



REQUEST FOR BID (RFB)

**Rebid of RFB For Fuel Delivery Services
Released: July 9, 2020**

Bids Due: August 4, 2020 at 2:00 p.m.

Submit Bid to:

**City of Portland
Attn: Annette Hall
City Secretary
1900 Billy G. Webb Dr.
Portland, TX 78374**

Due Date/Time:
August 4, 2020
2:00 p.m. (CST)

CITY OF PORTLAND, TEXAS
1900 Billy G. Webb Drive
Portland, Texas 78374
(361) 777-4500
www.portlandtx.com

SECTION 1 – NOTICE OF REQUEST FOR BIDS

A. INTRODUCTION

The City of Portland, Texas (“City”) hereby reissues this Request for Bid (“RFB”). The City is seeking bids from firms interested and qualified in providing fuel delivery services for one year on an as needed basis for Regular Unleaded Gasoline Ethanol (10%), 85 – 87 Octane, and Ultra Low Sulfur LED Distillate Diesel (TX LED). Currently, the City utilizes one 15,000 gallon two-compartment UL 2085 Fire Guard Tank located at 1101 Moore Ave., Portland, TX 78401. One compartment can hold up 10,000 gallons of gasoline and the other up to 5,000 gallons of diesel.

B. GENERAL INFORMATION

1. The objective of this RFB is to identify and award a contract to the Contractor that can meet the bid requirements and offer quality service at the lowest cost.
2. A copy of this RFB can be obtained upon request from the office of the Purchasing Officer at City Hall. To request a copy of this RFB via email, the Bidder must send an email request to John.Elizondo@portlandtx.com. The RFB and any addenda can also be downloaded from the City of Portland’s website at www.portlandtx.com by clicking the “Bids” graphic link on the home page then selecting the link under the heading “Related Documents”.
3. Any quantities that may be described herein are estimates and subject to availability of appropriated funds. Therefore, do not obligate the City to order or accept more than the City’s actual requirements during the term of any Contract or purchase order nor do the estimates limit the City to ordering less than its actual needs.
4. Any time stated in this RFB is referring to local time which is Central Standard Time (CST), and any number of days shall be construed as calendar days.

C. TERM

The term of the contract will be for one year after signed by the City Manager or designee and issuance of a Notice to Proceed.

D. SCHEDULE

The following is the schedule of important dates:

Request for Bid Release Date	July 9, 2020
Deadline for Questions & Inquiries	July 20, 2020 at 3:00 p.m.
Responses to Questions & Inquires	July 23, 2020
Bids Due Deadline / Bid Opening	August 4, 2020 at 2:00 p.m.
Projected Date of Award	August 18, 2020
Anticipated Notice to Proceed	August 20, 2020

Note: The City reserves the right to change the schedule of dates above as deemed necessary.

E. PURCHASING OFFICER’S CONTACT INFORMATION

Name: John Elizondo
Phone: 361-777-4576
John.Elizondo@PortlandTX.com

SECTION 2 – INSTRUCTIONS TO BIDDERS

A. BIDDER'S MINIMUM REQUIREMENTS

1. The Bidder must be an established refiner, major representative, distributor or dealer and able to provide satisfactorily evidence of their ability to furnish products or services in accordance with the terms and conditions of the Scope of Work.
2. The Bidder must have operated continuously for a minimum of 5 years as an established firm in providing timely deliveries of gasoline and diesel fuel.
3. Bidder must provide at least five verifiable client references (or as many client references as Bidder has available) for which the same services have been provided. This information will be used to determine the extent to which the Bidder is able to provide the services described herein as well as the level of customer service exhibited by the Bidder. Bidder must provide at minimum the following information for each reference:
 - a. Organization's Name
 - b. Organization's Address
 - c. Contact's Name and Title
 - d. Contact's Phone Number and Email Address
 - e. Effective Start/End Dates of Contract (month/year)

B. BID PROCEDURES

1. All bids must be complete, accurate and in the City-approved format specified. Bidder must use the attached Bid Pricing Form, Attachment B, in submitting bid. Bidders must furnish pricing for all of the items shown on the Bid Pricing Form.
2. Unauthorized modifications of specifications, forms or terms may render the bid invalid.
3. Bids should include taxes as the City is not tax exempt for the purchase of gasoline and diesel.
4. Should there be any shipping involved in this bid, shipping shall be FOB Destination and included in the pricing unless specifically listed as a separate bid item. For bidding purposes, any applicable trip charges must be factored in as part of the Unit Total Price based on the quantities of product and number of deliveries listed on the Bid Pricing Form.
5. An example (Exhibit A) of the Bid Pricing Form with the pricing table portion completed has been included with this RFB for reference only.
6. The deadline for submission of bids is 2:00 p.m. CST Tuesday, August 4, 2020.
7. The Bidder shall submit one (1) copy of the completed Bid Pricing Form (Attachment B) and any other required information identified in this RFB, addressed to:

City of Portland
Attn: Annette Hall
City Secretary
1900 Billy G. Webb Dr.
Portland, TX 78374

8. The bid must be submitted in a sealed envelope bearing the title "SEALED BID – REBID OF RFB FOR FUEL DELIVERY SERVICES" along with Bidder's name, address and contact information.
9. Sealed Bids may be submitted in person, by U.S. Mail, Special Delivery or courier service.
10. Bids must be received, before the date and time specified in this RFB. Without exception, bids received on or after this deadline will be deemed late, non-responsive and will not be considered.
11. The City's Purchasing Policy requires that all bids submitted remain sealed, secret and unopened until the DUE DATE AND TIME specified in this RFB. Therefore, bids submitted directly to the City by facsimile or e-mail will be considered non-responsive and eliminated from consideration.
12. All costs incurred by the Bidder in responding to the RFB shall be borne by the Bidder.
13. Bids will be opened publicly on the date and time specified herein in the City Council Chambers of City Hall.
14. The City reserves the right to reject any or all bids, to waive any non-material irregularities or informalities in any RFB, and to accept or reject any item or combination of items.

C. REQUEST FOR CLARIFICATION

1. Any Bidder requiring further clarification of the RFB procedures should submit inquiries in writing in the form of questions and or requests for clarification to the Purchasing Officer, John Elizondo, at John.Elizondo@portlandtx.com before 3:00 P.M. local time July 20, 2020. The Bidder should request confirmation via email that the request for clarification was received or follow up with a phone call, if necessary, to confirm receipt. The Purchasing Officer can be reached at (361) 777-4576.
2. Bidder's question(s) and or requests for clarifications and the City's response(s) can be found on the City's website in the form of an addenda on the specified date.
3. All other City employees do not have the authority to respond for the City in regard to this RFB. Any attempt by a Bidder, that Bidder's officers, employees, or agents to lobby or influence a vote or recommendation related to the Bidder's bid submitted in response to this RFB, directly or indirectly, through any contact with City Council members or other City officials between the date this RFB is released to the public and the date a contract is awarded by the City may result in rejection of the Bidder's bid at the discretion of the City Manager or designee.

SECTION 3 – CONDITIONS GOVERNING PROCUREMENT

A. PROCEDURAL AND CONTENT QUESTIONS

1. During review of this RFB and preparation of the bid, certain errors, omissions or ambiguities may be discovered. If so, or if there are doubts or concerns about the meaning of any part of this RFB, questions should be submitted to the Purchasing Officer as described in this RFB.

2. An addendum will be issued to address the questions and answers along with any changes to the documents as a result of these clarifications. The addenda will be released on July 23, 2020 by close of business. Bidders must acknowledge receipt of all Addenda.

B. BASIS FOR BID

1. Bidders should carefully examine the entire RFB, any addenda thereto and any related materials and dates referenced in the RFB. Bidders shall become fully aware of the specifications and requirements, any special provisions, and the sample agreement before submitting a bid.
2. By submission of a bid, Bidder is agreeing to performing the work and as to the requirements of the agreement.
3. Bidders are responsible for the cost to produce their Bid. Bidders are also responsible for their bid's content, timeliness of submission and withdrawal.
4. Only the information contained in this RFB, questions and answers with regard to inquiries requesting clarification or additional information, addenda hereto and information supplied by the City in writing through the Purchasing Officer should be used in the preparation of the bid.

C. SERVICE AGREEMENT

A sample SERVICE AGREEMENT is attached hereto that the successful Bidder will be required to sign a similar agreement. With the exception of certain terms and conditions which may be modified by the City to conform prior to final execution of the Contract.

D. TERMS AND CONDITIONS

1. With its bid, the Bidder is committing to the terms and conditions as outlined in the Sample Agreement. Any concerns over the terms and conditions must be resolved during the procurement stage through the clarification request and answer process.
2. The City will not accept bids containing conditions or agree to any proposed changes to the service agreement.
3. If awarded a contract, Contractor agrees to invoice based on the OPIS gross contract (10:00 a.m. EST) average price (for Corpus Christi, TX) for the day of delivery and the Contractor's Constant Price. The Constant Price is the difference between the OPIS average and the selling price per gallon which includes but is not limited to all applicable taxes, environmental fees, freight charges (including trip charge), load fees, operational overhead and the fixed OPIS average markup. Contractor is prohibited from changing the constant price, including the OPIS average markup, during the term of the contract.

E. EXCEPTIONS TO RFB SPECIFICATIONS

1. Although the specifications in the following sections represent the City's anticipated needs, there may be instances in which it is in the City's best interest to permit exceptions to specifications and evaluate alternatives.

2. When allowed exceptions, conditions or qualifications to the provisions of the City’s specifications must be clearly identified as such, together with reasons for taking exception and submitted as a request for clarification during the bid process. **If the Bidder does not make clear an exception is being taken, the City will assume the Bidder is, in its bid, responding to and will meet the specifications and requirements of this RFB.**

F. USE OF SUBCONTRACTORS

1. The Bidder may use subcontractors in connection with the work performed if awarded a Contract. When using subcontractors, however, if not listed in the bid at the time of award, the Bidder must obtain prior written approval from the City. In using subcontractors, the Bidder is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Bidder. All requirements set forth as part of the Contract are applicable to all subcontractors and their employees to the same extent as if the Bidder and its employees had performed the services.
2. The City considers any vendor hired by the awarded contractor for the purpose of delivering fuel to City property to be a subcontractor.

G. INSURANCE REQUIREMENTS

Contractor’s Liability Insurance

1. Contractor must not commence work under this agreement until all insurance required herein has been obtained and approved by the City's Risk Manager or designee. Contractor must not allow any subcontractor to commence work until all similar insurance required of the subcontractor has been so obtained.
2. Contractor must furnish to the Risk Manager or designee one (1) copy of Certificates of Insurance with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the Risk Manager or designee. **The City must be listed as an additional insured for the General Liability and Auto Liability policies, and a waiver of subrogation is required on all applicable policies. Endorsements must be provided with the Certificate of Insurance. The project name and / or number must be listed in Description Box of the Certificate of Insurance.**

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-day advance written notice of cancellation, non-renewal, material change or termination required on all certificates and policies.	Bodily Injury and Property Damage Per occurrence - aggregate
Commercial General Liability including: 1. Commercial Broad Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors 6. Personal Injury- Advertising Injury	\$1,000,000 Per Occurrence \$2,000,000 Aggregate

AUTO LIABILITY (including) Owned Hired and Non-Owned Rented/Leased	\$1,000,000 Combined Single Limit
WORKERS' COMPENSATION (All States Endorsement if Company is not domiciled in Texas) Employer's Liability	Statutory and complies with Part II of this Exhibit. \$500,000 / \$500,000 / \$500,000
POLLUTION LIABILITY (Including Cleanup and remediation)	\$1,000,000 Per Incident Limit \$1,000,000 Aggregate

3. In the event of accidents of any kind related to this project, Contractor must furnish the Risk Manager with copies of all reports of such accidents within 10 days of the accident.

Additional Requirements

1. Applicable for paid employees, Contractor must obtain workers' compensation coverage through a licensed insurance company. The coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The workers' compensation coverage provided must be in statutory amounts according to the Texas Department of Insurance, Division of Workers' Compensation. An All States Endorsement shall be required if Contractor is not domiciled in the State of Texas.
2. Contractor shall obtain and maintain in full force and effect for the duration of this Contract or purchase order, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.
3. Contractor shall be required to submit renewal certificates of insurance throughout the term of this contract or purchase order and any extensions within 10 days of the policy expiration dates. All notices under this Exhibit shall be given to City at the following address:

City of Portland, Texas
Attn: Risk Management
1900 Billy G. Webb
Portland, TX 78374

4. **Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
 - List the City and its officers, officials, employees, and volunteers, as additional insureds by endorsement with regard to operations, completed operations and activities of or on behalf of the named insured performed under contract or purchase order with the City, with the exception of the workers' compensation policy.

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of Portland where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide 30 calendar days advance written notice directly to City of any cancellation, non-renewal, material change or termination in coverage and not less than ten calendar days advance written notice for nonpayment of premium.
5. Within five calendar days of a cancellation, non-renewal, material change or termination of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract or purchase order. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract or purchase order.
 6. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
 7. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work under this contract or purchase order.
 8. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Portland for liability arising out of operations under this contract or purchase order.
 9. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.

SECTION 4 – SCOPE OF WORK

A. GENERAL REQUIREMENTS

1. Contractor shall provide the City of Portland with fuel delivery services of Regular Unleaded Gasoline (85- 87 Octane) Ethanol (10%) and Ultra Low Sulfur (TX LED) Distillate Diesel for one year. The products must be delivered on an as needed basis to the City's designated location(s).
2. The Contractor shall provide all labor, transportation and supervision during the life of the contract or purchase order. The Contractor must be adequately equipped, supplied and staffed to promptly and efficiently meet the City's requirements.

3. The Contractor shall ensure that a vapor recovery hose and connection system are properly installed prior to transferring and dispensing fuel. Drivers are not to leave hoses unattended during fueling operations.
4. The Contractor shall take all due precautions to prevent spillage of these products during delivery. Proper equipment maintenance constant inspection, and where necessary, the use of collection pans during fuel transfer, must be employed to avoid leaks or spills. In the event of a spill, the Contractor shall be responsible for immediate containment mitigation of the effects of the spill and cleanup of the spilled products at no cost to the City. Failure to take immediate action following a spill, may be grounds for termination of the contract and or purchase order. The City reserves the right to contract with a third party to accomplish any necessary spill control actions and will hold Contractor responsible for all cost incurred. A copy of the Contractor's spill containment policy must be provided upon request.
5. The required fuel delivery services are vital to the operation of the City particularly during emergency situations such as hurricanes and other catastrophes whether man made or natural. Time is of the essence during emergency situations; therefore, the designated Contractor representative(s) may need to be called and must be available at any time day or night during those periods. The Contractor must be prepared and ready to deliver Regular Unleaded Gasoline Ethanol (10%) and or Ultra Low Sulfur (TX LED) Distillate Diesel fuel to the designated location(s) upon request. **The awarded Contractor will be required to provide emergency contact information for the designated Contractor representative(s).**
6. During emergency situations, the City's fuel needs must take **PRIORITY** over other customer contracts the awarded Bidder may have.
7. If the Contractor is unable to meet the emergency requirements, the City may have to locate and purchase the required fuel. Any cost incurred, including additional cost over the bid price, will be charged to the Contractor.
8. The Contractor must submit, with their bid, a typical analysis of each product being proposed and unleaded fuel must indicate a minimum octane rating of 85 or 87.
9. The Contractor must submit with bid a Safety Data Sheet (SDS) for each product.

B. DELIVERY REQUIREMENTS

1. Fuel orders shall be delivered to the designated location(s) within 24 hours of the time the order was placed. If a delivery is not made within the required timeframe, the City reserves the right to purchase product from another source and charge the Contractor any cost incurred, including additional cost over the bid price.
2. The preferred fuel delivery hours are 8:00 a.m. to 4:00 p.m. Monday – Friday. However, if necessary, exceptions can be made occasionally with approval.
3. Safety Data Sheets (SDS) for each product must be submitted with each delivery.
4. Refinery manifest indicating gross/net gallons must accompany all deliveries.
5. All deliveries must be metered and verified by City personnel.

C. SPECIAL INSTRUCTIONS

1. The City reserves the right to have fuel tested up to three times per year by a recognized independent petroleum testing laboratory at the Contractor's expense.
2. In order to be considered responsive, Contractors must comply with all ASTM test methods required by TITLE 30 ENVIRONMENTAL QUALITY, PART 1 TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, CHAPTER 114 CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES, SUBCHAPTER H LOW EMISSION FUELS, DIVISION 2 LOW EMISSION DIESEL RULE §114.315 APPROVED TEST METHODS (TX LED), September 13, 2012,. <https://www.tceq.texas.gov>

SECTION 5 – BID EVALUATION AND SELECTION PROCESS

A. OVERVIEW OF BID EVALUATION/SELECTION PROCESS

1. The City will evaluate the merit of all the bids received in response to this RFB. City staff will recommend to the City Manager that award be made to the Bidder whose bid is determined to be the lowest, responsive, responsible bid.
2. Discussions may be conducted with responsible Bidders qualified to be selected for award for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Should the City require clarification from the Bidder, the City shall contact the individual named as the organization's contact person in the firms bid.
3. Until award of the Contract or purchase order is made by the City, the City reserves the right to reject any or all bids, to waive any technicalities or irregularities, to re-advertise for new bids or to proceed in any manner as may be considered in the best interest of the City.

**ATTACHMENT B: BID PRICING FORM
CITY OF PORTLAND, TEXAS**

1. In submitting bid, Bidder certifies that the prices in the bid have been arrived at independently, without consultation, communication, or agreement with any other vendor or competitor, for the purpose of restricting competition with regard to prices;
2. And, Contractor agrees to invoice based on the OPIS gross contract (10:00 a.m. EST) average price (for Corpus Christi, TX) for the day of delivery and the Contractor's Constant Price. The Constant Price is the difference between the OPIS average and the selling price per gallon which includes but is not limited to all applicable taxes, environmental fees, freight charges (including trip charge), load fees, operational overhead and OPIS average the fixed OPIS average markup. Contractor is prohibited from changing the constant price, including the OPIS average markup, during the term of the contract.
3. Please quote your best price for each product in the quantities listed based on an estimated 10 deliveries per year each consisting of 4,000 gals of gasoline and 2,000 gals of diesel. The Bidder's Unit Total Price must include the total cost to the City including trip charges if applicable.

Item	Description	UOM	Est. Annual Qty	OPIS Avg. for 1/29/20 (10 a.m. EST)	Fixed OPIS Avg. +/- Markup	*Unit Total Price Comprised of OPIS Average + Bidder's Constant Price	Extended Total
1	Regular Unleaded Gasoline (85 - 87 Oct.) Ethanol (10%)	Gal	40,000	\$1.5870			
2	Ultra-Low Sulfur LED Distillate Diesel	Gal	20,000	\$1.7073			
*Note: To calculate the Extended Total for each product, please multiple your Unit Total Price x the Estimated Annual Quantity.						Grand Total	

COMPANY: _____

NAME OF PERSON AUTHORIZED TO SIGN: _____

ADDRESS: _____

CITY / STATE/ZIP: _____

PHONE: _____

EMAIL: _____

FAX: _____

DATE: _____

SIGNATURE: _____

TITLE: _____

IN CASE OF A DISCREPANCY BETWEEN THE UNIT TOTAL PRICES AND THE EXTENDED TOTALS OR THE GRAND TOTAL, THE UNIT TOTAL PRICES WILL BE PRESUMED TO BE CORRECT AND THE TOTALS WILL BE RECALCULATED ACCORDINGLY.

THE CITY RESERVES THE RIGHT TO REJECT OR CANCEL ANY OR ALL BIDS, TO WAIVE ANY TECHNICALITIES OR IRREGULARITIES IN THE BIDS RECEIVED, TO CANCEL OR POSTPONE THIS PROJECT UNTIL A LATER DATE OR TO PROCEED IN ANY MANNER AS MAY BE CONSIDERED IN THE BEST INTEREST OF THE CITY.



Service Agreement

Service Agreement for Fuel Delivery Services

THIS Fuel Delivery Services Agreement ("Agreement") is entered into by and between **[insert name of company]** ("Contractor"), and the City of Portland, a Texas home-rule municipal corporation (the "City"), effective for all purposes upon execution by the City Manager or designee ("City Manager").

WHEREAS, Contractor has bid to provide Fuel Delivery Services in response to the City's Request for Bids ("**RFB No.**") which RFB with any related specifications, and bid response, are incorporated by reference into this Agreement as Exhibits "1 and 2";

WHEREAS, the City has determined Contractor to be the lowest, responsive, responsible bidder;

NOW, THEREFORE, for and in consideration of the payments, undertakings and covenants herein, Contractor and City enter into this Agreement and agree, covenant and contract as follows:

1. **Scope.** Contractor will provide Fuel Delivery ("Services") in accordance with this Agreement and the Scope of Services as shown in Attachment "A".
2. **Term.** This Agreement is for one year after signed by the City Manager or designee commencing on the issuance of a notice to proceed and continuing through end of one year.
3. **Compensation and Payment.** The total value of this Agreement is for an amount not to exceed \$_____, subject to validly authorized extensions and changes. Payments will be allowed in accordance with Attachment "B" Bid Pricing Form attached and incorporated by reference. Payment terms are net 30 days after each delivery of goods and or services are completed as required or a correct invoice is received, whichever is later.
4. **Allowances.**
 - a. Allowances are an amount established in the Agreement by the City to pay the Contractor for a scope of work which has been identified, but which has not yet been fully defined and may be used in whole, in part, or not at all as determined by the City. If the City has included Allowances within Agreement amount for materials and/or work, the Allowances may be used in whole, in part, or not at all as determined by the City.
 - b. The decision as to whether to proceed with an Allowance is within the City's complete discretion. If the City notifies the Contractor of its potential intent to proceed with that scope of work outlined by the allowance, the Contractor shall provide the City with pricing based from the schedule of pricing (Attachment B) for the scope of work and as required pursuant to the Contract Documents. For the defined scope of work and as required pursuant to the Contract Documents. For the defined scope of Allowance work, the City

may direct the Contractor to proceed on a time and materials basis, or decide not to proceed with the potential Allowance work.

- c. The Contractor must have the City's advance written approval generally issued by task order before proceeding with an established Allowance work element.
- d. Provided, however, no allowance may increase the cost of this Agreement more than 25%, nor decrease it more than 25% without the Contractor's approval.
- e. Any unused Allowance funds belong to the City and will revert back to the City upon completion of the Work. A change order will be issued to reduce the Agreement value for any unused allowance funds that remain.

5. **Contract Administrator.** The contract administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement including deductions for non-performance and authorizations for payment. All of the Contractor's notices or communications regarding this Agreement must be directed to the Contract Administrator or designee ("Contract Administrator") as follows:

Name:

Department:

Phone:

Email:

6. **Independent Contractor.** Contractor will perform the Services as an independent contractor and will furnish such Services in its own manner and method, and under no circumstances or conditions may any agent, servant or employee of the Contractor be considered an employee of the City.
7. **Insurance.** Before Services can begin under this Agreement, the Contractor's insurance company, or companies, must deliver a Certificate of Insurance, as proof of the required insurance coverages, to the Contract Administrator and City's Risk Manager. The Contractor's insurance requirements are attached to this Agreement as Attachment "C" attached and incorporated by reference.
8. **Assignment.** No assignment of this Agreement or of any right or interest contained in this Agreement by the Contractor is effective unless the City Manager first gives its written consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement, and the City's right to withhold consent to such assignment is within the sole discretion of the City on any ground whatsoever.
9. **Fiscal Year.** All parties recognize that the continuation of any contract after the close of any fiscal year of the City (the City's fiscal year ends on September 30th) is subject to appropriations and budget approval providing for such contract item as expenditure in the budget. The City does not represent that said budget item will be actually adopted, as that determination is within the sole discretion of the City Council at the time of adoption of each budget.
10. **Waiver.** No waivers by either party of any breach of any term or condition of this Agreement Waives any subsequent breach of the same.
11. **Governing Law.** This Agreement is subject to all federal, state and local laws, rules and regulations. The applicable law for any legal disputes arising out of this Agreement is the law

of Texas and such form and venue for such disputes is the appropriate district, county or justice court in and for San Patricio County, Texas.

12. **Subcontractors.** The Contractor may use subcontractors in connection with the Services to be performed under this Agreement. When using subcontractors, however, the Contractor must obtain prior written approval from the Contract Administrator unless such subcontractors were named and included at the time of bid. In using subcontractors, the Contractor shall be responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Contractor. All requirements set forth as part of this Agreement, including the necessity of providing a COI in advance to the City, are applicable to all subcontractors and their employees to the same extent as if the Contractor and its employees had performed the Services.
13. **Amendments/Extensions.** This Agreement may be amended only in writing and upon execution by authorized representatives of both parties. Such amendment will be in the form of a change order. Extensions to this Agreement will be at the sole discretion of the City and if offered to the Contractor will be mutually agreed to in the form of a bilateral change order.
14. **Termination.**
 - a. The City Manager may terminate this Agreement for Contractor's failure to perform the Services specified in this Agreement. Failure to keep any required insurance policies in force for the entire term of this Agreement is grounds for termination. The Contract Administrator must give the Contractor 10 work days written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.
 - b. Alternatively, the City Manager may terminate this Agreement without cause upon 30 days' written notice to the Contractor. However, the City may terminate this Agreement upon 24 hours written notice to the Contractor for Contractor's failure to pay or provide proof of payment of taxes, as set out in this Agreement.
15. **Taxes.** The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other related taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request. Failure to pay or provide proof of payment is grounds for the City Manager to immediately terminate this Agreement.
16. **Certificate of Interested Parties.** Contractor agrees to comply with Texas Government Code Section 2252.908 and complete Form 1295 "Certificate of Interested Parties" as part of this Agreement.
17. **Verification Regarding Israel.** In accordance with Chapter 2271, Texas Government Code, the City may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this Agreement on behalf of the Contractor verifies that the company does not boycott Israel and will not boycott Israel during the term of this Agreement.
18. **Notice.** Notice may be given by fax, email, hand delivery or certified mail, postage prepaid, and is received on the day faxed, emailed or hand-delivered and on the third day after deposit in the U.S. mail if sent certified mail. Notice must be sent as follows:

IF TO CITY:

City of Portland, Texas

Attention: Name:
Address:
Fax:
Email:

IF TO CONTRACTOR:

Contractor Company:

Attention: Name
Address:
Fax:
Email:

19. **Severability.** Each provision of this Agreement is considered to be severable and if, for any reason, any such provision or any part thereof, is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or affect those portions of this Agreement that are valid, and this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part thereof had been omitted.
20. **INDEMNIFICATION. CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF PORTLAND, TX AND ITS OFFICERS, EMPLOYEES AND AGENTS (“INDEMNITEES”) FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS AND CAUSES OF ACTION OF ANY NATURE ON ACCOUNT OF PERSONAL INJURIES, INCLUDING THOSE RESULTING IN WORKERS’ COMPENSATION CLAIMS OR DEATH, PROPERTY LOSS OR DAMAGE, OR ANY OTHER KIND OF LOSS OR DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS’ FEES AND EXPERT WITNESS FEES WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT AND REGARDLESS OF WHETHER THE INJURIES, DEATH, LOSS, OR DAMAGES ARE CAUSED OR ARE CLAIMED TO BE CAUSED BY THE CONCURRENT OR CONTRIBUTORY NEGLIGENCE OF INDEMNITEES BUT NOT IF BY THE SOLE NEGLIGENCE OF INDEMNITEES UNMIXED WITH THE FAULT OF ANY OTHER PERSON. CONTRACTOR MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL NOTICES, CLAIMS, AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL REASONABLY SATISFACTORY TO THE CITY ATTORNEY, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING FROM ANY OF SAID LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS, OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.**
21. **Order of Precedence.** In the event of conflicts or inconsistencies between this Agreement and its exhibits or attachments, such conflicts or inconsistencies will be resolved by reference

to the documents in the following order of priority: this Agreement and its Attachments, the RFB documents including Addenda, the bid response.

22. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.

(SIGNATURE PAGE FOLLOWS)

WHEREFORE, witness our signatures binding the respective parties effective the _____ day of _____, 2020.

AGREED: THE CITY OF PORTLAND

By: _____
Randy Wright, City Manager

Date: _____

ATTEST:

Annette Hall, City Secretary

AGREED:

By: _____

Date: _____

ATTEST:

Attached and Incorporated by Reference:

Attachment A: Scope of Work

Attachment B: Bid Pricing Form

Attachment C: Insurance Requirements

Incorporated by Reference Only:

Exhibit 1: RFB Name

Exhibit 2: Contractor's Bid Response

Attachment A – Scope of Work

Attachment B – Bid Pricing Form

Attachment C – Insurance Requirements