

**CITY OF ROCKWALL, TEXAS
GENERAL CONDITIONS OF THE BID
AND
INSTRUCTIONS TO BIDDERS**

1. **CONDITIONS/INSTRUCTIONS:** These Conditions and Instructions apply to all bids and become a part of the terms and conditions of any bid submitted unless bidder takes exception in writing when submitting bid.
2. **FORM:** Bids must be submitted on the forms provided and the forms must be completed in ink. The Bid price of each item on the form must be stated in numerals. Bids by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature. Bids by partnerships must be executed in the partnership name and signed by a partner, his title must appear under his signature and the official address of the partnership must be shown below the signature. All names must be printed below the signature. The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which shall be filled in on the Bid Form).
3. **BID RETURN:** The original bid form must be sealed in an envelope clearly marked on the (outside) front with "_____ " and addressed to Purchasing Agent, City of Rockwall, 385 South Goliad, Rockwall, Texas 75087 and include bid opening time and date.
4. **BID DUE DATE AND TIME:** Bids must be in the Purchasing Office prior to the closing time and date:

5. **PRE BID MEETING:** A pre bid meeting will be held on _____ at _____ in the City Hall Council Chambers, 385 South Goliad, Rockwall, TX 75087. Interested vendors are encouraged to attend as City staff and the project architect will be available to answer questions concerning this project, clarify any specification discrepancies and provide a site visit.
6. **BID/CONTRACT DOCUMENTS:** The following bid documents become a part of any contract awarded as a result of the bid:
 - General Conditions of the Bid
 - Instructions to Bidders
 - Notice to Bidders
 - Specifications
 - Any Attachments and Exhibits
 - Surety Bonds and Insurance
 - Plans, Drawings, Maps, Blueprints, and Plats
 - Contract
7. **ACCEPTANCE:** The City reserves the right to accept or reject part or the entire bid, and to accept the offer considered most advantageous to the City.
8. **ERROR-QUANTITY:** Bids must be submitted on units of quantity specified - extend and show total. In the event of discrepancies in extension, the unit prices shall govern.
9. **F.O.B. - DAMAGE:** Items shall be bid F.O.B. Delivered, City of Rockwall designated facility, Rockwall, Texas 75087 and shall include all delivery and packaging costs. The City of Rockwall assumes no liability for goods delivered in damaged or unacceptable condition. The successful bidder shall handle all claims with carriers, and in case of damaged goods, shall ship replacement goods immediately upon notification by the City of damage.
10. **FIRM PRICES:** Bid prices must be firm for 60 calendar days from the date of the bid opening.

11. **AUTHORIZED SIGNATURE:** Bids MUST show full firm name and address of bidder, and be manually signed. Failure to do so will disqualify bid. Person signing bid must show title or AUTHORITY TO BIND HIS FIRM IN A CONTRACT.
12. **WITHDRAWAL - ALTERATION OF BIDS:** Bids CANNOT be altered or amended after bid closing. Alterations made before bid closing must be initialed by bidder guaranteeing authenticity. No bid may be withdrawn after bid closing without acceptable reason in writing and with the approval of the Director of Finance.
13. **INVOICES:** Invoices bill to shall be Accounts Payable, City of Rockwall, 385 South Goliad, Rockwall, Texas 75087.
14. **PAYMENT TERMS:** Normal payment terms are Net 30 provided the goods and/or services received are in satisfactory condition. Any discounts available to the City for early payment should be noted. Discounts may be considered in determining low bid. Contractor shall invoice on a monthly basis for work completed. The invoice should include a copy of the weekly Maintenance Reports applicable to the invoice amount. The City will review each weekly maintenance report as they are turned in to confirm that the work has been completed in accordance with the Maintenance Schedule. Once the work has been approved by the City, payment will be made to the Contractor within fourteen (14) calendar days. The City may refuse to approve the whole or any part of any payment if, subsequently discovered evidence or the results of subsequent inspections of the work nullify any such payment to such extent as may be necessary in his opinion to protect City from loss because:
- the goods have not been received by the City,
 - the goods received by the City were not in satisfactory condition,
 - the Contractor's work is defective, or completed Work has been damaged requiring correction or replacement,
 - claims or Liens have been filed or there is reasonable cause to believe such may be filed,
 - the Contract Price has been reduced because of Modifications,
 - City has been required to correct defective Work or complete the work or,
 - unsatisfactory prosecution of the Work (deviation from Maintenance Schedule),
15. **TAXES:** The City of Rockwall is exempt from Federal Manufacturer's Excise, and State Sales taxes. TAX MUST NOT BE INCLUDED IN BID. Tax exemption certificates will be executed by the City and furnished upon request. The City qualifies as an exempt agency pursuant to the provisions of Article 20.04 (F) of the Texas Limited Sales, Excise and Use Tax Act, and is not subject to any State or City sales taxes. The Contractor's attention is directed to Rule 3.291, paragraphs (a.) (1.), defining separated contracts, subsection (b.) (3.) discusses separated contracts, and subsection (c.) discussing exempt contracts. Reference: Texas Tax Code, Chapter 151.
16. **INSURANCE:** Liability insurance (General and Auto) and workers' compensation are required by the City for said bid item(s), **proof of insurance and workers' compensation should be submitted with the bid proposal.** The City reserves the right to review all insurance policies pertaining to bid item(s) to guarantee that the proper coverage is obtained by the bidder. CONTRACTOR shall purchase, at his own expense, and maintain such insurance as will protect him from claims under worker's compensation laws, disability benefit laws or other similar employee benefit laws; from claims for damages because of bodily injury, occupational sickness or disease, or death of his employees, and claims insured by usual personal injury liability

coverage; from claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees including claims insured by usual personal injury liability coverage; and from claims for injury to or destruction of tangible property, including loss or use resulting there from - any or all of which may arise out of or result of Contractor's operations under the Contract Documents, whether such operations be by himself or by any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be legally liable. This insurance shall include the specific coverage and be written for not less than any limits of liability and maximum deductibles specified in the Supplemental Conditions or required by law, whichever is greater, shall include contractual liability insurance and **shall include the City as an additional insured.** The CONTRACTOR shall maintain such additional insurance as he may deem appropriate. With the exception of the Agreement, CONTRACTOR shall file with the City his Acord certificates of such insurance, acceptable to City; these certificates shall contain a provision that the coverage afforded under the policies will not be canceled or materially changed until at least thirty (30) days prior written notice has been given to City.

- **Limits:**
Such insurance as will protect the Contractor for damages because of bodily injury, sickness, disease or death of his employees apart from that imposed by Statutory Worker's Compensation laws with such insurance having a minimum limit of liability of not less than \$500,000.
- Such insurance as will protect the Contractor from claims from damages because of bodily injury, personal injury, sickness, disease or death with minimum limits of liability of not less than \$500,000 each occurrence and \$500,000 aggregate.
- Such insurance as will protect the Contractor from claims for damages for injury to or destruction of tangible property of others, including loss of use thereof. Such coverage shall include Broad Form Property Damage and removal of XCU exclusions where applicable. The minimum limits of liability shall be \$1,000,000 per occurrence and \$1,000,000 aggregate.
- Such insurance as will protect the Contractor from claims for damages arising out of the maintenance, operation, or use of any owned, non-owned or hired vehicles. Minimum limits of liability for bodily injury and property damage shall be not less than \$1,000,000 for each occurrence.
- Property insurance including materials not in place at the site to the full insurable value thereof.

All insurance coverages required are **MINIMUM** coverages and limit amounts, and it shall be the Contractor's responsibility to determine which limits are adequate for the scope and size of this work. These minimum limits may be basic policy limits or any combination of basic limits and umbrella limits. In any event, the Contractor is fully responsible for all losses arising out of, resulting from or connected with operations under this contract whether or not said losses are covered by insurance. The City's acceptance of Certificates of Insurance that in any respect do not comply with the Contract requirements does not release the Contractor from compliance herewith.

The City and Contractor waive all rights against each other for damages caused by fire or other perils to the extent their interests are covered by insurance under this Section, except such rights as they may have to the proceeds of such insurance when held by the City as trustee. The Contractor shall require similar waivers by Subcontractors and Sub-subcontractors.

17. WARRANTY - MAINTENANCE AGREEMENT: All documentation regarding warranties and/or maintenance agreements pertaining to said bid item(s) are to be included in the bid.

18. DELIVERY PROMISE - PENALTIES: Bids **MUST** show the number of calendar days required to place the materials in the possession of the City. **DO NOT** quote shipping dates. Failure to specify the delivery date will obligate bidder to complete delivery in two (2) weeks from the date the bid is awarded. Unrealistically short or undue long delivery promises may cause the bid to be disregarded. Consistent failure of a bidder to meet his delivery promises without a valid reason may cause removal from the bid list.

When delivery delay can be foreseen, the bidder shall give prior notice to the Purchasing Agent, who shall have the right to extend the delivery date if reasons for delay appear acceptable. The bidder must keep the Purchasing Agent informed at all times of the status of the order. Default in promised delivery, without acceptable reasons, or failure to meet specifications, authorizes the Purchasing Agent to purchase the goods elsewhere, and charge any increase in cost and handling to the defaulting bidder. Every effort will be made by Purchasing to locate the goods at the same or better price as that originally contracted.

19. DELIVERY TIME: Deliveries will be accepted only during normal working hours, 8:00 A.M. to 5:00 P.M. CST, Monday through Friday, at the designated City facility.

20. PRICE FIXING: In submitting a bid response to this request, the bidder thereby certifies that the bidder has not participated in nor been party to any collusion, price fixing or any other agreements with any company, firm or person concerning the pricing on the enclosed bid. Consistent and continued tie bidding on any commodity could be cause for rejection of all bids by the Purchasing Agent and/or investigation by the Attorney General to determine possible Anti-Trust violations.

21. BID EVALUATION: All bids are evaluated for compliance with specifications before the bid price is considered. Response to specification is primary. Other criteria used in determining the lowest responsible bid offering the best value are as follows.

- Bid Price
- Service / Repair Location
- Warranty
- Delivery
- Special needs and requirements of the City of Rockwall
- Vendor's knowledge of and experience with Bid Items
- Vendor's past performance record with the City of Rockwall
- City of Rockwall's evaluation of the Vendor's ability to perform

In evaluating bids, the City will consider the qualifications of the Bidders whose bid response complies with the prescribed specifications, requirements, alternates and unit prices if requested in the Bid forms. The City may consider the qualifications and experience of Subcontractors and other persons and organizations (including those who are to furnish the principal items of labor, material or equipment) proposed for those portions of the work as to which the identity of Subcontractors and other persons and organizations must be submitted on the form provided in this bid packet. The City may conduct such investigations as it deems necessary to establish the responsibility, qualifications and financial ability of the Bidders, proposed Subcontractors and other persons and organizations to do the work in accordance with the Contract Documents to City's satisfaction within the prescribed time. City reserves the right to reject the Bid of any Bidder who does not meet any such evaluation to City's satisfaction.

It is expected that the City's evaluation of bids and award of contract will be made within 60 days of the bid opening date. The successful Bidder will be notified by a written Notice of

Award. Timely work and compliance to the maintenance schedule, agreed to by the City and the Contractor, is very important and failure to meet the maintenance schedule will subject the Contractor to liquidated damages.

- 22. NEGOTIATION:** Any attempt to negotiate or give information on the contents of this bid with the City or its representative prior to award shall be grounds for disqualification.
- 23. GRATUITIES:** The City may, by written notice to the successful bidder, cancel this contract without liability to successful bidder if it is determined by the City that gratuities in the form of entertainment, gifts, or otherwise, were offered or given by the successful bidder, or any agent or representative of the successful bidder, to any officer or employee of the City with a view toward securing or amending, or the making of any determinations with respect to the performing of such a contract.
- 24. VENDOR PERFORMANCE:** The City of Rockwall shall make such investigations as it deems necessary to determine the ability of the bidder to provide satisfactory performance in accordance with specifications, and the bidder shall furnish to the City all such information and data for this purpose as the City may request.
- 25. APPLICABLE LAW:** This agreement shall be governed by the Uniform Commercial Code as adopted in the State of Texas. Venue for this contract is in Rockwall, County. Contractor shall give all notices and comply with all laws, ordinances, rules and regulations applicable to the work. If Contractor observes that the Specifications, Plans or Drawings are at variance therewith, he shall give the City prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate modification. If Contractor performs any work contrary to such laws, ordinances, rules and regulations, and without such notice to the City, he shall bear all costs arising there from.
- 26. USE OF CITY LOGO:** The City of Rockwall's Logos and Images (hereinafter "Logo") are registered trademarks with the State of Texas Secretary of State and the City of Rockwall is the owner of all rights to the Logo. Unauthorized use of the Logo is strictly prohibited.
- 27. QUALIFICATION OF BIDDERS:** To demonstrate qualifications, each Bidder must be prepared to submit within five (5) days of the City's request for written data as to the Bidder's Qualifications such as financial data, previous experience, list of available equipment, and evidence of authority to conduct business in the jurisdiction where the project is located.
- 28. EXAMINATION OF CONTRACT DOCUMENTS AND WORK SITE:** Before submitting a bid, each Bidder must (a.) examine the Contract Documents thoroughly, (b.) visit the site to familiarize himself with local conditions that may in any manner affect performance of the work, (c.) familiarize himself with federal, state and local laws, ordinances, rules and regulations affecting performance of the work, and (d.) carefully correlate his observations with the requirements of the Contract Documents.
- 29. INTERPRETATIONS:** All questions about the meaning or intent of the Contract Documents shall be submitted to the City in writing. Replies will be issued by Addenda mailed or delivered to all parties recorded by the City as having received the bidding documents. Questions received less than two days prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 30. BID SECURITY:** Each bid for construction work must be accompanied by an approved Bidder's Bond underwritten by a surety name in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of

Accounts, U.S. Treasury Department, for the sum of five percent (5%) of the amount of the maximum total bid as a guarantee that, if awarded the contract, the Bidder will promptly enter into a Contract and execute Performance and Payment Bonds on the forms included in the Contract Documents. CONTRACTOR shall furnish performance and payment bonds as security for the faithful performance and payment of all his obligations under the Contract Documents. These Bonds shall be in amounts at least equal to the Contract Price, in such form as set forth in the Contract Documents and with such corporate sureties as are licensed to conduct business in the state where the work is located and are named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department. The performance bond and payment bond shall be extended to include any contract extension.

If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the work is located is revoked, CONTRACTOR shall within five (5) days thereafter substitute another Bond of which the surety shall be acceptable to the City.

Prior to delivery of the executed Agreement by City to CONTRACTOR, City may require CONTRACTOR to furnish such other Bonds and such additional insurance, in such form and with such sureties or insurers as the City may require.

31. **CONTRACT TIME:** If the bid is for an annual contract and the City has the right, with the Contractor's written permission, to extend the contract into consecutive years. Should the contract be extended; all pricing, specifications, conditions and contract documents shall remain in effect.
32. **AWARD OF CONTRACT:** City reserves the right to reject any and all Bids and waive any informalities and all nonconforming, or conditional Bids or counter proposals. If a contract is awarded, it will be awarded to the lowest responsible Bidder who met specifications and whose evaluation by City indicates to the City that the award will be in the best interests of the City and the project.
33. **EXECUTION OF CONTRACT:** The successful Bidder, within fifteen (15) working days after written Notice of Award, shall execute the formal Contract Agreement and required Bonds on the forms provided by the City. Contractor's Certificates of Insurance shall again be provided with the executed contract. Once the all Contract documents have been received and approved by the City, a written Notice to Proceed will be issued by the City authorizing the Contractor to commence work.
39. **LIQUIDATED DAMAGES:** In the event the Contractor fails to attain substantial completion of the entire project (all bid items) within the time set forth in the Contract, the City may withhold money permanently from the Contractor's total compensation a sum of \$250 per day as liquidated damages and for added expenses for City services, etc. The City will be the sole judge as to whether the work has been completed according to the maintenance schedule.
40. **CONTRACTOR'S PRE-START REPRESENTATIONS:** CONTRACTOR represents that he has familiarized himself with, and assumes full responsibility for having familiarized himself with, the nature and extent of the Contract Documents, work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that may in any manner affect performance of the work, and represents that he has correlated his study and observations with the requirements of the Contract Documents. CONTRACTOR also represents that he has studied all drawings, plans and latent physical conditions and will make such additional surveys and investigations as he deems necessary for the performance of the work at the Contract Price in accordance with the requirements of the Contract Documents and that he has correlated the results of all such data with the requirements of the Contract

Documents.

- 41. COMMENCEMENT OF CONTRACT TIME – NOTICE TO PROCEED:** The Contract Time will commence on, and include, the day following the date established in the written Notice to Proceed issued by City to the CONTRACTOR.
- 42. STARTING THE PROJECT:** CONTRACTOR shall start to perform his obligations under the Contract Documents on the date when the Contract Time commences to run. No Work shall be done at the site prior to the date on which the Contract Time commences to run.
- 43. SUPERVISION AND SUPERINTENDENCE:** CONTRACTOR shall supervise and direct the work efficiently with his best skill and attention. He shall be solely responsible for the means, methods, techniques, sequences and procedures of work and safety at the work site. CONTRACTOR shall be solely responsible to see that the finished work complies accurately with the Contract Documents. CONTRACTOR and City intend that the CONTRACTOR shall be an independent contractor and not the agent or employee of the City.

CONTRACTOR shall keep at the project site at all times during its progress of the work a competent resident superintendent. The superintendent will be Contractor's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

- 44. LABOR, MATERIALS AND EQUIPMENT:** CONTRACTOR shall provide competent, suitable qualified personnel to lay out the work and perform scheduled maintenance as required by the Contract Documents. He shall at all times maintain good discipline and order at the work site.

CONTRACTOR shall furnish all materials, equipment, labor, transportation, machinery, tools, appliances, fuel, power, and all other facilities and incidentals necessary for the completion of the maintenance work.

All materials which are to be incorporated into the work shall be new. All materials and supplies used on this job are specified on the plans and drawings. If required by City, Contractor shall furnish satisfactory evidence as to the kind of quality of materials.

All materials and equipment shall be applied and used in accordance with the instructions of the manufacturer, fabricator or processors.

- 45. SUBSTITUTE MATERIALS AND EQUIPMENT:** If the specifications, law, ordinance or applicable rules or regulations permit Contractor to furnish or use a substitute that is equal to any material specified, and if Contractor wishes to furnish or use a proposed substitute, he shall make written application to the City for approval of such a substitute certifying in writing that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified and be suited to the same use and capable of performing the same function as that specified; and identifying all variations of the proposed substitute from that specified. No substitute shall be ordered or applied without the written approval of the City. The City will be the judge of equality and may require Contractor to furnish such other data about the proposed substitute as he considers pertinent. No substitute shall be ordered or applied without such performance guarantee and bonds as City may require which shall be furnished at Contractor's expense.
- 46. SUBCONTRACTORS:** Contractor shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom City may have reasonable objection. Acceptance of any Subcontractor, other person or organization by City after due investigation

has reasonable objection to any Subcontractor, other person or organization proposed by Contractor, Contractor shall submit an acceptable substitute. Contractor shall not be required to employ any Subcontractor, other person or organization against whom he has reasonable objection. Contractor shall not without the consent of City make any substitution for any Subcontractor, other person or organization that has been accepted by City. A list of all Subcontractors who the Contractor wishes to contract with to perform any part of the maintenance service shall be submitted with the bid. The list shall include the Subcontractor business name, address, contact person and telephone numbers.

Subcontractors are subject to the same Insurance requirements as Contractors and shall provide the City with certificates of insurance as requested by this bid.

Contractor shall be fully responsible for all acts and omissions of his Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that he is responsible for the acts and omissions of persons directly employed by him. Nothing in the Contract Documents shall create any contractual relationship between the City and any Subcontractor or other person or organization having a direct contract with Contractor, nor shall it create obligation on the part of the City to pay or to see to the payment of any moneys due any Subcontractor or other person or organization, except as may otherwise be required by law. The City may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Contractor on account of specific work done in accordance with the maintenance schedule and value thereof.

The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the work among Subcontractors or delineating the work to be performed by any specific trade.

Contractor agrees to bind specifically every Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the City.

- 47. PATENT FEES AND ROYALTIES:** Contractor shall pay all license fees and royalties and assume all costs incidental to the use in the performance of the work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. Contractor shall indemnify and hold harmless City and anyone directly or indirectly employed by the City from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, produce or device and shall defend all such claims in connection with any alleged infringement of such rights.

Contractor shall obtain, maintain and pay for all permits and licenses and shall pay all governmental charges and any fees associated with this maintenance service. All permits and licenses shall be in force the time of the Bid opening. City shall assist Contractor, when necessary, in obtaining such permits and licenses.

- 48. USE OF PREMISES:** Contractor shall confine his equipment, the storage of materials and the operations of his workmen to areas permitted by law, ordinances, permits, or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with materials or equipment. Permanent storage of Contractor's materials and equipment on or around the work site is not permitted at any time.

Contractor shall not load or permit any part of any structure to be loaded with weights that will endanger the structure, nor shall be subject any part of the work to stresses or pressures that will endanger it.

49. SAFETY AND PROTECTION: Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with this maintenance service work. He shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

- All employees on the Work Site and other persons who may be affected thereby.
- All the Work and all materials or equipment to be incorporated therein, and
- Other property at the site or adjacent thereto, including, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities.

Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He shall erect and maintain, as required by the conditions and progress of the Work, all necessary safeguards for safety and protection. He shall notify the owners of adjacent properties when prosecution of the work may affect them. All damage, injury or loss to any property referred to in this Contract caused, directly or indirectly, in whole or in part, by Contractor or Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by Contractor. Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as the Contract has expired and all work has been accepted by the City.

50. EMERGENCIES: In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time required by the Contractor to fulfill the Contract on account of emergency work shall be approved by the City prior to any extension or additional compensation.

51. CLEANING: Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the work, and shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, equipment and machinery, and surplus materials, and shall leave the site clean.

52. CHANGES IN WORK: Without invalidating the Contract, City may, at any time or from time to time, request additions, deletions or revisions in the work; changes will be authorized by Change Order forms. Upon receipt of a Change Order, the Contractor shall proceed with the work involved. All such work shall be executed under the applicable conditions of the Contract Documents. If any Change Order causes an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, an equitable adjustment will be made on the basis of a claim made by either party. Any claim for a change in the Contract work shall be issued by written notice from the Contractor and delivered to City within ten (10) days of the occurrence of the event giving rise to the claim. Notice of the amount of the claim with supporting data shall be delivered at that time.

Additional work performed by Contractor without written authorization of a Change Order will not entitle him to claim an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency. No increases above the total amount bid or the extended price will be paid without a written Change Order, approved in advance of work done and provided by the Contractor to the City. Any additional work performed by the Contractor other than that which was included in the bid will NOT be paid by the City without having been specifically approved in advance by the City with a written Change Order. It shall be the responsibility of the Contractor to notify the City in advance of any work which will be in excess of the quantities, extended prices or total bid prior to said work being done by the Contractor.

This section shall govern over any section within these specifications which may be to the contrary.

53. CHANGE OF CONTRACT PRICE: The Contract Price constitutes the total compensation payable to Contractor for performing the work. All duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at his expense without change in the Contract Price. The Contract Price may only be changed by a Change Order as a reflection of the change in Contract work.

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

- Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved, unless actual quantities differ from bid quantities by twenty (10%) percent. Revised consideration will be given to that portion in excess of the twenty (10%) percent difference subject to mutual acceptance of a revised unit price.
- By mutual acceptance of a lump sum.
- On the basis of the actual cost directly related to the work plus a Contractor's Fee for overhead and profit in the amount of fifteen (15%) percent. The actual cost shall be limited to: labor and materials directly related to the work.

The amount of credit to be allowed by Contractor to City for any such change which results in a net decrease in cost, will be the amount of the actual net decrease which decrease shall include a Contractor's Fee for overhead and profit in the amount of fifteen (15%) percent. When both additions and credits are involved in any one change, the Contractor's fee of fifteen (15%) percent shall be figured on the basis of the net increase, if any.

Whenever the cost of any Work is to be determined pursuant to actual cost, Contractor will submit in form prescribed by the City an itemized cost breakdown together with supporting data.

- 54. CITY MAY STOP WORK:** If the landscape maintenance service is performed in default to the Contract, or Contractor fails to supply sufficiently skilled workmen or suitable materials or equipment, or fails to conform to the maintenance schedule, or if Contractor fails to make prompt payments to Subcontractors for labor, materials or equipment, City may order Contractor to stop the work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the City to stop the work shall not give rise to any duty on the part of City to exercise this right for the benefit of the Contractor or any other party.
- 55. CORRECTION OF DEFAULT:** If required by the City prior to approval of final payment, Contractor shall promptly, without cost to City correct any default, whether or not fabricated, applied, installed or completed. If Contractor does not correct such default, remedy any unaccepted application, within a reasonable time, all as specified in a written notice from the City, the City may have the deficiency or default corrected. All direct and indirect costs of such correction or removal and replacement, including compensation for additional professional services, shall be paid by Contractor, and an appropriate deductive Change Order shall be issued. Contractor shall also endure the expenses of making good all work of others destroyed or damaged by his correction, removal or replacement of his defective work.
- 56. NEGLECTED WORK BY CONTRACTOR:** If Contractor should fail to prosecute the Work in accordance with the Contract Documents, including any requirements of the maintenance schedule, the City, after seven (7) days' written notice to Contractor may, without prejudice to any other remedy, make good such deficiencies and the cost thereof (including compensation for additional professional services) shall be charged against Contractor in which case a Change Order shall be issued incorporating the necessary revisions in the Contract Documents including an appropriate reduction in the Contract Price. If the payments then or thereafter due Contractor are not sufficient to cover such amount, Contractor shall pay the difference to the City.
- 57. CITY MAY SUSPEND WORK:** City may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than thirty (30) days by notice in writing to Contractor and the City shall fix the date on which Work shall be resumed. Contractor shall resume the Work on the date so fixed. Contractor may be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if he makes a claim therefore.
- 58. CITY MAY TERMINATE:** If Contractor is adjudged as bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or a trustee or receiver is appointed for Contractor or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to Subcontractors or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction, or if he disregards the authority of the City, or if he otherwise violates any provision of the Contract Documents, then City may, without prejudice to any other right or remedy and after giving Contractor and his Surety seven (7) days written notice, terminate the services of Contractor, and finish the Work by whatever method the City may deem expedient. In such case Contractor shall not be entitled to receive any further payment. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Project, including compensation for

additional professional services, such excess shall be paid to the Contractor. If such costs exceed such unpaid balance, Contractor shall pay the difference to the City. Such costs incurred by the City shall be incorporated in a Change Order.

Where Contractor's services have been so terminated by City, said terminations shall not affect any rights of City against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys by City due Contractor will not release Contractor from liability.

Upon seven (7) days written notice to Contractor, the City may, without cause and without prejudice to any other right or remedy, elect to abandon the work and terminate the Contract. In such case, Contractor shall be paid for all Work executed and any expense sustained plus a reasonable profit.

- 59. CONTRACTOR MAY STOP WORK OR TERMINATE:** If, through no act or fault of Contractor, the Work is suspended for a period of more than thirty (30) days by City or under an order of court or other public authority, or the City fails to act on any invoice for payment within thirty (30) days after it is submitted, or City fails to pay Contractor any sum approved, or awarded by arbitrators within thirty (30) days of its approval and presentation, then Contractor may, upon seven (7) days' written notice to City, terminate the Contract and recover from the City payment for all Work executed and any expense sustained plus a reasonable profit.

In addition and in lieu of terminating the Contract, if the City has failed to act on an invoice for payment or City has failed to make any payment as aforesaid, Contractor may upon seven (7) days' notice to the City stop the Work until he has been paid all amounts then due.

- 60. GIVING NOTICE:** Whenever any provision of the Contract Documents requires the giving of written notice it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to him who gives the notice.
- 61. COMPUTATION OF TIME:** When a period of time is referred to in the Contract Documents by days, it shall be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation.
- 62. GENERAL:** The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder, and in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor and the rights and remedies available to the City there under, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to them which are otherwise imposed or available by law, by special guarantee or by other provisions of the Contract Documents.

63. Piggyback Contract/Other Entity Clause:

It is the intent of this solicitation that other governmental organizations and agencies throughout the continental United States may purchase identical items at the same unit pricing and the same general terms and conditions, subject to the applicable state laws. Freight/shipping charges are included in the proposal prices for Texas cooperative members. Additional freight/shipping

charges that may be required by other organizations and agencies are outside the scope of the base proposal. The City authorizes each governmental entity to order and make payment directly to the successful proposer. The term of this agreement is one (1) year from the date of contract execution unless the contract states otherwise.

64. Wage Rates. There shall be paid on the project not less than the general prevailing rates of wages in the locality of the project, which prevailing wage rates have been determined by the City in accordance with statutory requirements.

65. Disclosure of Certain Relationships (HB 914). Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the records administrator of the City of Rockwall not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor. Forms may be obtained on the City's website at www.rockwall.com, City Departments, Finance Department, Purchasing page.

66. INDEMNIFICATION. CONTRACTOR shall indemnify and hold harmless the CITY and its representatives, agents and employees from and against all claims, damages, losses and expenses including, but not limited to, attorneys' fees arising out of the work, provided that such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss or use resulting there from and (b) is caused in whole or in part by any condition of premises or materials, act or omission of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not is caused in part negligence or otherwise, by a party indemnified hereunder. The indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount of type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under Worker's Compensation acts, disability benefit acts or other employee benefit acts.