicable.

3.0 RECEIPT OF BID PROPOSALS

Proposals will be received at Aransas Pass City Hall (P.O. Box 2000-600 W. Cleveland, Aransas Pass, TX 78336) until 2:00 pm CST on December 10, 2014, at which time they will be publicly opened and read.

4.0 SPECIFIC REQUIREMENTS

If additional information is needed, the City reserves the right to request such information. Criteria utilized by the City for determining the lowest responsible Bidder includes, but is not limited to, whether the Bidder meets the City's published specifications, experience, skill, ability, business judgment, financial capacity, possession of the necessary facilities or equipment, previous performance, reputation, promptness, and any other factor which could reasonably be asserted as being relevant to successful performance. The City reserves the right to award this contract to the lowest, most responsive and responsible Bidder.

This contract may be terminated by either party upon thirty (30) days written notice. Questions regarding this bid shall be directed to Manuela Camarillo in the Parks & Recreation Department at 361-758-2441 or mcamarillo@aransaspasstx.gov.

The City reserves the right to purchase emergency supplies from various vendors, if the vendor awarded the contract is unable to supply items. The City reserves the right to accept or reject in part or in whole any bids submitted, and to waive any technicalities for the best interest of the City.

5.0 SCOPE & INTENT

This Contract is for the management of the Aransas Pass Aquatic Center Located at 300 E. Johnson Avenue in Aransas Pass, Texas. The initial term of the contract will be from March 2, 2014 through October 31, 2014 and subject to two, one-year extensions.

6.0 SALES TAXES

This work qualifies for exemption to the provisions of article 20.4(f) of the Texas limited sales, excise and use tax act. Contractor may purchase, rent, or lease materials, supplies and equipment used or consumed in the performance of the Contract by issuing to their supplier and exemption certificate in lieu of the tax, said exemption certificate complying with State Comptroller's ruling #95-0.09 as amended to be effective October 2, 1968.

7.0 BID TO REMAIN SUBJECT TO ACCEPTANCE

All bids will remain subject to acceptance for forty-five (45) days after the day of the bid opening.

BID PROPOSAL
2014 AQUATIC CENTER MANAGEMENT SERVICES REQUEST FOR PROPOSALS
(Prices to include all delivery charges)

Pursuant to the Public Notice and in Compliance with all sections of the Bid Proposal Package, the undersigned hereby declares and proposes; 1) To provide the services or materials as specified; 2) To be bound upon acceptance of this bid to provide same for the price and terms stated herein; 3) To have carefully examined all contract documents, including all addenda; 4) Have a clear understanding of said documents and premises; 5) Propose to provide the necessary tools, training and services specified in the contract or called for in the contract documents for the 2015 Swim Season for a lump sum price in the amount of:

\$ _____

Supplemental information required with the Bid Proposal (Provide on separate sheets)

1. Detailed budget that includes a staffing plan and fee schedule Fees for daily use and pool rentals are established by the City. (See Exhibit A).
2. List of references (Five-year history of current and past clients, times worked, contract amounts and contact information.
3. Bid alternatives and/or exceptions (If applicable).

CONTRACT TIME: The Bidder agrees that if awarded the Contract, they will perform work according to the requirements outlined in the Bid Proposal Package and Bidder's Proposal. The term of the contract will be for the 2015 Swimming Season, and subject to two, one-year extensions.

ADDENDUM: I/We acknowledge receipt of the following addenda.

_____ No. 1 _____ No. 2 _____ No. 3 _____ No. 4

Bidder Name, Address & Contact Information

Name: _____

Address: _____

Phone No. _____ Fax No. _____

Email: _____

Signature: _____

Name & Title: _____

Date: _____

**SUBCONTRACTOR DISCLOSURE FORM INSTRUCTIONS
2014 AQUATIC CENTER MANAGEMENT SERVICES REQUEST FOR PROPOSALS**

Instructions for Submitting Form

The Subcontractor Disclosure Form must be provided to the City of Aransas Pass no later than three (3) hours after the time of bid opening, by one of the following methods;

1. With the Sealed Bid Package; or
2. By delivery to 600 W. Cleveland, Aransas Pass, TX ; or
3. By fax to 361.758.4854; or
4. By email to mcamarillo@aransaspasstx.gov

The City is not responsible for partial, failed, illegible or partially legible submissions or transmissions.

Instructions for Completion of Subcontractor Disclosure Form

When the contract value for a public improvement is greater than \$25,000, Bidder is required to disclose information about subcontractors that will furnish labor or labor/materials for the project. Specifically, when the contract amount of a subcontractor is greater than or equal to; (1) 25% of the total but at least, \$15,000, (2) \$50,000 regardless of the percentage of the total project bid. The Bidder must disclose the following information about that subcontractor no later than four (4) working hours after the time set for the Bid Opening.

1. The names of the Subcontractor, address, telephone, and fax number.
2. The category of work the Subcontractor will be performing.

If the submitted bid is greater than \$25,000 and the Bidder is not utilizing any subcontractors, the Contractor is still required to submit the form with the wording "N/A", "Not Applicable", or "None" where subcontractors are to be listed

The City may reject bids if the Bidder fails to submit the disclosure form by the deadline.

SUBCONTRACTOR DISCLOSURE FORM
2014 AQUATIC CENTER MANAGEMENT SERVICES REQUEST FOR PROPOSALS

Proposals that require a Disclosure Form submittal that are not received by the specific disclosure form deadline will be considered non-responsive and they will not be considered for contract award.

CITY SUPPLIED INFORMATION

Project Name: 2013 Aquatic Center Management Services

Bid Opening Date & Time: December 10, 2014 at 2:00 pm CST

Disclosure Deadline, Date & Time: December 10, 2014 by 5:00 pm CST

The Contractor may provide the Disclosure Form with the Bid Proposal, or deliver it by one of the following methods no later than four (4) hours after the bid opening by one of the following methods:

1. 600 W. Cleveland, Aransas Pass, TX; or
2. By Fax to 361.758.4854; or
3. By email to mcamarillo@aransaspasstx.gov

SUBCONTRACTOR INFORMATION

SUBCONTRACTOR NAME

CATEGORY OF WORK

1. _____

2. _____

3. _____

4. _____

Form submitted by (Company Name) _____

Company Representative Name & Title _____

Company Address _____

Phone & Fax Numbers _____

CITY OF ARANSAS PASS, TEXAS
2014 AQUATIC CENTER MANAGEMENT SERVICES REQUEST FOR PROPOSALS

I. PURPOSE OF AGREEMENT

The purpose of this Agreement is to state the terms and conditions under which the _____ - (Contractor) will provide pool management and maintenance services for the City of Aransas Pass Aquatic Center ("pool"), and related services to the City. When used in this Agreement, the term "2015 Swim Season" or "swim season" means the period commencing with the date established by the City of Aransas Pass for opening of the Pool to use by the residents and local citizens and ending with the date established by the City of Aransas Pass for closing the pool.

The Contractor will accommodate the needs of the various programs of the City by routinely meeting with the City of Aransas Pass or designated City staff that to coordinate services and calendars for the benefit of the public.

II. 2015 SWIM SEASON & HOURS

A. It is acknowledged and agreed that the Pool hours have been established as shown, but that these hours and dates may be changed at the City of Aransas Pass's discretion upon reasonable notice to the Contractor.

a. Days and Hours of Operation:

Aqua Aerobics

Mon. - Fri. 8 a.m. - 9 a.m.

Mon. - Fri. 5:45 p.m. - 6:45 p.m.

Tues. & Thurs. 8 a.m. - 9 a.m.

Open Swim

Everyday 10 a.m. - 6 p.m.

Adults Only Lap Swim

Mon-Fri 8:00 a.m. - 10:00 a.m.

Family Swim (June-Aug only)

Mon 7:00 p.m. - 10:00 p.m.

B. The Contractor may use the pool for lifeguard training prior to opening for general public use. Advance scheduling with PARD is necessary for training.

III. BASIC SERVICES. The Contractor will provide the following basic services to the City of Aransas Pass for the fees stated in Article IV.

A. POOL STAFF

The Contractor will retain staff in sufficient numbers to satisfy its obligations under this Agreement. The Contractor will bear the cost of the services of any staff it retains. At a minimum, the following staff will be provided by Contractor:

1. Pool Manager and/or Aquatic Director: Prior to the commencement of the 2015 Swim Season, the Contractor will retain and designate a qualified individual to serve as the Pool Manager. The Pool Manager is required, at a minimum, to be trained in the operation of all Pool equipment, and to have at least two (2) years of prior pool management experience and the following certifications:

- a) YMCA Life guarding or American Red Cross Life Guarding
- b) Red Cross, YMCA or American Heart Association CPR/PR.
- c) Red Cross, YMCA or American Heart Association First Aid.

2. Head Lifeguard(s): The Contractor will retain and designate a Head Lifeguard(s). The Head Lifeguard is required, at a minimum, to be trained in the operation of all pool equipment, and to have at least two (2) years' prior life guarding experience, and the following certifications:
 - a) YMCA Life Guarding or American Red Cross Life Guarding
 - b) Red Cross, YMCA or American Heart Association CPR/PR
 - c) Red Cross, YMCA or American Heart Association First Aid.
3. Lifeguards: All lifeguards must, at a minimum, be sixteen (16) years old or older and the following certifications:
 - a) YMCA Life Guarding or American Red Cross Life Guarding
 - b) Red Cross, YMCA or American Heart Association CPR/PR
 - c) Red Cross, YMCA or American Heart Association First Aid.
4. Swimming Instructors: All swimming instructors will be a YMCA Instructor or Red Cross WSI certified and will have experience working with children of all age groups.

B. DAILY POOL OPERATION

1. Admission to Pool & Management of Cash Collections: At least one Contractor staff member will be assigned to and stationed at the Pool entry window at all times to monitor patrons' entrance, collect fees and assure that the lifeguards on duty are not distracted from their duties. Contractor will be responsible for depositing fees collected along with daily report at the end of each day.
2. Lifeguarding: At a minimum either the Pool Manager or a Head Lifeguard, cashier, and an average of two (2) lifeguards will be on-site at all times when the Pool is open (less when the pool is slow, more during heavy usage). At least one (1) lifeguard for every 50-pool users will provide services at all times when the Pool is open for the general swim periods.
3. City Rules Enforcement: Either the Pool Manager or Head Lifeguard is responsible for enforcement of The City's rules governing the use of the Pool, The Pool Manager is responsible for overseeing enforcement of rules and regulations and promptly reporting problems to the Parks and Recreation Director, or their designee.
4. Daily Log of Activities: The Contractor will maintain a daily log of significant activities and information, including a usage log, showing Pool usage by hour, water analysis, daily tally and deposit sheet as shown in Exhibit B which is attached and part of this agreement.
5. Reporting: The Contractor will compile information from the logs identified in 4: above and submit a weekly report to the Parks and Recreation Director, or their designee, no later than by the end of the week following the reporting period. The format and content of the weekly reports shall be as shown in Exhibit C which is attached and part of this agreement.
6. Routine Daily Maintenance (See Section D)

C. POOL MANAGEMENT

1. The Contractor shall provide a comprehensive and detailed budget outlining the cost of services to be provided with the Bid Proposal. This submission will be attached and included in the Agreement as Exhibit A
2. The Pool Manager will attend City meetings upon the request of the City.
3. The City of Aransas Pass will be responsible for monitoring the safety of the pool and pool areas by performing a State Code and National Standards (Professional Standards) Safety Audit on a monthly basis. The Pool Manager will conduct a safety Audit of the Pool with the Parks and Recreation Director, or their designee, prior to commencement of the 2015 Swim Season if so desired. The Contractor will also conduct monthly safety audits each when the pool is open and as directed, and prepare safety maintenance reports to the Parks and Recreation Director, or their designee.

D. POOL MAINTENANCE

1. The City will provide the necessary equipment for the Contractor to clean the pool, including vacuuming, brushing and skimmer maintenance. Pool cleaning to be carried out at least once a week during non-public swim hours.
2. The Contractor will monitor and maintain proper chemical levels to insure the safety of all pool users.
3. The Contractor will test chlorine and pH levels hourly and record results of such tests on the appropriate daily log (Exhibit B). The Pool Manager or Head Lifeguard will be responsible for notifying the City if chemical test are outside of established ranges for safe operation. The City shall provide all necessary testing materials. Contractor will be required to notify City if testing materials need to be ordered.
4. During the time frame covered by this agreement, the City Certified Pool Operator (CPO) with assistance from Contractor will monitor and maintain proper chemical levels in the pool in order to insure the safety of all users. The CPO will conduct such tests as necessary to comply with all applicable federal, state and county laws as well as City Ordinances related to safe maintenance and operation of the City's Pool. The City will maintain an adequate supply of required chemicals. The CPO will apply or supervise the application of such chemicals as required to maintain optimum water quality.
5. The Contractor will conduct daily cleaning of pool facility areas including: the pool; areas inside the fence pool area; bathrooms and dressing areas. Cleaning activities shall include the picking up and removal of trash, stocking of restroom supplies, and keeping all areas referenced above in a neat and orderly condition. All deck areas will be sprayed clean every third night, or more frequently if needed.
6. The Contractor will inspect grounds, rest rooms, and dressing areas hourly.
7. The Contractor will initiate work orders for repairs or maintenance by request to the Parks and Recreation Director, and each work order request will be noted on the daily log maintained by the Contractor.
8. The City will provide materials that are needed for safe operation and routine maintenance (including safety equipment). The Contractor will notify the Parks and Recreation Director, or their designee, if supplies need to be ordered.

E. ADDITIONAL SERVICES-SWIM INSTRUCTION, POOL RENTALS, RECREATIONAL PROGRAMS & CONTRACTED SERVICES.

Swim lessons, pool rentals, recreational programs and other contracted services may be provided at times prior to and after normal operating hours in the following areas.

- Parent-child Swim Instruction
- Pre-school Swim Instruction
- School-Age Swim Instruction
- Adult Swim Instruction
- Adult Water Aerobics
- Family Nights
- Teen Nights
- Pool Rentals (For parties or special events)

Swim instructions, pool rentals, recreation programs and other contracted services may be provided by the Contractor. The City shall be paid fifteen percent (15%) of all gross fees charged for said instructions, rentals, programs or contracted services.

IV. COMPENSATION & BILLING SCHEDULES

- A.** The City will pay the Contractor for the services provided under this agreement as follows:
Except as otherwise provided herein, the Contractor will receive payment for pool management services in three (3) installments. The total fee for pool management services identified in Section III of this Agreement, as well as a payment schedule, will be negotiated with the contractor. If the pool is closed due to weather conditions, the unavailability of lifeguards, or any other reason beyond the

control of the Contractor or the City for a period of at least one-half the number of regularly scheduled hours for that day, and amount negotiated with the contractor (Operating Crew Hourly Rate) times the total number of hours closed for the day, will be subtracted from the last payment made by the City to the Contractor. Calculation of the Operation Crew Hourly Rate is shown on Exhibit A (provided by Contractor), which becomes part of this agreement.

- B. The Contractor will pay the City for fees associated with pool use under this Agreement as follows:

Payment for additional services for which fees are charged shall be made to the City on July 1st, August 1st, and September 15th. The amount of payment will be determined based on the Contractor's submission and City acceptance of a written accounting of all programs, participants and fees paid, per requirements outlined in Section III, E of this Agreement.

V. COMPLIANCE WITH APPLICABLE LAWS

The Contractor will comply with all applicable federal, state, county and city ordinances and regulations in performing all services to be rendered by the Contractor under this Agreement. The City will comply with all applicable federal, state, county and city ordinances and regulations in maintaining the Pool's facilities.

The Contractor agrees, to the fullest extent permitted by law, to indemnify and hold harmless the City and its officers, directors, agents employees and representatives, in both their individual and official capacities, from and against all liability for any and all claims, suits, demands, and/or actions, whether in law or in equity, including losses from any and every claim or demand of every kind and character which may be asserted by reason of any occurrence, injuries and/or damages or the effects or consequences thereof resulting from the activities of Contractor, its officers, directors, agents, representatives, employees, members, visitors, invitees, contractors and subcontractors conducted in connection with or incidental to this Agreement. This indemnity provision shall apply whether the basis for claims, suit, demand, and/or action may be attributable in whole or in part to the Contractor, or any of its agents, representatives, employees, members, visitors, contractors, and subcontractor, or indirectly employed by any of them.

VI. INSURANCE & BOND

The contractor is an independent contractor and not an employee of the City hereunder. The Contractor will carry complete, adequate workmen's compensation insurance covering all employees of the Contractor. The Contractor will maintain a policy of liability insurance in the minimum amount of \$1,000,000.00, which will cover performance of its services under this Agreement. Current certificates of all insurance, showing the City as an additional insured, must be submitted to and maintained on file with the City.

VII. TERM OF AGREEMENT; RENEWAL; TERMINATION

The term of this Agreement commences on March 2, 2015 and continues until October 31, 2015, unless terminated sooner in accordance with the terms and conditions of this Agreement. This Agreement may be renewed for two additional one-year periods under the terms set forth in this Agreement with the written approval of both parties. This Agreement may be terminated, by either party, for any reason by delivery of at least thirty (30) days written notice.

VIII. EXHIBITS & ATTACHMENTS

Exhibits A, B and C that were provided in the 2015 Swimming Pool Management Services Request for Proposals packet are hereby attached and incorporated into the Agreement.

IX. MICELLANEOUS

The Agreement will be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created under it are performable in San Patricio County, Texas.

Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law in equity to the City nor to create any legal rights or claims, contractual or otherwise, on behalf of any third party. The City does not waive, modify or alter to any extent whatsoever, the availability of the defense of governmental immunity under the laws of the State of Texas.

This Agreement shall not be construed to establish a partnership, joint venture, agency, or joint enterprise, express or implied, nor any employer-employee or borrowed servant relationship by and among Parties hereto. Nor shall this Agreement be construed to create or grant rights, contractual or otherwise, to any other person or entity not a party to this Agreement. Each party shall remain solely responsible for the proper direction of its employees and an employee of one shall not be deemed an employee or borrowed servant of the other for any reason.

This Agreement is binding upon and insures to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.

In case any provisions contained in this Agreement are for any reason held to be invalid, illegal, or unenforceable, the invalidity, illegality, or unenforceability does not affect any other provision, and this Agreement will be construed as if the invalid, illegal or unenforceable provision had never been contained in this Agreement.

This Agreement constitutes the sole agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting its subject matter.

Executed this _____ day of _____ 2014

CITY OF ARANSAS PASS

CONTRACTOR

By: _____

By: _____

Sylvia Carrillo, City Manager

Name & Title: _____

Date: _____

Date: _____

EXHIBIT A

CONTRACTOR BUDGET, STAFFING PLAN & FEE SCHEDULE

(This Document will be prepared and submitted by the Bidder with the Bid Proposal and incorporated into the Management Services Contract Agreement)

EXHIBIT B DAILY POOL RECEIPTS & WATER TEST RESULTS

Prepared By: _____

Date: _____

POOL ADMISSIONS

<i>Paid Swimmers</i>	<i>Deposit Verification</i>
Paid Admissions: _____ Swim Pass Entries: _____	Paid Admissions x 2: _____ Amount In Deposit Bag: _____ Verified By: _____

Weather Conditions:

WATER TEST RESULTS

<i>Hourly Check</i>	<i>Chlorine (ORP)</i>	<i>PH</i>	<i>Number of Swimmers</i>	<i>Completed By</i>
Noon				
1 PM				
2 PM				
3 PM				
4 PM				
5 PM				
6 PM				
7 PM				

Comments, Closure Reasons, etc.:

EXHIBIT C

STANDARD TERMS & CONDITIONS

By acceptance of a purchase order or agreement, or response to a solicitation, Vendor agrees the following terms and conditions, without modification, will govern:

- I. **DEFINITIONS.** The following definitions shall be used to identify terms throughout procurement documents:
 - A. **AGREEMENT/CONTRACT** – A mutually binding legal document obligating the Vendor to furnish the goods, equipment or services specified within the solicitation and obligating the City to pay for the goods, equipment, or services specified. .
 - B. **BID/PROPOSAL /RESPONSE/OFFER/QUOTATION**– A complete, properly signed response to a solicitation that, if accepted, would bind the Respondent to perform the resulting contract.
 - C. **BIDDER/PROPOSER/RESPONDENT/OFFERER** – The Respondent identified throughout the solicitation that they consider themselves qualified to provide the goods, equipment or services specified herein, and are interested in making an offer to provide the goods, equipment or services to the City.
 - D. **CITY** – The City of Aransas Pass, located in San Patricio County, Texas.
 - E. **GOODS** –Materials, supplies, commodities and/or equipment.
 - F. **PIGGYBACK CONTRACT** – A contract or agreement that has been competitively bid in accordance with State of Texas statutes, rules, policies and procedures and has been extended for the use of state and local agencies and active State of Texas CO-OP entities.
 - G. **PURCHASE ORDER** – An order placed by the City for the purchase of goods or services issued on the City’s standard purchase order form and which, when accepted by the Vendor, becomes a contract. The purchase order is the Vendor’s authority to deliver and invoice the City for goods or services specified, and the City’s commitment to accept the goods or services for an agreed upon price.
 - H. **SERVICES** – Work performed to meet the requirements and demand of the purchase order. The furnishing of labor, time, or effort by the Vendor and their ability to comply with promised delivery dates, specification and technical assistance specified.
 - I. **SOLICITATION/INVITATION TO BID/REQUEST FOR PROPOSALS/REQUEST FOR QUOTES** – The solicitation document issued by the City containing terms, conditions and specifications for the service or commodity to be procured.
 - J. **SUBCONTRACTOR** – Any person or business enterprise providing goods, labor, and/or services to a Vendor if such goods, equipment, labor, and/or services are procured or used in fulfillment of the Vendor’s obligations arising from a contract with the City.
 - K. **VENDOR/CONTRACTOR** – Person or business enterprise providing goods, equipment, labor and/or services to the City as fulfillment of obligations arising from an agreement or purchase order.

- II. **SOLICITATIONS**
 - A. **CONFLICT OF INTEREST:**

Effective January 1, 2006, Chapter 176 of the Texas Local Government Code (HB 914) requires an entity contracting or seeking to contract for the sale or purchase of property, goods, or services with a local governmental entity to disclose any affiliation or business relationship which might create a conflict of interest with a local government entity. The Conflict of Interest Questionnaire is available from the Texas Ethics Commission at www.ethics.state.tx.us, and completed forms must be submitted to the appropriate records administrator of the City not later than the seventh business day after the date the entity begins contract discussions or negotiations with the local governmental entity, or submits to the local governmental entity an application, response to a Request for Proposals or Bids, correspondence, or another writing related to a potential Agreement with the local governmental entity. If responding to a Solicitation, the Conflict of Interest Form may be submitted with the Response. The completed forms may be mailed or hand delivered to the City Secretary at the following address: The City of Aransas Pass, Office of the City Secretary, City Hall, 600 W. Cleveland, Aransas Pass, TX 78336. This legislation is subject to change and each entity should consult its own attorney regarding the current law. Any attempt to intentionally or unintentionally conceal a conflict of interest may result in disqualification of any response to a solicitation. The validity of the Contract is not affected solely because of failure to comply with the conflict of interest disclosure requirements.
 - B. **COMMUNICATIONS WITH THE CITY:**

To insure the proper and fair evaluation of a Solicitation, the City prohibits ex parte communication (e.g., unsolicited) initiated by the Offer or to the City Official or Employee evaluating or considering the Responses prior to the time an award has been made. Communication between Offeror and the City will be initiated by the appropriate City Official or Employee in order to obtain information or clarification needed to develop a proper and accurate evaluation of the Solicitation. Ex parte communication may be grounds for disqualifying the offending Offeror from consideration or award of the Solicitation then in evaluation, or any future Solicitation.

Unless otherwise specified, all requests for clarification or questions regarding a Solicitation must be directed to the City of Aransas Pass City Manager’s Office, Attn.: Amanda Torres, PO Box 2000, 600 W. Cleveland, Aransas Pass, TX 78336, 361-758-5301, FAX: 361-758-4854, atorres@aransaspasstx.gov.
 - C. **DISCLOSURE OF PENDING LITIGATION:**

Each Respondent shall include in its proposal a complete disclosure of any material civil or criminal litigation or pending investigation which involves the Respondent or in which the Respondent has been judged guilty.
 - D. **CONFIDENTIALITY OF RESPONSES, PUBLIC INFORMATION ACT:**

All Responses are subject to release as public information unless the Response or specific parts of the Response can be shown to be exempt from the Texas Public Information Act. Respondents are advised to consult with their legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or any other proprietary information. The City assumes no obligation or responsibility for asserting legal arguments on behalf of potential Respondents.

If a Respondent believes that a Response or parts of a Response are confidential, then the Respondent shall so specify. The Respondent shall stamp in bold red letters the term "**CONFIDENTIAL**" on that part of the Response, which the Respondent believes to be confidential. Vague and general claims as to confidentiality shall not be accepted. All Responses and parts of Responses that are not marked as confidential will be automatically considered public information. Notwithstanding, responses to Requests for Proposals shall be opened in a manner that avoids disclosure of the contents to competing offeror and keeps the proposals secret during negotiations as provided for in Section 252.049 of the Local Government Code.

E. **CLARIFICATIONS, WAIVER OF MINOR TECHNICALITIES OR DISCREPANCIES:**

The City reserves the right to request clarification or additional information specific to any response after all Responses have been received and the Solicitation due date has passed. Additionally, the City reserves the right to accept or reject all or part of any Response, waive any formalities or technical inconsistencies, delete any requirement or specification from the Solicitation, or terminate the Solicitation when deemed to be in City's best interest.

F. **COST OF PREPARATION OF RESPONSE:**

All costs directly or indirectly related to preparation of a Response to this Solicitation or any oral presentation required to supplement and/or clarify a Response which may be required by the City shall be the sole responsibility of the Respondent.

G. **RESPONSES BECOME PROPERTY OF THE CITY:**

Submissions received in response to a Solicitation become the sole property of the City.

H. **WITHDRAWAL OF A RESPONSE:**

A Response may be withdrawn prior to the submission deadline by submitting a written request for its withdrawal to the City Manager's office. A new Response may be submitted and must be received prior to the submission deadline to be considered. Modifications offered in any manner will not be considered if submitted after the submission deadline.

I. **DETERMINATION OF AWARD, RESULTING AGREEMENT:**

In determining award, the City reserves the right to select the acceptable Respondent who will offer contractual terms and conditions most favorable to the City. All requirements stated in the Solicitation shall become a part of any Contract, Agreement or Purchase Order awarded as a result of the Solicitation, and any deviations from these requirements must be specifically stated and defined by the Respondent in their Response. Requests for clarification and the responses(s) shall also become a part of any Contract, Agreement or Purchase Order resulting from the Solicitation.

J. **AFFIRMATIONS AND CERTIFICATIONS:**

By signature on and submission of a Response, Respondent certifies they have not conspired with any other potential supplier in any manner to attempt to control competitive pricing. By signature on and submission of a Response, Respondent certifies they are duly qualified, capable and a bondable business entity not in receivership or contemplating same, and has not filed for bankruptcy. By signature on and submission of a Response, Respondent affirms that they will not discriminate against any employee or applicant as prohibited by law.

K. **REQUIREMENTS FOR SUBMISSION OF RESPONSE:**

1. All Responses must be submitted on the form provided by the City, and accompanied by all required attachments. Each Response shall be placed in a separate envelope and properly identified with Solicitation Number and Opening Date. Responses must be time-stamped at the City of Aransas Pass City Manager's Office, PO Box 2000, 600 W. Cleveland, Aransas Pass, TX 78336 on or before due date and time shown on the Solicitation form. Late Responses will not be considered.
2. If applicable, Respondent will show exact cost to deliver. Responses must specify unit price on the quantity specified, extend and show total. Unit prices shall govern, including in case of errors. Pricing will be considered firm for acceptance for a minimum of 60 days after the due date unless otherwise specified in the Solicitation. The validity period may be extended beyond that date on agreement of parties. Cash discounts will not be considered in determining award; all cash discounts offered will be taken if earned. Respondent will list and deduct all discounts not based on early payment from prices quoted.
3. The City is exempt from all federal excise, state and local taxes unless otherwise stated. The City claims exemption from under Texas Tax Code §151.309, as amended. Texas Limited Sales Tax Exemption Certificates will be furnished upon request. Do not include taxes in Response to any Solicitation.
4. Unless stated otherwise, any catalog, brand name or manufacturer's reference used in the Solicitation is descriptive (not restrictive), and is used to indicate type and quality desired. Responses on brands of like nature and quality will be considered. If quoting on other than referenced specifications, the Response MUST show manufacturer brand or trade name and description of product offered. Illustrations and complete descriptions of product offered should be made part of the Response. If Respondent does not identify exceptions to the specifications shown in this Invitation, Respondent will be required to furnish brand names, numbers, etc., as shown in the Solicitation.
5. Response must show the number of days required to deliver items or provide services to the City's designated location under normal conditions. Unrealistically short or long delivery promises may cause Response to be disregarded. Failure to state delivery time obligates Respondent to complete delivery in 14 calendar days.

III. **PURCHASE ORDERS**

A. **GENERAL TERMS AND CONDITIONS**

1. **ACCEPTANCE:**

A Purchase Order is the City's commitment to make procurement and is subject to Vendor's acceptance of the City's terms and conditions

2. **ABSENCES OF PURCHASE ORDER OR AGREEMENT:**

The City is not responsible for delivery of any materials or services without a proper Purchase Order

3. **VENDOR'S OBLIGATIONS:**

The Vendor shall fully and timely provide all deliverables described in the Solicitation and in the Vendor's Offer in strict accordance with the terms, covenants, and conditions of the Agreement and all applicable Federal, State, and local laws, rules, and regulations.

4. **EFFECTIVE DATE/TERM:**

Unless otherwise specified in the Solicitation, this Agreement shall be effective as of the date the City issues and signs the Purchase Order, and shall continue in effect until all obligations are performed in accordance with the Agreement.

5. **SUBCONTRACTORS:**

If the Vendor utilizes Subcontractors in providing the goods and/or services under this Purchase Order, the Vendor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Vendor is responsible for the Vendor's own acts and omissions. The Vendor shall:

- a. Require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Agreement;
- b. Prohibit the Subcontractor from further subcontracting any portion of the Agreement without the prior written consent of the City and the Vendor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

- c. Require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Vendor in sufficient time to enable the Vendor to include same with its invoice or application for payment to the City in accordance with the terms of the Agreement;
- d. Require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Vendor, with the City being a named insured as its interest shall appear;
- e. Require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City; and
- f. Shall pay each Subcontractor its appropriate share of payments made to the Vendor not later than ten (10) calendar days after receipt of payment from the City.

6. **DELAYS:**

The City may delay scheduled delivery or other due dates by written notice to the Vendor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Agreement, the City and the Vendor shall negotiate an equitable adjustment for costs incurred by the Vendor in the Agreement price and execute an amendment to the Agreement. The Vendor must assert its right to an adjustment within ten (10) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution Process specified in Section Z. However, nothing in this provision shall excuse the Vendor from delaying the delivery as notified.

7. **FORCE MAJEURE:**

Neither party shall be liable for any default or delay in the performance of its obligations under this Agreement if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond reasonable control. In the event of default or delay in performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

8. **INSURANCE REQUIREMENTS:**

Unless specific insurance requirements are noted, Vendor shall maintain insurance coverage appropriate for the fulfillment of the Purchase Order. In the event the Vendor, its employees, agents or subcontractors enter premises occupied by or under the control of the City, the Vendor agrees to maintain public liability and property damage insurance in reasonable limits covering the obligations set forth in this Purchase Order, and will maintain Workers' Compensation coverage (either by insurance or if qualified pursuant to law, through a self-insurance program) covering all employees performing on premises occupied by or under control of the City. Upon request, Vendor shall provide a copy of its insurance policies to the City.

9. **EXCEPTIONS TO SPECIFICATIONS:**

Any deviation from the specifications must be clearly indicated in the Response to the Solicitation or promptly documented in writing at or before the time of the award. Any deviations or exceptions are subject to review by the City and may be grounds for rejection.

10. **TRAVEL EXPENSES:**

All travel, lodging and/or per diem expenses associated with providing the materials, equipment or services specified must be included in the original Quotation and/or the resulting Purchase Order or Agreement. All travel expenses are subject to review by the City and documentation of actual itemized expenses may be requested. No reimbursement will be made without prior authorization, or for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed.

11. **HUB REQUIREMENTS:**

The City complies with the requirements of the State of Texas *Local Government Code*, Chapter 252, Section 252.0215.

12. **SPECIAL TOOLS AND EQUIPMENT:**

If the price stated in the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Vendor to fulfill the Agreement, such special tooling and/or equipment and all process sheets associated thereto shall become the property of the City and shall be identified by the Vendor as such.

B. SERVICES

1. **PLACE AND CONDITIONS OF WORK, ACCESS TO SITE:**

If Services are to be performed principally on the City's premises or in public rights of way, the City shall provide the Vendor access to the sites where the Vendor is to perform the Services as required in order for the Vendor to perform in a timely and efficient manner, in accordance with and subject to applicable security laws, rules and regulations. The Vendor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of the materials, equipment, labor and facilities necessary to perform the Services and any other conditions or states of fact which could, in any way, affect performance of the Vendor's obligations under the Agreement. The Vendor shall promptly notify the City if the actual site or service conditions differ from the expected conditions and failing to do so, hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature.

2. **VENDOR TO PROVIDE ALL MATERIAL, EQUIPMENT, LABOR:**

Vendor shall provide all goods and labor necessary to perform Services. All material must be new and all equipment utilized must be in good safe working condition and suitable for Services. Vendor shall employ all personnel for Services in accordance with the requirements of applicable local, state, and federal law.

3. **WORKFORCE:**

If Services are to be performed principally on the City's premises or on public right-of-ways:

Vendor shall employ only orderly and competent workers, skilled in the performance of the Services which they will perform under the Agreement.

Vendor, its employees, subcontractors and subcontractor's employees while engaged in participating in a Solicitation or while in the course and scope of delivering goods and services under City Purchase Order or Agreement may not: use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Agreement; or use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated or under the influence of alcohol or drugs while on the job.

If the City or the City's representative notifies the Vendor that any work is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Vendor shall immediately remove such worker from Agreement Services and may not employ such worker again on Agreement Services without the City's prior consent.

4. **COMPLIANCE WITH ALL SAFETY AND ENVIRONMENTAL REQUIREMENTS:**

If Services are to be performed principally on the City's premises or on public rights of way, the Vendor, its subcontractors and their respective employees, shall comply fully with all applicable federal, state and local health, safety and environmental laws, ordinances, rules and regulations in the performance of the Services, including but not limited to those promulgated with the City and the Occupational Safety and Health Administration (OSHA). In the case of conflict, the most stringent safety requirement shall govern. The Vendor shall defend, indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liabilities of any kind or nature arising from the breach of the Vendor's obligations under this paragraph.

5. **STOP WORK NOTICE:**

The City may issue an immediate Stop Work Notice in the event the Vendor is observed performing in a manner that is in violation of Federal, State or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Vendor shall cease all work until notified by the City that the violation or unsafe condition has been corrected. The Vendor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

6. **WARRANTY OF SERVICES:**

Vendor warrants and represents that all Services to be provided to the City under the Agreement will be fully and timely performed in good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions and covenants of the Agreement and all applicable Federal, State and local laws, rules or regulations. This warranty may not be limited, excluded or disclaimed and any attempt to do so will be without force or effect. Unless otherwise specified, the warranty period shall be a minimum of one year from acceptance by the City of Services. In the event any applicable warranty is breached, the Vendor shall promptly upon receipt of demand of performance, perform the Services again in accordance with the above standard at no additional costs to the City. All costs incidental to such additional performance shall be borne solely by the Vendor. The City shall endeavor to give the Vendor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

In the event the Vendor is unable or unwilling to perform the Services in accordance with the above standards as required by the City, then in addition to any other available remedy, the City may reduce the amount of Services originally required to purchase from the Vendor under the Agreement and procure conforming Services from other sources. In such event, the Vendor shall pay the City upon demand the increased cost, if any, incurred by the city to procure such services from an alternative source.

C. **COMMODITIES/EQUIPMENT**

1. **MATERIAL SAFETY DATA SHEETS:**

Under the "Hazardous Communication Act," commonly known as the "Texas Right to Know Act," a Vendor must provide to the City WITH EACH DELIVERY Material Safety Data Sheets, which are applicable to hazardous substances as defined in the Act.

2. **GOODS:**

Goods furnished shall be the latest improved model in current production, as offered to commercial trade, and shall be of quality workmanship and material. The Vendor represents that all goods and equipment offered shall be new. Unless otherwise specified, used, shopworn, demonstrator, prototype or discontinued models are not acceptable.

3. **PACKAGING OF DELIVERABLES:**

Vendor must package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and the unit price. Unless otherwise provided in writing by the City, each shipping container shall be clearly and permanently marked with the Vendor's name and address, and the City's name, address and Purchase Order number. Vendor shall bear all costs of packaging. Deliverables must be suitably packed to secure lowest transportation cost, conform with requirements of common carriers and ensure safe delivery. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

4. **WARRANTY:**

The goods or equipment specified shall be warranted against defects in material or workmanship for a period of not less than twelve (12) months from date of acceptance by the City. If the manufacturer's warranty exceeds twelve (12) months, then the manufacturer's warranty shall be in effect. Vendor shall furnish a copy of the manufacturer's warranty at the time of delivery.

5. **NO LIMITATION OF MANUFACTURERS' WARRANTIES:**

Vendor may no limit, exclude or disclaim any warranty provided by manufacturer.

D. **DELIVERY**

1. **DELIVERY TERMS, TRANSPORTATION CHARGES, FOB:**

Deliverables shall be shipped FOB point of delivery unless otherwise specified on the Purchase Order or in the Solicitation. The Vendor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship deliverables. The place of delivery shall be specified in the Purchase Order.

2. **NO SUBSTITUTIONS OR CANCELLATIONS:**

Unless specifically permitted in writing by the City, no substitutions or cancellations shall be acceptable.

3. **NOTICE OF DELAY IN DELIVERY:**

If a delay in delivery is anticipated, Vendor shall give written notice to the City. The City has the right to extend the delivery time/service date, or to cancel the Purchase Order or Agreement. Vendor shall keep the City advised at all times of the status of the order. Default in promised delivery, service or failure to meet specifications authorizes the City to procure the goods or services from an alternate source and charge the full increase, if any, in cost and handling to defaulting Vendor. Default on delivery may result in legal action and recourse.

4. **DELIVERY LOCATION, HOURS, DAYS, HOLIDAYS:**

Unless otherwise specified, all deliveries must be made to City of Aransas Pass, at the City Department ship to address on the Purchase Order between the hours of 8AM and 4PM (CST), Monday through Friday except regularly observed state and federal holidays schedule. Receipt of goods or materials does not signify acceptance.

5. **NO SHIPMENT UNDER RESERVATION:**

Vendor is not authorized to ship deliverables under reservation and no tender of bill of lading will operate as a tender of deliverables.

6. **TITLE/RISK OF LOSS:**

Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables (no delivery, no sale).

7. **RIGHT OF INSPECTION AND REJECTION:**

The City expressly reserves all rights under law, including but not limited to, the Uniform Commercial Code, to inspect the deliverables at delivery or at a reasonable time subsequent to delivery, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Vendor's or the Vendor's subcontractors facilities, or the deliverables at the Vendor's or the Vendor's subcontractors premises, the Vendor shall furnish or shall cause to be furnished without additional charge all reasonable facilities and assistance to the City to facilitate such inspection.

8. ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING GOODS:

If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept such deliverables, the City may do so. The Vendor shall pay all claims, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If discovery that the deliverables are defective or non-conforming occurs after final payment, Vendor may be required to refund such amounts to the City.

E. PAYMENT

1. TAX EXEMPT STATUS:

The City is exempt from all federal excise, state and local taxes unless otherwise stated in this document. The City claims exemption from all sales and/or use taxes under Texas Tax Code §151.309, as amended. Texas Limited Sales Tax Exemption Certificates are furnished upon request. Vendor will not charge for such taxes. If billed, the City will not remit payment until a corrected invoice is received.

2. INVOICING REQUIREMENTS:

Unless otherwise specified, all invoices shall be submitted to City of Aransas Pass, Accounts Payable, PO Box 2000, Aransas Pass, TX 78336, and issued as required by the Purchase Order or Agreement. Each invoice must reference the unique Purchase Order number, and include the Vendor's complete name and remit to address. If applicable, transportation and delivery charges must be itemized on the each invoice. A copy of the bill of lading and the freight waybill must be submitted with the invoice if applicable. Invoices for labor must include a copy of all time sheets with labor rate and Purchase Order or Agreement number clearly identified. Invoices for labor shall also include a tabulation of hours worked at the appropriate rates and grouped by work order number, if applicable. Time billed for labor shall be limited to hours actually worked at the work site.

3. PAYMENT TERMS:

All payments will be processed in accordance with Texas Prompt Payment Act, *Texas Government Code*, Subtitle F, Chapter 2251. The City will pay Vendor within thirty days after acceptance of goods, supplies, materials, equipment or the day of performance of services was completed, or the day of receipt of a correct invoice for goods, supplies, materials, equipment or services, whichever is later. The Vendor may charge a late fee (fee shall not be greater than that permitted under the Texas Prompt Payment Act) for payments not made in accordance with this prompt payment policy; however, the policy does not apply to payments made by the City in the event: (a) there is a bona fide dispute between the City and Vendor concerning the goods, supplies, materials, equipment delivered, or the services performed, that causes the payment to be late; (b) the terms of a federal agreement, grant, regulation or statute prevents the City from making a timely payment with Federal funds; (c) there is a bona fide dispute between the Vendor and a subcontractor and its suppliers concerning goods, supplies, material or equipment delivered, or the services performed, which caused the payment to be late; or (d) the invoice is not mailed to the City in strict accordance with instructions on the Purchase Order or Agreement, or other such contractual agreement.

4. RIGHT TO AUDIT:

The Vendor agrees that the representatives of the City shall have access to, and the rights to audit, examine, or reproduce, any and all records of the Vendor related to the performance under this Agreement. The Vendor shall retain all such records for a period of four (4) years after final payment on this Agreement or until all audit and litigation matters that the City has brought to the attention of the Vendor are resolved, whichever is longer. The Vendor agrees to refund to the City any overpayments disclosed by any such audit.

5. FIRM PRICING:

The price shall remain firm for the duration of the Purchase Order or Contract, or extension periods. No separate line item charges shall be permitted for either bidding or invoice purposes, which shall include equipment rental, demurrage, fuel surcharges, delivery charges, and cost associated with obtaining permits or any other extraneous charges. Vendor further certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6. PRICE WARRANTY:

The Vendor warrants the prices quoted are not materially higher than the Vendors current prices on orders by others for like deliverables under similar terms of purchase. In addition to any other remedy available, the City may deduct from any amounts owed to the Vendor, or otherwise recover, any amounts paid for items materially in excess of the Vendor's current prices on orders by others for like deliverables under similar terms of purchase.

7. VENDOR OWING TAXES OR FEES TO THE CITY:

Payment will not be made to any person, firm or in arrears in taxes or fees to the City.

IV. TERMS, CONDITIONS AND ADDITIONAL REQUIREMENTS

A. VENDOR'S OBLIGATION:

Vendor shall fully and timely provide all deliverables described in Solicitation, Vendor's Offer in strict accordance with the terms, covenants and conditions of the Agreement and all applicable federal, state and local laws, rules and regulations.

B. DEFAULT:

Vendor shall be in default under the Agreement if the Vendor (a) fails to fully, timely and faithfully perform any of its material obligations under the Agreement, (b) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (c) makes a material misrepresentation in Vendor's Offer, or in any report or deliverable required to be submitted by Vendor to the City.

C. ABANDONMENT OR DEFAULT:

A Vendor who abandons or defaults the work on the Agreement and causes the City to purchase the services elsewhere may be charged the difference in service if any and may not be considered in the re-advertisement of the service and may be rejected as an irresponsible bidder and not considered in future Solicitations for the same type of service unless the scope of work is significantly modified.

D. TERMINATION/CANCELLATION:

1. TERMINATION FOR CAUSE:

In the event of default by the Vendor, the City shall have the right to terminate the Agreement for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Vendor, within such ten (10) day period cures such default, or provides evidence sufficient to prove to the City's satisfaction that such default does not, in fact, exist. In addition to any other remedies available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses incurred by the City as a result of the Vendor's default, including without limitation, cost of cover, reasonable attorneys' fees, court costs and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of default by the Vendor, the City may remove the Vendor from the City's Vendor List and any Offer submitted by the Vendor may be disqualified for up to three (3) years. All rights and remedies under the Agreement are cumulative and not exclusive of any other right or remedy provided by law.

2. TERMINATION WITHOUT CAUSE:

The City shall have the right to terminate the Agreement, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Vendor shall promptly cease all further work pursuant to the Agreement, with such exceptions, if any, specified in the notice of termination. The City shall pay the Vendor, to the extent of funds appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

3. NON-APPROPRIATION:

The resulting Agreement is a commitment of the City's current revenues only. It is understood and agreed that the City shall have the right to terminate the Agreement at the end of any City fiscal year (September 30th) if the governing body of the City does not appropriate funds sufficient to purchase the estimated yearly quantities, as determined by the City's budget for the fiscal year in question. The City may effect such termination by giving the Vendor a written notice of termination at the end of its then current fiscal year.

4. CANCELLATION:

The City reserves the right to cancel the Agreement for default all or any part of the delivered portion of the deliverables if the Vendor breaches any term hereof including warranties, or becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any remedies which the City may have in law or in equity.

E. FRAUD:

Fraudulent statements by the Vendor on any Offer or in any report or deliverable required to be submitted by the Vendor to the city shall be grounds for termination of the Agreement for cause by the City and may result in legal action.

F. INDEMNITY:

VENDOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LEGAL PROCEEDINGS, CAUSES OF ACTION, CLAIMS, DEMANDS, DAMAGES, JUDGMENTS, LOSSES, LIENS, COSTS, EXPENSES, ATTORNEYS' FEES AND ANY AND ALL OTHER COSTS, FEES AND/OR CLAIMS OF ANY KIND OR DESCRIPTION ARISING OUT OF, IN CONNECTION WITH OR RESULTING FROM THE AGREEMENT OR THE GOODS OR SERVICES PROVIDED UNDER THE AGREEMENT. IF THE VENDOR AND THE CITY ARE CONCURRENTLY NEGLIGENT, EACH PARTY'S LIABILITY SHALL BE LIMITED TO THAT PORTION OF NEGLIGENCE ATTRIBUTABLE TO IT AS DETERMINED UNDER THE APPLICABLE PROPORTIONATE RESPONSIBILITY RULES OF THE STATE OF TEXAS.

G. LIABILITY:

Any person, firm or corporation performing services pursuant to this Agreement or Purchase Order shall be liable for all damages incurred while in the performance of such services. Vendor assumes full responsibility for the work to be performed hereunder and hereby releases, relinquishes, and discharges the City, its officers, agents and employees from all claims, demands and causes of action of any nature including the cost of defense thereof, for any injury to, including death of, any person whether that person be a third party, supplier or an employee of either of the parties hereto, and any loss of or damage to property, whether the same be that of either of the parties, caused by or alleged to have been caused by, arising out of or in connection with the issuance of the Agreement or Purchase Order to the Vendor and the negligence of the Vendor, whether or not said claims, demands and causes of action in whole or in part are covered by insurance. Certificates of insurance may be required for, but not limited to, Commercial General Liability, Business Auto Liability, Workers Compensation and Professional Liability Insurance.

H. INFRINGEMENT:

Vendor represents and warrants to the City that: (a) Vendor shall provide the City good and indefeasible title to the deliverables and (b) the deliverables supplied by the Vendor in accordance with the specifications of the Agreement shall not infringe, directly or contributory, any patent, trademark, copyright, trade secret or any other intellectual property right of any kind of any third party; that no claims have been made by a person or entity with respect to the ownership or operation of the deliverables and the Vendor does not know of any basis for any such claims. Vendor shall, at its sole expense, defend, indemnify and hold the City harmless from and against all liability, damages and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (a) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverable infringes the intellectual property rights of any third party; or (b) Vendor's breach of any of the Vendor's representations or warranties stated in this Agreement. In the event of any such claim, the City shall have the right to monitor such claim or, at its option, engage its own separate counsel to act as co-counsel on the City's behalf. Further, Vendor agrees that the City's specifications regarding the deliverables shall in no way diminish Vendor's warranties or obligations under the Section, and the City makes no warranty that the products, development or delivery of such deliverables will not impact such warranties of Vendor.

I. DAMAGE TO CITY PROPERTY:

Vendor shall be responsible for any and all damage to the City's equipment and/or property, the workplace and its contents, by its work, negligence in work, its personnel and equipment. Vendor shall be responsible and liable for the safety, injury and health of its working personnel while its employees are performing service work.

J. OVERCHARGES:

Vendor hereby assigns to the City any and all claims for overcharges associated with this Agreement which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and/or which arise under the antitrust laws of the State of Texas, *Business and Commerce Code Ann.*, Section 15.01, et seq.

K. CONFIDENTIALITY:

In order to provide the deliverables to the City, Vendor may require access to certain of the City's and/or its licensors' confidential information (including, but not limited to, inventions, employee information, trade secrets, confidential know-how, confidential business information and other information which the City or its licensors consider confidential)(collectively, "Confidential Information"). Vendor acknowledges and agrees

that the Confidential Information is the valuable property of the City and/or its licensors, and any unauthorized use, disclosure, dissemination or other release of the Confidential Information will substantially injure the City and/or its licensors. The Vendor (including its employees, subcontractors, agents or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate or otherwise use the Confidential Information without the prior written consent of the City, or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or as a result of an order of any court or other governmental authority with proper jurisdiction, provided the Vendor promptly notifies the City prior to disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Vendor agrees to use protective measures no less stringent than the Vendor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

L. CODES, PERMITS, LICENSES:

Vendor shall comply with all federal, state and local standards, codes and ordinances and the terms and conditions of the services of the electric utility, as well as other authorities that have jurisdiction pertaining to equipment and materials used and their application. None of the terms or provisions of the specification shall be construed as waiving any rules, regulations or requirements of these authorities. Vendor shall be responsible for obtaining all necessary permits, certificates and/or licenses to fulfill contractual obligations to the City.

M. ADVERTISING/PUBLICITY:

Vendor shall not advertise or otherwise publicize, without the City's prior written consent, the fact that the City has entered into the Agreement, except to the extent required by applicable law.

N. INDEPENDENT CONTRACTOR:

The Agreement shall not be construed as creating an employer/employee relationship, a partnership or joint venture. The Vendor's services shall be those of an independent contractor. The Vendor agrees and understands that the Agreement does not grant any rights or privileges established for employees of the City. Vendor shall not be within protection or coverage of the City's Worker Compensation insurance, Health Insurance, Liability Insurance or any other insurance that the City, from time to time, may have in force.

O. LIENS:

Vendor shall defend, indemnify and hold the City harmless from and against any and all liens and encumbrances for all labor, goods and services provided under this Agreement. At the City's request, the Vendor or its subcontractors shall provide a proper release of all liens or satisfactory evidence of freedom from liens shall be delivered to the City.

P. ASSIGNMENT/DELEGATION:

The Agreement shall be binding upon and endure to the benefit of the City and the Vendor, and their respective successors and assignees, provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by the Vendor without the prior written consent of the City. Any attempted assignment or delegation by the Vendor shall be void unless made in conformity with this Section. The Agreement is not intended to confer any rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Agreement.

Q. INTERPRETATION:

The Agreement is intended by both parties as the final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Although the Agreement may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner fair to both parties, reading no provision more strictly against one party of the other. Whenever a term defined by the Uniform Commercial Code (the "UCC"), as enacted by the State of Texas, is used in the Agreement, the UCC definition shall control unless otherwise defined in the Agreement.

R. GOVERNING LAW AND VENUE:

This Agreement is made under and shall be governed by the laws of the State of Texas, including when applicable, the UCC as adopted in Texas, VTCA, *Business & Commerce Code*, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. This Agreement is fully performable in Aransas Pass, TX, and the venue for any action related to this Agreement shall be Aransas Pass, TX. All issues arising from this Agreement shall be resolved in the courts of San Patricio County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or the ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein and does not waive the city's defense of sovereign immunity.

S. INTERLOCAL COOPERATIVE PURCHASING/PIGGYBACK CONTRACTS:

T. Other governmental entities may be extended the opportunity to purchase from Solicitations of the City, with the consent and agreement of the awarded Vendor(s) and the City. Such consent and agreement shall be conclusively inferred from lack of exception to this clause in Vendor's Response. However, all parties indicate their understanding and all parties hereby expressly agree that the City is not an agent of, partner to or representative of those outside agencies or entities and that the City is not obligated or liable for any action or debts that arise out of such independently negotiated piggyback procurements.

U. SURVIVABILITY OF OBLIGATIONS:

All provisions of the Agreement that impose continuing obligations on the parties, including but not limited to the warranty, indemnity and confidentiality obligations of the parties, shall survive the expiration or termination of the Agreement.

V. CLAIMS:

If a claim, demand, suit or other action is asserted against the Vendor which arises under or concerns the Agreement, or which could have a material adverse effect on the Vendor's ability to perform thereunder, the Vendor shall give written notice to the City within ten (10) calendar days after receipt of notice by the Vendor. Such notice to the City shall state the date of notification of any such claim, demand, suit or other action; the names and address of the claimant(s); the basis thereof; and the name of each person against whom such claim is asserted. Such notice shall be delivered to the Purchasing Department as set forth below.

W. NOTICES:

Unless otherwise specified, all notices, requests or other communications required or appropriate to be given under the Agreement shall be in writing and deemed delivered three (3) business days after postmarked if sent by US Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, fax, or other commercially accepted means. Notices to the Vendor shall be sent to the address specified in the Vendor's Offer or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to: City of Aransas Pass City Manager's Office, Attn.: Amanda Torres, PO Box 2000, 600 W. Cleveland, Aransas Pass, TX 78336.

X. GRATUITIES:

The City may, by written notice to the Vendor, cancel the Agreement without liability if it is determined by the City that gratuities were offered or give by the Vendor or any agent or representative of the Vendor to any officer or employee of the City with the intent of securing the Agreement or securing favorable treatment with respect to awarding or amending or the making of any determinations with respect to performing of the Agreement. In the event the Agreement is cancelled by the City pursuant to this Section, the City shall be entitled, in addition to any other rights and remedies, to recover the benefits or payments to the Vendor, as a result of the gratuities.

Y. PERSONAL INTEREST PROHIBITED:

No officer, employee, independent consultant or elected official of the City who is involved in the development, evaluation or decision-making process of the performance of the any Solicitation shall have a financial interest, direct or indirect, in the resulting Agreement. Any willful violation of this Section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. In the event a member of the governing body or an appointed board or commission of the City belongs to a cooperative association, the City may purchase equipment or supplies for the association only if no member of the governing body, board or commission will receive pecuniary benefit from the purchase, other than as reflected as in increase in dividends distributed generally to members of the association. Any violation of this provision with the knowledge, expressed or implied, by the Vendor shall render the Agreement voidable by the City. Nevertheless, the City may obtain the equipment or service if a conflict of interest affidavit is filed and the Council member recuses his/herself.

Z. WAIVER:

No claim or right arising out of a breach of the Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Vendor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Agreement, or an express or implied acceptance of any other existing or future default(s), whether of similar or different character.

AA. DISPUTE RESOLUTION:

If either the Vendor or the City has a claim, dispute or other matter in question for breach of duty, obligations, services rendered or any warranty that arises under this Agreement, the parties shall first attempt to resolve the matter through this dispute resolution process. The disputing party shall notify the other party in writing as soon as practicable after discovering the claim, dispute or breach. The notice shall state the nature of the dispute and list the party's specific reasons for such dispute. Within ten (10) business days of receipt of the notice, both parties shall make a good faith effort, in person or through generally accepted means, to resolve any claim, dispute, breach or other matter in question that may arise out of, or in connection with, this Agreement. If the parties fail to resolve the dispute within sixty (60) days of the date of receipt of the notice of the dispute, then the parties may submit the matter to non-binding mediation upon written consent of authorized representatives of both parties in accordance with the Arbitration Rules of the American Arbitration Association or other applicable rules governing mediation then in effect. If the parties cannot resolve the dispute through mediation, then either party shall have the right to exercise any and all remedies available under law regarding the dispute.

BB. INVALIDITY:

The invalidity, illegality or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace the stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision which is the essence of the Agreement be determined to be void.

CC. RIGHT TO ASSURANCES:

In the event the City, in good faith, has reason to question the intent of the Vendor to perform, the City may demand written assurances of the intent to perform. In the event no written assurance is given within the time specified, the City may treat this failure as an anticipatory repudiation of the Agreement.