



Request for Bid: 23MCO607 Courthouse 11th Floor Buildout

Due Date: Wednesday May 31, 2023 at 10:00 A.M.

INSTRUCTION TO BIDDERS BUILDING CONSTRUCTION PROJECT

Midland County (hereinafter called "County") invites sealed bids from interested qualified vendors (hereinafter called "Vendors") for the contract # identified above. The following pages provide general information regarding bid requirements and specifications for the project. If further information is required, please contact the Midland County Purchasing Department by email at pur103@co.midland.tx.us. **A mandatory pre-bid site survey meeting will be held at 10:00am on Wednesday May 3, 2023; meet at the elevator bank of the 11th floor of the Midland County Courthouse 500 N. Loraine, Midland, TX 79701.** All requests for information must be submitted in writing. Responses to all questions received will be sent to each Vendor known to have copies of the Request for Bid. All questions should be submitted on or before **5:00pm Wednesday May 10, 2023**. Questions received after said date and time will not receive a response. Answers and clarifications which are considered to materially change the solicitation will be issued as written addenda to the original RFP and will be posted to the Midland County website at www.co.midland.tx.us. Vendors are responsible for ensuring all answers to questions are reviewed prior to bid submittal and that all answers are properly acknowledged with their submitted bid. Verbal representations made or assumed to be made during any discussions held between representatives of a Vendor and any Midland County personnel or official are not binding on Midland County.

Vendors should submit one (1) original, three (2) copies, and an electronic copy on USB drive of the bid. Midland County is exempt from all state and federal taxes. Tax exempt certificates are available upon request. All responses should be submitted by hand delivery or mail carrier in a sealed envelope, marked on the outside with the contract number and name of vendor. Responses must be received by the Due Date listed above and all late bids will be rejected and returned without being opened. Bids should be addressed as follows:

Midland County Purchasing Department
Midland County Courthouse
Attention: Kristy Engeldahl, Purchasing Agent
500 N. Loraine Street, Suite 1101
Midland, Texas 79701

A bid may be altered, modified or amended by a Vendor at any time, prior to Due Date. Alterations, modifications or amendments to a bid must be made in the offices of the Purchasing Department. All changes made on a bid before the submission deadline must be initialed by the signer of the bid, guaranteeing authenticity. A bid may not be altered, modified or amended after the submission Due Date. A bid may not be withdrawn or canceled by the Vendor for a period of sixty (60) days following the Due Date.

Prior to award, selected Vendors may be asked to provide further information concerning their bid, up to and including presentations/demonstrations. The County reserves the right to reject any and all bids or waive formalities as deemed in the best interests of Midland County. Midland County also reserves the right to withdraw the bid request at any time and for any reason. Midland County also has the right to terminate its selection process at any time and to reject all responses, or all bids. Receipt of the bid materials by Midland County or submission of a bid to Midland County confers no rights upon any Vendor nor obligates Midland County in any manner. All costs associated with the preparation or submittal of bids shall be borne by the Vendor, and no cost shall be sustained by Midland County.

Vendors must submit all required documentation and failure to provide requested information may result in rejection of the bid.

SUBMISSION OF A BID MUST INCLUDE	
1. At least two references for commercial projects, preferably any local/state government clients that the Vendor has provided a similar type of work as being bid	7. Proof of insurance with minimum coverage values described herein
2. State contractor license number	8. Company Affidavit
3. List of current projects similar in scale and scope	9. Statement from Vendor that Performance and Payment Bonding capacity to the full value of the contract is attainable
4. List of past projects (5-year history) similar in scale and scope	10. Completed bid with total contract costs summation and itemized as directed in the bid documents.
5. OSHA 30 Log (5-year history)	11. Total quantity of continuous calendar days necessary to complete the Work from NTP.
6. EMR (5-year history)	12. List of subcontractors and suppliers for use in performance of the work, specifying the work to be performed by each

Submission of a bid indicates Vendor's acceptance of the evaluation technique and Vendor's recognition that subjective judgments may be made by the County during the determination of qualification. The County may conduct such investigations as the County deems necessary to establish the responsibility, qualifications and financial ability of Vendors and any proposed subcontractors or suppliers.

Evaluation of the bids shall be based on either:

- _____ A. Lowest Responsible Bidder, or
 X B. Best Value

If neither option A nor option B is chosen above then the County may award the bid to a Vendor upon any evaluation process of its choosing. Lowest Responsible Bidder evaluations are awarded to the bidder who meets the County's criteria and submits the lowest total bid consistent with the requirements herein. Best Value evaluations are awarded to the bidder who the County, in its sole judgment, determines is best suited for the specific work and could include factors such

as whether the bid complies with the prescribed requirements, alternates, unit prices, total contract duration in calendar days, qualifications and experience.

The Vendor agrees, during the performance of the work, to comply with all applicable federal, state, or local code and ordinances. The apparent silence of any specification as to any detail or omission from a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

Contents of the bids will remain confidential until the contract is awarded. At that time the contents will be made public under the Texas Public Information Act; except for any portion of a bid which has been clearly marked as a trade secret or proprietary data (the entire bid may not be so marked). Bids will be opened, and the name of the firm submitting the bid read aloud and acknowledged on the Due Date in the Purchasing Department Conference Room located in the Midland County Courthouse, Suite 1101. All interested parties are invited to attend the opening. Vendors are hereby notified that the Owner strictly adheres to all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of public information.

The attached Contract with insurance and bonding requirements are non-negotiable. Modification by Vendor of any terms of the Contract will be deemed a non-responsive bid. Non-responsive bids will be rejected. Vendor must be willing to sign the Contract 'as is' and without modifications, provide properly executed bonds and provide insurance as required therein. If the selected Vendor cannot meet the requirements, then the County reserves the right to award the purchase to another bidder. Any Vendor who fails to comply with the terms of the award may be declared an unqualified vendor. Bids submitted by unqualified vendors shall not be considered again for future bids for a minimum of six (6) months as determined by Midland County officials.

After the bid is awarded and within fifteen (15) calendar days of the Notice to Proceed, Vendor must submit the following to the County for review:

SUBMISSIONS REQUIRED AFTER AWARD OF A BID	
1. Safety Plan, to include an organization chart with responsibilities and a traffic control plan	4. Construction Schedule indicating the milestones in detail and total calendar day duration provided with the bid.
2. Quality Control plan to include an organization chart with responsibilities	5. Signed Midland County Building Construction Contract, bonding and insurance certificates
3. Material submittals as described in the technical specifications, list of subcontractors and suppliers specifying the performance of each	

**BID REQUIRED FORM
COMPANY AFFIDAVIT**

The affiant, _____ states with respect to this submission to County:

I hereby certify that if the contract is awarded to our firm that no member or members of the governing body, elected official or officials, employee or employees of said County, or any person representing or purporting to represent the County, or any family member including spouse, parents, or children of said group, has received or has been promised, directly or indirectly, any financial benefit, by way of fee, commission, finder's fee or any other financial benefit on account of the act of awarding and/or executing a contract.

I hereby certify that I have full authority to bind the company and that I have personally reviewed the information contained in this submission and all attachments and appendices, and do hereby attest to the accuracy of all information contained in this submission, including all attachments and exhibits.

I acknowledge that any misrepresentation will result in immediate disqualification from any consideration in the submission process.

I further recognize that County reserves the right to make its award for any reason considered advantageous to the County. The company selected may be without respect to price or other factors.

Signature _____ Date _____

Name _____ Phone _____

Title _____

Firm Name _____

Address _____

County, State, Zip _____

THE STATE OF _____ §
COUNTY OF _____ §

Before me, the undersigned personally appeared _____, an officer of _____, known to me to be the person and official whose name is subscribed to this instrument, and acknowledged to me that he executed the same as an act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2022.

Notary Public

**FORM OF
BUILDING CONSTRUCTION CONTRACT**

(This Building Construction Contract is for bidders' reference during the bidding process and is not for execution until after the winning bid is approved and awarded.)

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MIDLAND COUNTY BUILDING CONSTRUCTION CONTRACT

THIS CONTRACT, effective the ____ day of _____, 20____ is hereby made by and between Midland County Texas, and _____ to execute the _____ Project.

I. PARTIES

1.1 County: Shall refer to Midland County Texas. The words “County Representative” or “Representative” shall mean the County Engineer or the designee under whose supervision these contract documents, including the plans and specifications, were prepared, or who may inspect work performed under this Contract; or such other representative, supervisor, or inspector as may be authorized by the County to act in any particular county under this Contract.

1.2 Company: Shall refer to _____. It is expressly understood and agreed that Company shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of County; that Company shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder, and all persons performing the same; and shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of respondeat superior shall not apply as between County and Company, its officers, agents, employees, contractors and subcontractors; and that nothing herein shall be construed as creating a partnership or joint enterprise between County and Company. No person performing any of the work and services described hereunder by Company shall be considered an officer, agent, servant or employee of the County. Further, it is specifically understood and agreed that nothing in this Contract is intended nor shall be construed as creating a “Community of Pecuniary Interest” or “An Equal Right of Control” which would give rise to vicarious liability. Company shall be an independent contractor under this Contract and shall assume all of the rights, obligations and liabilities, applicable to it as such independent contractor hereunder. The County does not have the power to direct the order in which the work is done. The County shall not have the right to control the means, methods or details of the Company’s work. Company shall assume exclusive responsibility for the work. Company is entirely free to do the work in its own way.

1.3 Parties. County and Company may sometimes be referred to herein

collectively as “Parties.”

II. SCOPE OF WORK

The Company shall perform all work described for _____ Project of this Contract in the following documents, attached hereto and incorporated herein by reference for all legal purposes.

EXHIBIT A.....Scope of Work, Specifications, Bid or Cost Summary

EXHIBIT B..... Conflict of Interest Reporting

EXHIBIT C.....ACORD from

III. CONSTRUCTION PRICE

3.1 **Price:** Company shall perform all work described in this Contract and its Exhibits for the price submitted in the winning bid. In the event that the price for any line item changes, then the total contract sum shall be equitably adjusted.

3.2 **Periodic Payments:** The County may make periodic payments to Company; only after all work and all Change Orders are completed by Company and approved by the County. The approval shall be in the County’s sole discretion. Requests for progress payments may be made to the extent of the materials and labor completed at the end of each month, or at other stated intervals at the discretion of the County. Upon approval by the County or the County’s Representative, the request and invoice shall be forwarded for payment.

3.3 **Consideration:** The terms of this Contract are supported by good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties named herein.

3.4 **Unbudgeted Funds:** In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable in any fiscal period for contract payments due under the contract, then this contract shall terminate on the last day of the fiscal period for which full appropriations were made, without penalty or expense to County of any kind whatsoever.

IV. COMMENCEMENT OF WORK

4.1 Commencement of Work/Notice to Proceed: Once the bidder has been identified, the award of the contract will be considered and discussed in open County Commissioners Court. Upon acceptance, the bidder shall engage with the County as follows: (a) Attend a mandatory preconstruction meeting to discuss the details of the project and validate scope understanding by the bidder, (b) Submit an original executed contract, (c) Submit executed Performance and Payment bonds and (d) Submit insurance and waivers of subrogation to the County. Upon receipt of the above documentation, a formal Notice to Proceed with an executed agreement will be transmitted to the Vendor. This transmittal will start the construction timetable and work shall commence. Company shall commence work no later than thirty (30) days after receipt of the Notice to Proceed or other written release to proceed and shall continue working until the work is complete.

4.2 Materials: Unless otherwise stipulated, Company shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and all water, light, power, fuel, transportation and all other facilities necessary for the execution and completion of the work covered by the contract documents. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of a good quality. Company shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

4.3 Laws: Company shall perform all work in compliance with federal, state and local laws, regulations and orders now in effect or which may hereafter be enacted. Company's actions hereunder shall not arise out of or result from any actual or alleged discrimination, humiliation, harassment or misconduct because of age, color, race, sex, creed, national origin, marital status, sexual preference, or orientation, religion, disability or pregnancy or any other legally protected class; rather, Company shall provide equal employment opportunities.

4.4 Permitting: Company shall, at its expense, obtain all permits and licenses necessary for the performance of this contract and pay all fees and taxes required by law, and comply with all laws, ordinances, rules and regulations governing Company's performance of the contract, including all environmental laws and regulations, whether state or federal.

4.5 Minor Work Not Mentioned: All minor detail of the work not specifically mentioned in the Specifications but obviously necessary for the proper completion of the work, such as the proper connection of new work to old, shall be considered as incidental to and a part

of the work for which the prices are named in the contract. Company will not be entitled to any additional compensation therefor unless specifically stated otherwise. Otherwise the term “extra work” as used in this contract shall mean and include all work that may be required by County to be done by Company to accomplish any alteration or addition to the work as shown on the Specifications. Company shall perform all extra work under the direction of County's Representative when presented with a written work order signed by County's Representative, subject, however, to the right of the Company to require written confirmation of such extra work order by County. Payment for extra work shall be as agreed in the work order.

4.6 Safety: Company shall at all times exercise reasonable precaution for the safety of employees and others on or near the work and shall comply with all applicable provisions of federal, state and municipal laws. All machinery and equipment and other physical hazards shall be guarded in accordance with federal, state or municipal laws or regulations.

4.7 Clean Up: Company shall promptly remove from County's premises all materials condemned by County's Representative on account of failure to conform to the contract, whether actually incorporated in the work or not, and Company shall at its own expense promptly replace such condemned materials with other materials conforming to the requirements of the contract. Company shall also bear the expense of restoring all work of other contractors damaged by any such removal or replacement. If Company does not remove and replace any such condemned materials within a reasonable time after a written notice by County, County may remove and replace such at Company's expense. A clean and orderly project site will be a stipulation at each payment application presented to the County.

4.8 County Involvement: The County's Representative may make periodic visits to the site to observe the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract documents. The County's Representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, nor will such representative be responsible for the construction means, methods, techniques, sequences or procedures, or the safety precautions incident thereto. The County's Representative will not be responsible for Company's failure to perform the work in accordance with the contract.

V. DEFAULT

5.1 Events of Default: Company shall be in default if Company at any time: (1) fails to supply sufficient, properly skilled and conforming labor, materials or equipment in the proper sequence or of the proper quality or quantity; (2) fails to pay any subcontract, supplier, laborer or materialmen or otherwise discharge any obligations arising out of the work; (3) falls behind in its work or delays, hinders or interferes with the work of the County or other subcontractors; (4) offers any form of gratuity, bribe, commission, percentage, brokerage fee or the like in violation of Midland County's Purchasing Code of Ethics; (5) breaches, defaults or otherwise fails to perform any obligation under this Construction Contract, a change order, a scope of work, or similar document; or (6) files a proceeding under any bankruptcy law, makes an assignment for the benefit of creditors; files for a proceeding for dissolution or liquidation, appointments a receiver, trustee, or custodian for any material part of Company's assets; becomes insolvent (unless any of the above items in subparagraph (6) are dismissed within thirty (30) calendar days from the date of filing.

5.2 Time Is of The Essence: Time is of the essence of each and every portion of this contract and of the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract. A construction duration from NTP to Substantial Completion has been submitted with the awarded bid of _____ continuous calendar days.

5.3 Late Completion: It is hereby understood and mutually agreed, by and between Company and the County, that the date of beginning and the time for completion as specified in the contract of the work to be done hereunder are essential conditions of this contract; and it is further mutually understood and agreed that the work embraced in this contract shall be commenced on a date to be specified in the Notice to Proceed. Company agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between Company and the County, that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

5.4 LIQUIDATED DAMAGES:

5.5 SUBSTANTIAL COMPLETION: Liquidated damages based on the Substantial Completion date [_____] shall apply.

5.6 Owner will suffer damages which are difficult to determine and accurately specify if the Substantial Completion date, which may be amended by Change Order, is not attained. Construction Manager shall pay Owner ONE THOUSAND DOLLARS (\$1,000) as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Substantial Completion date. These liquidated damages are in lieu of all liability for all extra costs, losses, expenses, claims, penalties, and any other damages of any nature incurred by Owner resulting from not attaining the Substantial Completion date.

5.7 Notice: Provided, further, that Company shall, within ten (10) days from the beginning of such delay, unless the County shall, in its sole discretion grant a further period of time prior to the date of final settlement of the contract, notify the County, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify Company within a reasonable time of its decision in the matter.

5.8 NO STANDBY TIME: COMPANY SHALL RECEIVE NO FINANCIAL COMPENSATION FOR DELAY OR HINDRANCE TO THE WORK. IN NO EVENT SHALL THE COUNTY BE LIABLE TO COMPANY OR ANY SUBCONTRACTOR OR SUPPLIER, ANY OTHER PERSON OR ANY SURETY FOR OR ANY EMPLOYEE OR AGENT OF ANY OF THEM, FOR ANY DAMAGES ARISING OUT OF OR ASSOCIATED WITH ANY DELAY OR HINDRANCE TO THE WORK, REGARDLESS OF THE SOURCE OF THE DELAY OR HINDRANCE, INCLUDING EVENTS OF FORCE MAJEURE, AND EVEN IF SUCH DELAY OR HINDRANCE RESULTS FROM, ARISES OUT OF OR IS DUE, IN WHOLE OR IN PART, TO THE NEGLIGENCE OF THE COUNTY. COMPANY'S SOLE REMEDY IN ANY SUCH CASE SHALL BE AN EXTENSION OF TIME.

VI. REMEDIES

6.1 Remedies Generally: Upon an event of default by Company the County may, at its election and in addition to any other rights or remedies at law or in equity and after forty-eight (48) hours written notice to Company, proceed as follows:

- A. Withholding. County may withhold all or any part of any payment otherwise due Company until the default is remedied by Company. No withholding by County shall

relieve Company of its obligation to cure the default or perform the work or other obligations under this Construction Contract, a change order, a scope of work, or similar document. County may, on account of subsequently discovered evidence, withhold whole or part of any payment to such extent as may be necessary to protect itself from loss on account of defective work not remedied; or claims filed or reasonable evidence indicating possible filing of claims; or failure of Company to make payments promptly to subcontractors or for material or labor which County may pay as an agent for the Company; or damages to another contractor or subcontractor. When the above grounds to withhold payment are removed, or Company provides a surety bond satisfactory to County, which will protect County in the amount withheld, payment may be released.

- B. Cure. County may provide itself or through others such labor, materials, equipment or other items or services as may be necessary in the County's sole discretion to cure the default of Company or pay its obligations arising out of the work and perform the work or any part or other obligations of Company. No curative efforts or supplementation by County shall relieve Company of its obligation to cure its default and continue performance of the work and other obligations under this Construction Contract, a change order, a scope of work, or similar document.
- C. Termination. County may terminate Company's right to proceed with performance of the work, in whole or in part, and correct or complete the work or any portion covered by such termination. In the event of termination, Company shall deliver to County all materials and equipment and other work in preparation or progress, and County may, at its option, take possession of and use in completing the work any or all subcontracts and purchase orders or any materials, equipment or other items of Company on the project site at the time of termination.
- D. Withholding At Termination. In the event of termination, County may withhold all payments otherwise due Company as security for the completion of the Work and other obligations of Company, and Company shall not be entitled to any further payment until the Work is completed by County or others at County's direction. If the costs and damages incurred by County on Company's behalf exceed the unpaid balance otherwise due Company, then Company shall not be entitled to any further payment

and shall reimburse any shortfall to County upon demand. If such costs and damages do not exceed the unpaid balance otherwise due Company, then County shall pay the balance to Company, but only to the extent of work performed by Company and unpaid by County through the date of termination, and subject to the terms and conditions of this Construction Contract, a change order, a scope of work, or similar document and any other rights of withholding by County. Company agrees that the payments required by this paragraph are its sole and exclusive remedy for a termination for default, and Company hereby waives any claims or rights of recovery for loss of or anticipated profits on unperformed Work or any other loss or damage.

- E. Bond. County may file a notice, claim, or demand against Company's bond requiring the surety to take over and complete the project, tender a new contractor at surety's cost, finance the bond principal's completion of the work, indemnify the parties, or buy out the bond obligation as the situation requires. The bonding obligations herein will require that the surety perform or pay for items including, but not limited to labor, materials, and equipment until the work contracted for herein is completed and all records retention, insurance, indemnity and warranty periods have terminated.

VII. INSURANCE

7.1 Insurance Requirements: Company shall at all times during the term of this Contract maintain and keep in full force and effect insurance in the following types and minimum amounts with companies authorized to do business in the State of Texas:

<u>Commercial General Liability</u> (including contractual liability):	Personal Injury: \$1,000,000.00 per person and \$1,000,000.00 per occurrence Property Damage: \$500,000.00 per occurrence
<u>Commercial Automobile Liability</u> :	\$1,000,000.00 combined single limit
<u>Workers' Compensation</u> :	Statutory limits
<u>Employers' Liability</u> :	\$500,000.00 per accident or occurrence
<u>Pollution Liability</u> :	\$1,000,000.00 per occurrence

7.2 General Liability: The Commercial General Liability shall be on a per project aggregate, including completed operations, and shall be on a claims-occurred basis. This insurance

shall name the County as an additional insured and waive subrogation in favor of the County.

7.3 Auto Policy: The Commercial Automobile Liability insurance provided by Company shall cover any auto for bodily injury and property damage, including owned vehicles, hired and non-county vehicles, and employee non-ownership, and the amount of such policy shall be a minimum of \$1,000,000.00 covering any vehicle used for the execution of the work that is the subject of this Contract. This insurance shall name County as an additional insured and waive subrogation in favor of County.

7.4 Workers' Compensation: The Workers' Compensation coverage provided by Company shall inure to the benefit of employees injured during the course and scope of their employment by Company pursuant to this Contract. The Workers' Compensation shall waive all rights of subrogation in favor of County.

7.5 Subrogation / Additional Insured: All insurance required pursuant to this Contract shall provide for a waiver of subrogation in favor of County. All insurance required pursuant to this Contract, except for Workers' Compensation Insurance, shall name the County as an additional insured on a claims occurred basis. The County shall be provided the notice by Company's insurance provider not later than thirty (30) days prior to any reduction or termination of such coverage.

7.6 Subcontractor Insurance: Company shall contractually require all contractors, subcontractors, and sub-subcontractors of any tier that work on any portion of the work that is the subject of this Contract to obtain insurance coverage that meets or exceeds the policy requirements and minimum amounts specified herein. All contractors, subcontractors, and sub-subcontractors shall obtain insurance policies that provide blanket waivers of subrogation in favor of Midland County and policies that name Midland County as an additional insured on a claims occurred basis (except workers' compensation).

7.7 Certificates: The Parties agree that, prior to the execution of the Contract, Company shall provide one or more certificates of insurance specifically stating that these requirements have been met and subject to the approval of the County, an example of which is attached hereto as Exhibit C – Acord Form. The County shall not be required to provide any insurance whatsoever pursuant to this Contract. Company certifies that the certificate of insurance provided as required herein complies with the requirements of Chapter 1811 of the Texas Insurance Code. Company shall not use an unapproved certificate of insurance or insert inappropriate language on a

certificate. All insurance must be placed through an insurance carrier licensed to operate in Texas and have an AM Best Rating greater than A-VI.

VIII. BONDING

Company shall furnish a Payment and Performance Bond for bids in excess of \$50,000, in an amount equal to one hundred percent (100%) of the total contract price, such bond to be executed in five (5) original counterparts by a corporate surety authorized to do business in the State of Texas and acceptable to the County. A cash security such as a cashier's check or irrevocable letter of credit issued by a bank satisfactory to the City for 100% of the contract amount may be supplied in lieu of the Payment and Performance Bonds. The check will be returned un-cashed upon satisfactory completion of the work and evidence of payment of all obligations due under the Contract. A line item for premium costs shall be included in the bid tab provided to the County to be included as a part of the total base bid.

IX. WARRANTY

Neither the final payment nor any provision in this contract shall relieve Company of responsibility for faulty materials or workmanship, and Company shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of substantial completion. County shall give notice of observed defects with reasonable promptness.

X. INDEMNITY

COMPANY SHALL INDEMNIFY AND HOLD HARMLESS AND DEFEND COUNTY AND ALL OF COUNTY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, LOSSES, PROPERTY DAMAGE AND EXPENSES OF ANY CHARACTER WHATSOEVER, INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COMPANY, THEIR AGENTS OR EMPLOYEES, OR ANY SUBCONTRACTOR, IN THE EXECUTION,

SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST COUNTY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

COMPANY SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND COUNTY AND ALL OF COUNTY'S OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, CLAIMS, DAMAGES, PERSONAL INJURIES, ACCIDENTAL DEATH, PROPERTY DAMAGE, LOSSES, AND EXPENSES OF ANY CHARACTER WHATSOEVER INCLUDING ATTORNEY'S FEES, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ON ACCOUNT OF ANY NEGLIGENT ACT OF COUNTY, COUNTY'S OFFICERS, AGENTS AND EMPLOYEES, WHETHER SUCH NEGLIGENT ACT WAS THE SOLE PROXIMATE CAUSE OF THE INJURY OR DAMAGE OR A PROXIMATE CAUSE JOINTLY AND CONCURRENTLY WITH COMPANY OR COMPANY'S EMPLOYEES, AGENTS OR SUBCONTRACTORS NEGLIGENCE IN THE EXECUTION, SUPERVISION AND OPERATIONS GROWING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THIS CONTRACT, AND COMPANY WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST COUNTY OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES, INCLUDING ATTORNEY'S FEES.

COMPANY AGREES THAT IT WILL INDEMNIFY AND SAVE COUNTY HARMLESS FROM ALL CLAIMS GROWING OUT OF ANY DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN, AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. WHEN COUNTY SO DESIRES, COMPANY SHALL FURNISH SATISFACTORY EVIDENCE THAT ALL OBLIGATIONS OF THE NATURE HEREINABOVE DESIGNATED HAVE BEEN PAID, DISCHARGED OR WAIVED. COMPANY, ITS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND SAVE HARMLESS COUNTY AND ALL OF ITS OFFICERS, AGENTS AND EMPLOYEES FROM ALL SUITS, ACTIONS, OR CLAIMS OF ANY CHARACTER

WHATSOEVER, BROUGHT FOR OR ON ACCOUNT OF ANY INJURIES OR DAMAGES RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY, ARISING FROM ANY ACT OF COMPANY OR ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES, IN THE EXECUTION AND SUPERVISION OF THIS CONTRACT, AND WILL BE REQUIRED TO PAY ANY JUDGMENT WITH COSTS WHICH MAY BE OBTAINED AGAINST COUNTY OR ANY OF ITS OFFICERS, AGENTS, OR EMPLOYEES INCLUDING ATTORNEY'S FEES.

XI. ADDITIONAL REQUIREMENTS

11.1 **Wage Scale:** Company agrees to pay all workers in Company's employ no less than the generally prevailing wage rate for employees of similar category in the Permian Basin Area. If Company's work is in the furtherance of a federal-funded project, then the Davis-Bacon Act, 29 CFR 5.5, and any related acts or regulations are hereby incorporated by reference and made a part of this Contract, and all terms and requirements under said laws, by such incorporation, are made terms and requirements of this Contract, to which the Parties to this Contract have agreed to be bound.

11.2 **Compliance:** Company agrees that it shall comply with Texas Government Code Section 2252.908, *et seq.*, as amended (disclosure of interested parties). Company agrees that it shall comply with Texas Local Government Code Section 176.006, *et seq.*, as amended (conflict of interest questionnaire). To the extent that Tex. Gov't Code section 2270.002 applies to this Contract, Company hereby verifies that Company does not boycott Israel and will not boycott Israel during the term of this Contract. If Tex. Gov't Code section 2270.002 does not apply to this Contract, such verification is not required, and Company shall be deemed to have not made such verification.

11.3 **Records Retention and Production of Information:** To the extent that the work contemplated hereunder is funded by a federal or state grant program, Company shall preserve all records related to the work as prescribed by the funding grant and promptly provide them upon request. To the extent that this Contract is a contract described by Section 552.371 of the Texas Government Code, Company shall (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to the County for the duration of the contract, (2) promptly provide to the County any contracting information related to the Contract

that is in the custody or possession of Company on request of the County, and (3) on completion of the Contract, either (i) provide at no cost to the County all contracting information related to the Contract that is in the custody or possession of Company, or (ii) preserve the contracting information related to the Contract as provided by the records retention requirements applicable to County.

11.4 Public Information: To the extent that this Contract is a contract described by Section 552.371 of the Texas Government Code, Company agrees as follows in accordance with Section 552.372(b) of the Texas Government Code: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this contract, and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

11.5 Prompt Pay Act: - County and Company agree that Texas Government Code, Chapter 2251, Payment for Goods and Services (the "Prompt Pay Act") does not waive governmental immunity.

11.6 No Third Party Beneficiary: The County's approval of this Contract does not create a third party beneficiary. There is no third party beneficiary to this contract. No person or entity who is not a party to this contract shall have any third party beneficiary or other rights hereunder.

11.7 Assignment: Company shall not, either directly or indirectly, assign all or any part of this Contract or any interest, right or privilege herein (including to subcontractors and suppliers), without the prior written consent of the County. The issue on whether or not to grant consent to an assignment is in the sole discretion of the County.

11.8 Governmental Immunity: By executing this contract the County is not waiving its right of governmental immunity. The County is retaining its immunity from suit. NO WAIVER OF GOVERNMENTAL IMMUNITY.

11.9 RELEASE: NOTWITHSTANDING ANY OTHER PROVISIONS, COMPANY HEREBY RELEASES, ACQUITS, RELINQUISHES AND FOREVER DISCHARGES COUNTY, COUNTY'S EMPLOYEES AND OFFICERS, FROM ANY AND ALL DEMANDS, CLAIMS, DAMAGES, OR CAUSES OF ACTION OF ANY KIND WHATSOEVER WHICH COMPANY HAS OR MIGHT HAVE IN THE FUTURE, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, QUANTUM MERUIT,

CLAIMS UNDER THE DUE PROCESS AND TAKINGS CLAUSES OF THE TEXAS AND UNITED STATES CONSTITUTIONS, TORT CLAIMS, OR COUNTY'S NEGLIGENCE.

11.10 Notice of Alleged Breach; Statutory Prerequisites: As a condition precedent to filing suit for alleged damages incurred by an alleged breach of an express or implied provision of this Contract, Company or its legal representative, shall give the County Engineer, or any other reasonable official of the County, notice in writing (consisting of one original and seven copies of notice attached to a copy of this Contract) of such damages, duly verified, within one-hundred fifty (150) days after the same has been sustained. The discovery rule does not apply to the giving of this notice. The notice shall include when, where and how the damages occurred, the apparent extent thereof, the amount of damages sustained, the amount for which Company will settle, the physical and mailing addresses of Company at the time and date the claim was presented and the physical and mailing addresses of Company for the six months immediately preceding the occurrence of such damages, and the names and addresses of the witnesses upon whom Company relies to establish its claim; and a failure to so notify the County Engineer within the time and manner provided herein shall exonerate, excuse and except County from any liability whatsoever. The County is under no obligation to provide notice to Company that Company's notice is insufficient. The County reserves the right to request reasonable additional information regarding the claim. Said additional information shall be supplied within thirty (30) days after receipt of notice. The statutory prerequisites outlined herein constitute jurisdictional requirements pursuant to Section 271.154 of the Texas Local Government Code and Section 311.034 of the Texas Government Code. Notwithstanding any other provision, Company's failure to comply with the requirements herein shall perpetually bar Company's claim for damages under Chapter 271 of the Texas Local Government Code, and Section 311.034 of the Texas Government Code, regardless if County has actual or constructive notice or knowledge of said claim or alleged damages. Company agrees that the requirements of this entire Contract are reasonable.

11.11 Termination at Will: The County may terminate this Contract at will for no or any reason upon giving at least thirty (30) days written notice to Company. The Parties to this Contract understand and agree that it is in County's sole discretion to cancel the Contract during the term of the Contract without penalty to County. Company has no expectation and has received no guarantees that this Contract will not be terminated before the end of the Contract term. The Parties have bargained for the flexibility of terminating this Contract upon tender of the requisite

notice at any time during the term of the Contract. All work and services under the Contract shall be suspended upon termination of the Contract becoming effective.

11.12 Governing Law and Venue: This Contract shall be governed by the laws of the State of Texas. All performance and payment made pursuant to this Contract shall be deemed to have occurred in Midland County, Texas. Exclusive venue for any claims, suits or any other action arising from or connected in any way to this Contract or the performance of this Contract shall be in Midland County, Texas. The obligations and undertakings of each of the parties to this Contract shall be deemed to have occurred in Midland County, Texas. This Contract shall be governed by, interpreted, enforced and construed under the law of the State of Texas. The laws of the State of Texas shall govern, construe and enforce all the rights and duties of the parties, including but not limited to tort claims and any and all contractual claims or disputes, arising from or relating in any way to the subject matter of this Contract, without regard to conflict on laws and rules that would direct application of the laws of another jurisdiction.

11.13 Survival: Notwithstanding termination or cancellation of this Agreement, all express representations, indemnifications or limitations of liability, warranty, insurance, records retentions policies and other provisions, which by their nature would reasonably survive the terms herein, shall survive completion or termination of this Agreement.

XII. ATTORNEY FEES

BY EXECUTING THIS CONTRACT, COMPANY AGREES TO WAIVE AND DOES HEREBY KNOWINGLY, CONCLUSIVELY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY CLAIM IT HAS OR MAY HAVE IN THE FUTURE AGAINST COUNTY, REGARDING THE AWARD OF ATTORNEY'S FEES, WHICH ARE IN ANY WAY RELATED TO THE CONTRACT, OR THE CONSTRUCTION, INTERPRETATION OR BREACH OF THE CONTRACT. COMPANY SPECIFICALLY AGREES THAT IF COMPANY BRINGS OR COMMENCES ANY LEGAL ACTION OR PROCEEDING RELATED TO THIS CONTRACT, THE CONSTRUCTION, INTERPRETATION, VALIDITY OR BREACH OF THIS CONTRACT, INCLUDING BUT NOT LIMITED TO ANY ACTION PURSUANT TO THE PROVISIONS OF THE TEXAS UNIFORM DECLARATORY JUDGMENTS ACT (TEXAS CIVIL PRACTICE AND REMEDIES CODE SECTION 37.001, ET SEQ., AS AMENDED), OR CHAPTER 271

OF THE TEXAS LOCAL GOVERNMENT CODE, COMPANY AGREES TO ABANDON, WAIVE AND RELINQUISH ANY AND ALL RIGHTS TO THE RECOVERY OF ATTORNEY'S FEES TO WHICH COMPANY MIGHT OTHERWISE BE ENTITLED.

COMPANY AGREES THAT THIS IS THE VOLUNTARY AND INTENTIONAL RELINQUISHMENT AND ABANDONMENT OF A PRESENTLY EXISTING KNOWN RIGHT. COMPANY ACKNOWLEDGES THAT IT UNDERSTANDS ALL TERMS AND CONDITIONS OF THE CONTRACT. COMPANY FURTHER ACKNOWLEDGES AND AGREES THAT THERE WAS AND IS NO DISPARITY OF BARGAINING POWER BETWEEN COUNTY AND COMPANY. THIS SECTION SHALL NOT BE CONSTRUED OR INTERPRETED AS A WAIVER OF GOVERNMENTAL IMMUNITY.

COMPANY AND COUNTY ARE RELYING ON THEIR OWN JUDGMENT. EACH PARTY HAD THE OPPORTUNITY TO DISCUSS THIS CONTRACT WITH COMPETENT LEGAL COUNSEL PRIOR TO ITS EXECUTION.

EXECUTED IN DUPLICATE the day and year first above mentioned.

COMPANY:

By: _____

Name: _____

Title: _____

THE STATE OF TEXAS §
 §
COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2022, personally appeared, _____, an officer of _____, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated. GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2022.

Notary Public, State of Texas

THE COUNTY OF MIDLAND, TEXAS

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
 §

COUNTY OF MIDLAND §

BEFORE ME, the undersigned authority, on this ____ day of _____, 2022, personally appeared, _____, an officer of _____, known to me to be the person and official whose name is subscribed to the forgoing instrument, and acknowledged to me that he executed the same as the act and deed of said corporation, for the purposes and consideration therein expressed, and in the capacity therein stated. GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ____ day of _____, 2022.

Notary Public, State of Texas

Exhibit A

Scope of Work, Specifications, Bid or Cost Summary

DRAFT

Exhibit B

Conflict of Interest Reporting Requirements and Conflict of Interest Questionnaire

Compliance with LOCAL GOVERNMENT CODE TITLE 5. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES SUBTITLE C. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES OF MORE THAN ONE TYPE OF LOCAL GOVERNMENT CHAPTER 176. DISCLOSURE OF CERTAIN RELATIONSHIPS WITH LOCAL GOVERNMENT OFFICERS; PROVIDING PUBLIC ACCESS TO CERTAIN INFORMATION.

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire shall be filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits a misdemeanor if the vendor knowingly violates Section 176.006, Local Government Code.

Contracts or Purchase Orders awarded to a vendor that has violated this law is subject to termination at such time that the violation is discovered with no recourse to the County of Midland. The bidder will be subsequently removed from the bidders list for a minimum of one year.

When there is no known conflict of interest as defined by the statute, it is not necessary to file/submit the Form CIQ. The form must be submitted if a conflict is subsequently discovered. By submitting a response to this request, vendor represents that it complies with the requirements of Chapter 176 of the Texas Local Government Code.

For a current list of the local government officers go to:

CONFLICT OF INTEREST QUESTIONNAIRE
For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

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

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Date

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed;
- or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

