



NOTICE TO BIDDERS

The City of Edinburg is soliciting sealed bids to be received by the City Secretary's Office located at 415 W. University Drive, Edinburg, Texas 78541. City of Edinburg normal business days are Monday through Friday between the hours of 8:00 a.m. to 5:00 p.m. and shall be closed on recognized holidays.

Bids will be received until **3:00 p.m. Central Time**, on **Wednesday, April 13, 2022**, shortly thereafter all submitted bids will be gathered and taken to the Edinburg City Hall Community Room, 1st Floor, to be publicly opened and read aloud. Any bid received after the closing time will not be accepted and will be returned to the bidder unopened. It is the responsibility of the bidder to see that any bid submitted shall have sufficient time to be received by the City Secretary's Office prior to the bid opening date and time. The receiving time in the City Secretary's Office will be the governing time for acceptability of the bids. Bids will not be accepted by telephone or facsimile machine. All bids must bear original signatures and figures. The Bid shall be for:

BID NO. 2022-43 CONSTRUCTION MATERIALS

A pre-bid meeting will be held at 9:00 a.m., Wednesday, March 30, 2022, at the City Hall Conference Room. If you have any questions or require additional information regarding this bid, you may contact LORENA FUENTES, ASSISTANT PURCHASING MANAGER, LOCATED AT 415 W. UNIVERSITY DRIVE, Edinburg, TX 78541 by calling (956) 388-8972 or via e- to the following e-mail address: lfuentes@cityofedinburg.com.

If Hand-delivering Bids: 415 West University Drive,
C/o City Secretary Department (1st Floor)

If using Land Courier (i.e., FedEx, UPS): City of Edinburg
C/o City Secretary
415 West University Drive
Edinburg, Texas 78541

If Mailing Bids: City of Edinburg
C/o City Secretary
P.O. Box 1079
Edinburg, TX 78540-1079

The City of Edinburg reserves the right to refuse and reject any or all bids and to waive any or all formalities or technicalities and to accept the bid deemed most advantageous to the City, and hold the bids for a period of **60** days without taking action.

Bids must be submitted in an envelope sealed with tape and prominently marked on the lower left hand corner of the bid envelope with corresponding bid number and title.

CITY OF EDINBURG

INSTRUCTIONS TO BIDDERS

DEVIATION FROM SPECIFICATION

Please read your specifications/requirements thoroughly and be sure that the SERVICES offered comply with all specifications/requirements. Any variation from the specifications/requirements must be clearly indicated by letter attached to your bid referencing variations on a point-by-point basis. If no exceptions are noted, and you are the successful bidder, it will be required that the SERVICES be provided as specified.

PURPOSE

1. The purpose of these specifications/requirements and bidding documents is for the **CONSTRUCTION MATERIALS** for the City of Edinburg.
2. The SERVICES to be furnished under this bid shall be as specified in these bid documents. All specifications/requirements shown are minimum. There is no intention to disqualify any bidder who can meet these specifications/requirements.

SUBMITTAL OF BID

Bids will be submitted in sealed envelopes upon the blank bid form attached hereto. Submit two (2) complete sets of the bid, one (1) original marked "**ORIGINAL**," and one (1) copy marked "**COPY**". Each bid must be completely filled out and SUBMITTED IN ORIGINAL FORM, complete with all supporting documentation. Bids submitted by facsimile (fax) or electronically will **NOT** be accepted. Submittal of a bid in response to this solicitation for Bids constitutes an offer by the Bidder. Bids which do not comply with these specifications/requirements may be rejected at the option of the City. Bids must be filed with the City of Edinburg, before opening day and hour. No late Bids will be accepted. They will be returned to Bidder unopened (if properly identified).

If Hand-delivering Bids: 415 West University Drive, c/o City Secretary Department (1st Floor)
If using Land Courier (i.e., FedEx, UPS): 415 West University Drive, c/o City Secretary Department (1st Floor),
Edinburg, Texas 78541
If Mailing Bids: P.O. Box 1079, Edinburg, TX 78540-1079

PREPARATION OF BID

Bids MUST give full firm name and address of bidder, and be manually signed. Failure to do so will disqualify your bid. Person signing bid must show title or AUTHORITY TO BIND HIS/HER FIRM IN A CONTRACT. Firm name and authorized signature must appear on each page that calls for this information. The legal status of the Respondent/Bidder whether corporation, partnership, or individual, shall also be stated in the bid. A corporation shall execute the bid by its duly authorized officers in accordance with its corporate by-laws and shall also list the state in which it is incorporated. A partnership Respondent/Bidder shall give full names and addresses of all partners. All partners shall execute the bid. Partnership and Individual Respondent/Bidder shall state in the bid the names and addresses of all persons with a vested interest therein. The place of residence of each Respondent/Bidder, or the office address in the case of a firm or company, with county and state and telephone number, shall be given after the signature.

ALTERATIONS/AMENDMENTS TO BID

Bids **CANNOT** be altered or amended after opening time. Alterations made before opening time must be initialed by bidder guaranteeing authenticity. No bid may be withdrawn after opening time without acceptable reason in writing and only after approval by the City of Edinburg.

SALES TAX

State sales tax must not be included in the bid.

SUBSTITUTIONS

No substitutions or cancellations will be permitted without written approval of City of Edinburg.

NO BID RESPONSE

If unable to submit a bid, bidder should return inquiry giving reasons.

EXCEPTIONS

Any additions, deletions, or variations from the following specifications/requirements must be noted. The bidder shall attach to his/her bid sheet a list of any exceptions to the specifications/requirements if unable to do so, on specification sheet.

BRAND OR MANUFACTURER REFERENCE

Unless otherwise specified, any catalog or manufacturer's reference or brand name used in describing an item is merely descriptive, and not restrictive, and is used only to indicate type and style of product desired. Bids on alternate brands will be considered if they meet specification requirements. If a bidder quotes on equipment other than the one(s) specified in the bid, sufficient specifications and descriptive (pictured literature) data must accompany same to permit thorough evaluation. In the absence of these qualifications, he/she will be expected to furnish the product called for.

DELIVERY

Number of days required to deliver SERVICES after receiving order must be stated in the bid. Failure to so state will obligate bidder to complete service delivery within ONE day.

DELAY IN SERVICE DELIVERY

When delay can be foreseen, Bidder shall give prior notice to City of Edinburg. Bidder must keep City of Edinburg advised at all times of status of order. Default in promised service delivery (without acceptable reasons) or failure to meet specifications/requirements, authorizes the City of Edinburg to purchase such SERVICES elsewhere and charge increase in cost to defaulting vendor. Acceptable reasons for delayed delivery are as follows: Acts of God (floods, tornadoes, hurricanes, etc.), acts of government, fire, strikes, war; Actions beyond the control of the successful bidder.

SERVICE DELIVERED PRICING

Bids in units of quantity specified - extend and show total. In the event of discrepancies in extension, unit prices will govern. Bids subject to unlimited price increase will not be considered.

VALID BID TIME FRAME

The City may hold bids 60 days after bid opening without taking action. BIDDERS shall be required to hold their Bids firm for the same period of time.

RIGHT TO REJECT/AWARD

The City of Edinburg reserves the right to refuse and reject any or all Bids, and to waive any or all formalities or technicalities, and to make such awards of contract as may be deemed to be the best and most advantageous to the City of Edinburg.

MULTIPLE VENDOR CONTRACTS

Bidders are advised that the City of Edinburg may award Service Contracts to multiple vendors based on low bid per item basis. All items specified on the "Bid Form" **must** reflect the individual unit prices. The City of Edinburg reserves the right to award all items individually or in any combination thereof.

INDEMNIFICATION CLAUSE

The Bidder agrees to indemnify and save harmless the City, from all suits and actions of every nature and description brought against them or any of them, for or on account of the use of patented appliances, products or processes, and he shall pay all royalties and charges which are legal and equitable. Evidence of such payment or satisfaction shall be submitted upon request of the Assistant Purchasing Manager, as a necessary requirement in connection with the final estimate for payment in which such patented appliance, products or processes are used.

ADDENDA

Bidder shall carefully examine the bid forms, specifications/requirements, and instructions to Bidders. Should the bidder find discrepancies in, or omissions from bid forms, specifications/requirements, or other documents, or should he/she be in doubt as to their meaning, he/she should at once notify the Assistant Purchasing Manager, (Edinburg City Hall, 956-388-8972) and obtain clarification by addendum prior to submitting any bid. Explanations, interpretations, and supplemental instructions shall be in the form of written Addenda which shall become a part of the Contract documents. Said Addenda shall be mailed, e-mailed, hand delivered and/or faxed, to all prospective Bidders. All Addenda issued in respect to this project shall be considered official changes to the original bid documents. Verbal statements in response to inquiries and/or requests for explanations shall not be authoritative nor binding. It shall be the Bidder(s) responsibility to ensure that they have received all Addenda in respect to this project. Furthermore, Bidders are advised that they must recognize, comply with, and attach a signed copy of each Addendum which shall be made part of their Bid Submittal. Bidder(s) signature on Addenda shall be interpreted as the bidder's "recognition and compliance to" official changes as outlined by the City of Edinburg and as such are made part of the original solicitation documents. Failure of any bidder to receive any such addendum or interpretation shall not relieve such Bidder from its terms and requirements. The City may issue a written addendum no later than five calendar days prior to the date bids must be received. Addendums are available online at www.cityofedinburg.com.

PAYMENT

The City of Edinburg will execute payment by mail in accordance with the State of Texas Pay Law after SERVICES have been provided and invoiced. No other method of payment will be considered.

SYNONYM

Where in this bid package ITEMS OR SERVICES is used, its meaning shall refer to the **CONSTRUCTION MATERIALS** as specified.

ASSIGNMENT

Neither the Bidder's contract nor payment due to an awarded vendor may be assigned to a third party without the written approval of the Purchasing Department for the City of Edinburg.

BIDDER'S EMPLOYEES

Neither the Bidder nor his/her employees engaged in fulfilling the terms and conditions of this Purchase Contract shall be considered employees of the City. The method and manner of performance of such undertakings shall be under the exclusive control of the vendor on contract. The City shall have the right of inspection of said undertakings at any time.

INTERPRETATIONS

Any questions concerning the conditions and/or specifications/requirements with regards to this solicitation for Bids shall be directed to the designated individuals as outlined in the Request for Bids. Such interpretations, which may affect the eventual outcome of this request for Bids, shall be furnished in writing to all prospective Bidders via Addendum. No interpretation shall be considered binding unless provided in writing by the City of Edinburg in accordance with paragraph entitled "Addenda".

STATUTORY REQUIREMENTS

It shall be the responsibility of the successful Bidder to comply with all applicable State & Federal laws, Executive Orders and Municipal Ordinances, and the Rules and Regulations of all authorities having jurisdiction over the work to be performed hereunder and such shall apply to the contract throughout, and that they will be deemed to be included in the contract as though written out in full in the contract documents. (To include issues related to health, environmental, and safety to name a few.)

RIGHT TO WAIVE

City of Edinburg reserves the right to waive or take exception to any part of these specifications/requirements when in the best interest of the City of Edinburg.

COOPERATIVE PRICING

Bidders are advised that in addition to responding to our "local" solicitation for bids/Bids with Dealer pricing, vendors/contractors are encouraged to provide pricing on the below referenced items/products/services based on BuyBoard, TX-MAS, H-GAC and/or any other State of Texas recognized and approved cooperative which has complied with the bidding requirements for the State of Texas. If bidding other than or in addition to "dealer" pricing, kindly duplicate the bid forms for each bid being provided from a cooperative contract. Any and all applicable fees must be included. All cooperative pricing must be submitted on or before bid opening date and hour.

TIME ALLOWED FOR ACTION TAKEN

The City of Edinburg may hold bids 60 days after the opening of Bids without taking action. Bidders are required to hold their Bids firm for same period of time.

PREPARATION OF BID

The City of Edinburg shall not be held liable for any costs incurred by any bidder for work performed in the preparation of and production of a bid or for any work performed prior to execution of contract.

CONFIDENTIAL INFORMATION

Any information deemed to be confidential by the bidder should be clearly noted on the pages where confidential information is contained; however, the City cannot guarantee that it will not be compelled to disclose all or part of any public record under Texas Public Information Act, since information deemed to be confidential by the bidder may not be considered confidential under Texas Law, or pursuant to a Court order.

VERBAL THREATS

Any threats made to any employee of the City, be it verbal or written, to discontinue the providing of item/material/services for whatever reason and/or reasons shall be considered a breach of contract and the City will immediately sever the contract with the Vendor on contract.

MARKET VOLATILITY AND UNIT PRICE ADJUSTMENTS

The City of Edinburg recognizes that during periods of national crisis and unstable economic conditions, unforeseen price increases might affect costs for goods and services contracted on an annual basis. The following procedure may be employed to mediate price volatility:

1) **Requesting Price Adjustment:** Upon written request of the Vendor to the City Purchasing Agent, the City may review evidence of prevailing industry-wide market conditions that warrant an adjustment in bid prices contained in the contract.

- A Vendor must tie any price change clause to an industry-wide or otherwise nationally recognized index, or some other form of verifiable document. Such written request must be accompanied by a certified copy of the supplier's advisory or notification to the vendor of the price changes,

- The Vendor must put the Purchasing Agent on the mailing lists for such publications so that the Purchasing Agent can monitor said changes, such membership shall be at no cost to the City of Edinburg.
 - The City of Edinburg's Purchasing Agent retains the right to determine whether or not such proposed price changes are in the best interest of the City of Edinburg,
 - No price escalation will be authorized in excess of the amount of the increase referred to in the supplier's notice,
 - The City of Edinburg may only grant a price increase if the evidence presented is deemed reliable. Should the City of Edinburg allow a price increase, the approved price change shall be honored for all orders received by the vendor or contractor after the effective date of such price change, Approved price changes are not applicable to orders already issued and in process at time of price change.
- 2) **Price Reduction:** Vendor shall notify the City of Edinburg at the time when the Vendor's costs for items and/or supplies reduce due to stabilization in the market at which time prices for items on this contract shall be reduced accordingly, Failure by the Vendor to notify the City of a decrease in costs for items and/or supplies for which the Vendor was granted a price adjustment, may result in immediate termination of this contract and the City of Edinburg shall not be obligated to pay the Vendor the difference between the contract price and the price adjustment
- 3) **Timeframe for Adjusted Price Increases:** Price increases are only valid for the quarter in which they are requested and approved. Prices shall return to the original contract price at the beginning of the following quarter unless a Vendor notifies the City of Edinburg in writing within ten (10) days of expiration of the quarter in which the price increase is in effect, that it desires to have the price increase continue or that the Vendor is requesting a different price increase for the following quarter. Such request must be supplemented with sufficient justification to demonstrate that the price increase remains necessary. The City of Edinburg Purchasing Department shall have sole discretion whether to grant the price increase extension. The City of Edinburg too, shall have discretion to unilaterally reduce, eliminate or extend a price adjustment to the Vendor at any time upon written notice from the City to the Vendor demonstrating justification for such reduction, elimination or extension of the price adjustment.
- 4) **Allowable Review Periods:** Price adjustment reviews may only be requested by the Vendor on a quarterly basis. However, the City may at its own discretion, conduct temporary price adjustment reviews at any time. The City's Purchasing Agent reserve the right to audit and or/examine any pertinent books, documents, papers, records or invoices relating directly to the contract transaction in question after reasonable notice and during normal business hours.
- 5.) **Dollar Limit to Price Changes:** The total increase in contract price shall not exceed twenty-five percent (25%) of the original contract price during the contract term.

MATHEMATICAL ERRORS

In the event that mathematical errors exist in any bid, unit prices/rates -v- totals, unit prices/rates will govern.

AUDIT

The City of Edinburg reserves the right to audit the vendor's books and records relating to the performance of this contract. The City of Edinburg, at its own expense, shall have the right at all reasonable times during normal business hours and upon at least twenty-four (24) hours' advance notice, to audit, to examine, and to make copies of or extracts from the books of account and records maintained by the vendor(s) with respect to the Supply/Service and/or Purchase Contract. If such audit shall disclose overpayment by City to vendor, written notice of such overpayment shall be provided to the vendor and the amount of overpayment shall be promptly reimbursed by vendor to the City. In the event any such overpayment is not paid within ten (10) business days after receipt of such notice, the unpaid amount of such overpayment shall bear interest at the rate of one percent (1%) per month from the date of such notice until paid.

PAST PERFORMANCE

Vendor's past performance shall be taken into consideration in the evaluation and award of Service Contract for the Purchase of SERVICES.

JURISDICTION

Contract(s) executed as part of this solicitation shall be subject to and governed under the laws of the State of Texas. Any and all obligations and payments are due and performable and payable in Hidalgo County, Texas.

VENUE

The parties agree that venue for purposes of any and all lawsuits, cause of action, arbitration, and/or any other dispute(s) shall be in Hidalgo County, Texas.

IF YOU HAVE ANY QUESTIONS ABOUT COMPLIANCE, PLEASE CONSULT YOUR OWN LEGAL COUNSEL. COMPLIANCE IS THE INDIVIDUAL RESPONSIBILITY OF EACH PERSON OR AGENT OF A PERSON WHO IS SUBJECT TO THE FILING REQUIREMENT. AN OFFENSE UNDER CHAPTER 176 IS A CLASS "C" MISDEMEANOR.

CONFLICT OF INTEREST

CHAPTER 176 OF THE TEXAS LOCAL GOVERNMENT CODE

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 Edinburg not later than the 7th business day after the date the person becomes aware of facts that require the statement 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. For more information or to obtain Questionnaire CIQ go to the Texas Ethics Commission web page at <https://www.ethics.state.tx.us/data/forms/conflict/CIQ.pdf>.

CERTIFICATE OF INTERESTED PARTIES (Form 1295)

In 2015, the Texas Legislature adopted [House Bill 1295](#), which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016. For more information go to the Texas Ethics Commission web page at <https://www.ethics.state.tx.us/filinginfo/1295/>.

HB 89

The 85th Texas Legislature approved new legislation, effective Sept. 1, 2017, which amends Texas Local Government Code Section 1. Subtitle F, Title 10, Government Code by adding Chapter 2270 which states that a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

- 1) does not boycott Israel; and
- 2) will not boycott Israel during the term of the contract

SB 13 ENERGY COMPANY BOYCOTTS

The 87th Texas Legislature approved new legislation, effective Sept. 1, 2021, which amends Texas Local Government Code 2274.001. Subtitle F, Title 10, Chapter 809 which states that a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

- 1) does not boycott energy companies and will not boycott energy companies during the term of the Contract. If Respondent does not make that verification, Respondent must so indicate in its Response and state why the certification is not required , or
- 2) the verification required by Section 2274.002 of the Texas Government Code does not apply to the contract. If circumstances relevant to this provision change during the course of the contract, Respondent shall promptly notify Agency.

SB 19 FIREARM ENTITIES AND TRADE ASSOCIATIONS DISCRIMINATIONS

The 87th Texas Legislature approved new legislation, effective Sept. 1, 2021, which amends Texas Local Government Code Section 1. Subtitle F, Title 10 of the Texas Government Code 2274.002, Respondent verifies that it:

- 1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and
- 2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

If Respondent does not make that verification, Respondent must so indicate in its Response and state why the verification is not required. If circumstances relevant to this provision change during the course of the contract, Respondent shall promptly notify Agency.

ETHICAL STANDARD

No City official or employee shall have interest in any contract resulting from this bid.
The following forms must be completed with your bid response.

- **Conflict of Interest Questionnaire**
- **HB 89 Verification Form**
- **SB 13 Verification Form**
- **SB 19 Verification Form**

The forms stated above MUST be returned as part of your Bid response. Failure to include these forms may result in your Bid being considered unresponsive and therefore disqualified. Sample copies of these forms are included in the Bid. * **FORM 1295 (CERTIFICATE OF INTERESTED PARTIES) is not required with the bid submittal but will be required from the awarded party before entering into a contract with the City of Edinburg.**

AWARD

For purposes of this project, award will be contingent on approval of budget.

CONSIDERATION OF LOCATION OF BIDDER'S PRINCIPAL PLACE OF BUSINESS

The City may give local vendors, whose principal place of business is located within the City of Edinburg, and whose bid is within five percent (5%) of the lowest bid price preference as allowed by Section 271.9051 of the Local Government Code

SPECIAL CIRCUMSTANCES

In the event that the City of Edinburg has an immediate need for a particular service(s) that is/are on contract and the successful vendor on contract is not able to meet the special service delivery needs of the City of Edinburg, the City of Edinburg reserves the right to purchase such services elsewhere to fulfill its' immediate need.

TERMINATION OF CONTRACT

The City of Edinburg reserves the right to terminate the contract if, in the opinion of the City of Edinburg, the successful vendor's performance is not acceptable, if the City is being repeatedly over charged, improperly charged, no funds are

available, or if the City wishes, without cause, to discontinue this contract. Termination will be in written form allowing a 30-day notice. The bidder shall be afforded the same right to terminate this contract in the same manner.

INSURANCE REQUIREMENTS

Staff may waive insurance requirements for contracts \$0 - \$4,999.99, including but not limited to contracts for food, materials, supplies, and construction. Workers' Compensation in amounts which satisfy statutory coverage shall be required for construction projects.

The following insurance requirements will be included in all City contracts of \$5,000 - \$14,999.99. In contracts not involving building and construction projects, as that activity is defined in TEX. LABOR CODE §406.096, contractors may obtain alternative form of worker accident insurance with minimum limits of liability of \$100,000 per claim.

Minimum Insurance Requirements	
Type of Coverage	Limits of Liability
Worker's Compensation	Statutory Coverage
Comprehensive General Liability (City named as additional insured) Bodily Injury	\$250,000 each person/\$500,000 each occurrence
Property Damage	\$100,000 each occurrence/\$100,000 aggregate or \$500,000 combined single limits

The following insurance requirements will be included in all City contracts of \$15,000 or more.

- (1) The successful bidder will be required to carry the following insurance coverage and limits of coverage, as well as list the City as an additional insured to liability coverage as requested by the City. In addition, the successful bidder shall provide the City with evidence of coverage and furnish acceptable proof of payment of insurance premiums.
- (2) The successful bidder will be required to secure and/or have insurance coverage in force with an admitted property and casualty insurance company licensed by the State of Texas to conduct business in the State of Texas.
- (3) In contracts not involving building and construction projects, as that activity is defined in TEX. LABOR CODE §406.096, contractors may obtain alternative form of worker accident insurance with minimum limits of liability of \$100,000 per claim

Minimum Insurance Requirements	
Type of Coverage	Limits of Liability
Worker's Compensation	Statutory Coverage
Employer's Liability	Bodily Injury by Accident: \$100,000 each accident Bodily Injury by Disease:

	\$100,000 each employee/\$500,000 policy limit
Comprehensive General Liability	
Bodily Injury	\$250,000 each person/\$500,000 each occurrence
Property Damage	\$100,000 each occurrence/\$100,000 aggregate or \$500,000 combined single limits
Comprehensive Auto Liability	
Bodily Injury	\$100,000 each person/\$500,000 each occurrence
Property Damage	\$100,000 each occurrence/\$100,000 aggregate or \$500,000 combined single limits
City's Protective Liability	
Bodily Injury	\$250,000 each person/\$500,000 each occurrence
Property Damage	\$100,000 each occurrence/\$100,000 aggregate or \$500,000 combined single limits

Policies must name the City of Edinburg as an Additional Insured.

Certificates of insurance naming the CITY as an additional insured shall be submitted to the CITY for approval prior to any services being performed by Contractor. Each policy of insurance required hereunder shall extend for a period equivalent to, or longer than the term of the Contract, and any insurer hereunder shall be required to give at least thirty (30) days written notice to the CITY prior to the cancellation of any such coverage on the termination date, or otherwise. This Contract shall be automatically suspended upon the cancellation, or other termination, of any required policy of insurance hereunder, and such suspension shall continue until evidence that adequate replacement coverage is provided to the CITY. If replacement coverage is not provided within thirty (30) days following suspension of the Contract, the Contract shall automatically terminate.

BID BOND INFORMATION – CONSTRUCTION PROJECTS ONLY

If the contract amount is over twenty-five-thousand dollars (\$25,000) for construction of the project, the successful bidder shall provide a bid guarantee, give a good and sufficient bond in the full amount of the contract price for the faithful performance of such contract, executed by a surety company authorized to do business in the State of Texas, in accordance with Article 5160, Vernon's Texas Civil Statutes, and amendments thereto. A payment bond in the full amount of the contract price to assure payment shall be required by law of all persons supplying labor and material in the execution of the project provided for in the contract documents.

A bid guarantee equivalent to five percent (5%) of the bid price will be required from each bidder. The "bid guarantee" shall consist of a firm commitment, such as a bid bond, certified check or other negotiable instrument accompanying a bid as assurance that the bidder will upon acceptance of his/her bid, execute such contractual documents as may be required within the time specified.

A performance bond on the part of the contractor for one-hundred percent (100%) of the contract price will be required. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

A payment bond on the part of the contractor for one-hundred percent (100%) of the contract price will be required. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in execution of the work provided for in the contract documents.

CONFLICT OF INTEREST

DISCLOSURE

Prospective contractors should carefully consider whether any of their activities may give rise to an improper conflict of interest situation. Conflict of interest situations that are not properly addressed can result in a loss of funding to a specific program and/or to the City of Edinburg, and in some cases can result in civil or criminal liability.

Organizations that may enter into a contract with the City of Edinburg should examine the following:

- Are any employees or board members of the organization,
 - a City of Edinburg employee or consultant who exercises program or project specific functions as part of their City position?
 - a member of a Board, Council or Committee that may participate in the City's selection or award process?
 - a City Official?
- Are any immediate family members or business associates of my employees or board member's,
 - a City of Edinburg employee or consultant who participates in the City's selection or award process as part of their City position?
 - a member of a Board, Council or Committee that may participate in the City's selection or award process?
 - a City Official?
- Will any of my employees or board members receive a financial interest or benefit from any project funded and administered through the City (other than employee salaries or personnel benefits)?
- Will any immediate family members or business associates of my employees or board members receive a financial interest or benefit from any project funded and administered through the City (other than employee salaries or personnel benefits)?
- To my knowledge, will my program or project have a financial effect on a City official or employee who exercises City-related functions, or an immediate family member or business associate of such person? For example, will any of these persons be receiving rental payments, other business income, or program services from my company or services offered?

If you can answer "yes" to any of these questions, it is possible that there may be a conflict of interest. You should review the rules below to determine whether an actual conflict situation is raised, and, if so, what action needs to be taken to avoid a violation of the law. You should contact City staff immediately if you suspect that there might be an issue.

Any contractor entering into an agreement with the City will be required to warrant and represent, to the best of his/her knowledge at the time the contract is executed, he/she is not aware of any improper conflict of interest as described. Also, the contract will obligate contractors to exercise due diligence to ensure that no improper conflict situations occur during the contract.

The following Federal, State and local regulations and policies, govern projects funded through the City of Edinburg:

- * 2 CFR Part 200 [Subpart B 200.112 and Subpart D 200.318]
- * Texas Local Government Code Chapter 171.004
- * City of Edinburg Policies & Procurement Manual

Certification:

I, the undersigned, certify and report that to the best of my knowledge,

☐ I have no conflict of interest to disclose

☐ I have the following conflict of interest to disclose:

Date:

Printed Name and Title:

Company/Vendor Name:

Authorized Signatory:

HOUSE BILL 89 VERIFICATION

I, _____, the undersigned representative of

_____, (Company or Business name) (hereafter referred to as company) being an adult over the age of eighteen (18) years of age, verify that the company named-above, under the provisions of Subtitle F, Title 10, Government Code Chapter 2270:

1. Does not boycott Israel currently; and

2. Will not boycott Israel during the term of the contract.

3) Is not currently listed on the State of Texas Comptroller's Companies that Boycott Israel List located at <https://comptroller.texas.gov/purchasing/publications/divestment.php>

Pursuant to Section 2270.001, Texas Government Code:

1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.

SIGNATURE OF COMPANY REPRESENTATIVE:

TYPE/PRINT NAME AND TITLE:

DATE:

SENATE BILL 13 VERIFICATION

I, _____, the undersigned representative of

_____, (Company or Business name) (hereafter referred to as company) **being an adult over the age of eighteen (18) years of age, verify that the company named-above, under the provisions of Subtitle F, Title 10, Chapter 809, Government Code 2274:**

- 1) **does not boycott energy companies and;**
- 2) **will not boycott energy companies during the term of the contract.**

Pursuant to Section 2274.001, Texas Government Code:

1. *"Boycott energy company" has the meaning assigned by Section 809.001; and*

2. *"Company" has the meaning assigned by Section 809.001, except that the term does not include a sole proprietorship.*

SIGNATURE OF COMPANY REPRESENTATIVE:

TYPE/PRINT NAME AND TITLE:

DATE:

SENATE BILL 19 VERIFICATION

I, _____, the undersigned representative of

_____, (Company or Business name) (hereafter referred to as company) **being an adult over the age of eighteen (18) years of age, verify that the company named-above, under the provisions of Subtitle F, Title 10, Government Code Chapter 2274:**

(1) **does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and,**

(2) **will not discriminate during the term of the contract against a firearm entity or firearm trade association.**

Pursuant to Section 2274.001, Texas Government Code:

- 1) *"Ammunition" means a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile.*
- 2) *"Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or associations that exists to make a profit. The term does not include a sole proprietorship.*
- 3) *"Discriminate against a firearm entity or firearm trade association":*
 - a) *means, with respect to the entity or association, to:*
 - i) *refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association;*
 - ii) *refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or*
 - iii) *terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; and*
 - b) *does not include:*
 - (i) *the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and*
 - (ii) *a company 's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship:*
 - (aa) *to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or*
 - (bb) *for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity 's or association 's status as a firearm entity or firearm trade association.*
- 4) *"Firearm" means a weapon that expels a projectile by the action of explosive or expanding gases.*
- 5) *"Firearm accessory" means a device specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and an item used in conjunction with or mounted on a firearm that is not essential to the basic function of the firearm. The term includes a detachable firearm magazine.*

- 6) "Firearm entity" means:
- a) *firearm, firearm accessory, or ammunition manufacturer, distributor, wholesaler, supplier, or retailer; and*
 - b) *a sport shooting range as defined by Section 250.001, Local Government Code.*
- 7) "Firearm trade association" means any person, corporation, unincorporated association, federation, business league, or business organization that:
- a) *is not organized or operated for profit and for which none of its net earnings inures to the benefit of any private shareholder or individual;*
 - b) *has two or more firearm entities as members; and*
 - c) *is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.*
-

SIGNATURE OF COMPANY REPRESENTATIVE:

TYPE/PRINT NAME AND TITLE:

DATE:

**CITY OF EDINBURG
REQUEST FOR BIDS FOR
CONSTRUCTION MATERIALS**

BID NO. 2022-44

BID OPENING DATE: April 13, 2022 at 3:00 p.m.

It is the intent of this Request for Bids to describe and ultimately make it possible for the City of Edinburg to purchase the below mentioned **CONSTRUCTION MATERIALS.**

GENERAL REQUIREMENTS AND AGREEMENT FOR CONSTRUCTION MATERIALS:

You are invited to submit a sealed bid for the purchase of CONSTRUCTION MATERIALS (type "D" hot mix, and crushed caliche) as requested by the City of Edinburg Streets Department. **The Contract shall be awarded for a period of (1) one year from the date of award of contract. Successful bidder(s) shall be expected to hold their bid prices firm for the duration of the contract period. The city of Edinburg reserves the right to extend the contract for an additional (1) one year if the unit prices remain firm and the performance of the successful bidder/vendor is satisfactory.**

The specifications listed below are minimum requirements and are intended to govern, in general, the size and material desired. The City of Edinburg reserves the right to evaluate variations from these specifications.

TYPE "D" HOT MIX

- Shall meet the Texas Department of Transportation (Tx Dot) specifications for Type "D" Hot Mix Asphalt.
- Hot Mix will be picked up at the plant, as needed, by the City of Edinburg trucks or a private trucking company.
- Hot Mix must be available within a 25 mile radius of the Service Center
- 100% virgin material
- Hot Mix must be available with at least a 24 hour notice.

COLD MIX

- Shall meet the Texas Department of Transportation (Tx Dot) specifications for Cold Mix Asphalt.
- Cold Mix will be picked up at the plant, as needed, by the City of Edinburg trucks or a private trucking company.
- Cold Mix must be available within a 25 mile radius of the City of Edinburg.
- Cold Mix must be available with at least a 24 hour notice.

CRUSHED CALICHE

- Shall meet the Texas Department of Transportation (Tx Dot) specifications for Crushed Caliche.
- Crushed Caliche will be picked up at the plant, as needed, by the City of Edinburg trucks or a private trucking company.
- Crushed Caliche must be available within a 25 mile radius of the City of Edinburg.
- Crushed Caliche must be available with at least a 24 hour notice.

**CITY OF EDINBURG
BID FORM FOR
CONSTRUCTION MATERIALS**

BID NO. 2022-44

BID OPENING DATE: April 13, 2022 at 3:00 p.m.

I/We submit the following bid in **ORIGINAL FORM** for **CONSTRUCTION MATERIALS** according to City of Edinburg requirements, less tax:

NOTE: In addition to responding to our “local” solicitation for bids/proposals vendors/contractors are encouraged to provide pricing on the above referenced items/products/services based on Buyboard, H-GAC, TXMAS and/or any other **State of Texas recognized and approved cooperative** which has complied with the bidding requirements for the State of Texas (**any and all applicable fees must be included**). **All cooperative pricing must be submitted on or before bid/proposal opening date and hour.**

CHECK ONE

☐ **BUYBOARD** ☐ **H-GAC** ☐ **TXMAS** ☐ **DEALER/LOCAL**
☐ **TX DIR** ☐ **TFC** ☐ **OTHER** _____

Specify

ITEM	EST. QTY	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
1	30,000 TONS	TYPE “D” HOT MIX	\$_____	\$_____
2	100 TONS	COLD MIX	\$_____	\$_____
3	100 TONS	CRUSHED CALICHE	\$_____	\$_____
NOTE: Quantities are estimates only. BID TO BE AWARDED ON A UNIT PRICE ONLY MUST PROVIDE ORIGINAL AND A COPY				

All Addenda issued in respect to this project shall be considered official changes to the original bidding documents. It shall be the Bidder(s) responsibility to ensure that all Addenda have been received. Furthermore, bidders are advised that they must recognize, comply with, and attach a signed copy of each Addendum which shall be made part of their Bid Submittal. Bidder(s) signature on Addenda shall be interpreted as the vendor's "recognition and compliance to" official changes as outlined by the City of Edinburg and as such are made part of the original bidding documents.

Does the Company have an office located in Edinburg, Texas? Yes _____ No _____

Has the Company ever conducted business with the City of Edinburg? Yes _____ No _____

Respectfully submitted this _____ day of _____, 2022.

SIGNATURE:

TYPE/PRINT NAME:

TITLE:

COMPANY:

ADDRESS:

TELEPHONE NO.:

FAX NO.:

EMAIL:

STATE OF TEXAS	§	AGREEMENT BETWEEN THE CITY
COUNTY OF HIDALGO	§	OF EDINBURG AND ????? FOR
CITY OF EDINBURG	§	CONSTRUCTION MATERIALS

The City of Edinburg, Hidalgo County, Texas, a municipal corporation, (hereinafter “City”) and ????? (hereinafter “Vendor”), are the parties to this Agreement.

RECITALS

WHEREAS, the City desires to engage the Vendor for certain Materials and materials as described in Exhibit A, and

WHEREAS, Vendor has the professional knowledge, ability, equipment, and material needed by the City; and

NOW, THEREFORE, City and Vendor do mutually agree as follows:

SECTION I **EMPLOYMENT OF VENDOR**

A. City agrees to employ Vendor to provide services and materials (“Materials”) as stated in this agreement and **Exhibit “A”**. Upon receipt of Materials to the City’s satisfaction, the City agrees to pay Vendor as stated in this Agreement.

SECTION II **SERVICES OF VENDOR**

A. The Vendor agrees to provide Materials in connection therewith, under the terms as stated in Exhibit A; and its own proper cost and expense to furnish all Materials, insurance and other accessories and materials necessary to complete the said tasks in accordance with the conditions and prices stated in Exhibits “A & C” Scope of Work and Notice to Bidders and Bid Form pertaining to **Bid # ???** Construction Materials.

B. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party as an agent of the other for any purpose whatsoever. Except as otherwise specifically provided herein, neither party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

SECTION III **PAYMENT AND FEES**

City agrees to pay Vendor for Materials being contracted herein as follows:

A. Payment for materials shall be upon receipt of invoice by City. Invoice shall be submitted to City upon delivery and inspection of materials. The total compensation to Vendor during the contract performance for the unit price of **????** per ton for Type "D" Hotmix.

B. Vendor shall submit all invoices to City in the manner specified herein. Vendor and City acknowledge and agree that compensation paid by City to Vendor under this Agreement is based upon Vendor's estimated costs of providing the Materials required hereunder, including salaries and benefits of employees and subcontractors of Vendor. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Vendor and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

C. MARKET VOLATILITY AND UNIT PRICE ADJUSTMENTS

The City of Edinburg recognizes that during periods of national crisis and unstable economic conditions, unforeseen price increases might affect costs for goods and services contracted on an annual basis. The following procedure may be employed to mediate price volatility:

1) **Requesting Price Adjustment:** Upon written request of the Vendor to the City Purchasing Agent, the City may review evidence of prevailing industry-wide market conditions that warrant an adjustment in bid prices contained in the contract.

- A Vendor must tie any price change clause to an industry-wide or otherwise nationally recognized index, or some other form of verifiable document. Such written request must be accompanied by a certified copy of the supplier's advisory or notification to the vendor of the price changes,

- The Vendor must put the Purchasing Agent on the mailing lists for such Publications so that the Purchasing Agent can monitor said changes, such membership shall be at no cost to the City of Edinburg.

- The City of Edinburg's Purchasing Agent retains the right to determine whether or not such proposed price changes are in the best interest of the City of Edinburg,

- No price escalation will be authorized in excess of the amount of the increase referred to in the supplier's notice,

•The City of Edinburg may only grant a price increase if the evidence presented is deemed reliable. Should the City of Edinburg allow a price increase, the approved price change shall be honored for all orders received by the vendor or contractor after the effective date of such price change, Approved price changes are not applicable to orders already issued and in process at time of price change.

2) **Price Reduction:** Vendor shall notify the City of Edinburg at the time when the Vendor's costs for items and/or supplies reduce due to stabilization in the market at which time prices for items on this contract shall be reduced accordingly, Failure by the Vendor to notify the City of a decrease in costs for items and/or supplies for which the Vendor was granted a price adjustment, may result in immediate termination of this contract and the City of Edinburg shall not be obligated to pay the Vendor the difference between the contract price and the price adjustment

3) **Timeframe for Adjusted Price Increases:** Price increases are only valid for the quarter in which they me requested and approved. Prices shall return to the original contract price at the beginning of the following quarter unless a Vendor notifies the City of Edinburg in writing within ten (10) days of expiration of the quarter in which the price increase is in effect, that it desires to have the price increase continue or that the Vendor is requesting a different price increase for the following quarter. Such request must be supplemented with sufficient justification to demonstrate that the price increase remains necessary. The City of Edinburg Purchasing Department shall have sole discretion whether to grant the price increase extension. The City of Edinburg too, shall have discretion to unilaterally reduce, eliminate or extend a price adjustment to the Vendor at any time upon written notice from the City to the Vendor demonstrating justification for such reduction, elimination or extension of the price adjustment.

4) **Allowable Review Periods:** Price adjustment reviews may only be requested by the Vendor on a quarterly basis. However, the City may at its own discretion, conduct temporary price adjustment reviews at any time. The City's Purchasing Agent reserve the right to audit and or/examine any pertinent books, documents, papers, records or invoices relating directly to the contract transaction in question after reasonable notice and during normal business hours.

5) **Dollar Limit to Price Changes:** The total increase in contract price shall not exceed twenty-five percent (25%) of the original contract price during the contract term.

D. City is entitled to impose a set-off against payment based on any of the following:

a. Claims have been made against City based on Vendor's conduct in the performance or furnishing of Materials, or City has incurred costs, losses, or damages

resulting from Vendor's conduct in the performance or furnishing of Materials, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, and non-compliance with Laws and Regulations;

b. City has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;

c. Any Materials are defective, requiring correction or replacement;

d. City has been required to correct defective Materials or has accepted defective Materials;

e. Liens have been filed in connection with the Materials; or

f. Other items entitle City to a set-off against the payment amount.

E. If City imposes any set-off against payment, City will give Vendor immediate written notice stating the reasons for such action and the specific amount of the reduction, and promptly pay Vendor any amount remaining after deduction of the amount so withheld. City shall promptly pay Vendor the amount so withheld, or any adjustment thereto agreed to by City and Vendor, if Vendor remedies the reasons for such action. The reduction imposed will be binding on Vendor unless it duly submits written notice contesting the reduction within 30 days of receiving City's written notice.

F. All fees payable to Vendor under this Agreement shall be made in full, and without any withholding, deduction, or offset of any state or federal withholding taxes, FICA, SDI, or income taxes, nor shall the City be obligated to pay any of Vendor's employees' taxes. Vendor hereby covenants and agrees that it shall be solely responsible for all taxes, withholding, FICA, SDI, and other similar items (both employee and employer portions) with respect to all fees paid by the City under this Agreement, and agrees to indemnify and hold the City harmless with respect to such taxes and withholding.

G. Vendor and its employees shall not be eligible for, participate in, or be entitled to compensation in lieu of any insurance, benefit, retirement, or other plan or program provided by the City to its employees.

SECTION IV

TERM OF AGREEMENT

The Vendor shall provide materials as identified in Request for Bid No. 2020-52 and bid proposal submitted by Vendor attached as stated in Exhibit "A & C". Work shall be completed upon request of the City and during the course of the City's fiscal year 2020-2021, with the contract terminating on or about May 31, 2021. The Contract shall be awarded for a period of (1) one year from the date of award of contract. The Vendor shall be expected to hold their bid prices firm for the duration of the contract period.

The city of Edinburg reserves the right to extend the contract for an additional (1) one year if the unit prices remain firm and the performance of the Vendor is satisfactory.

A. City may terminate this Agreement upon giving 10 days' prior written notice thereof to Vendor. In addition, City shall have the right, upon written notice, to cancel this Agreement immediately if, in the City's sole judgment, the Materials rendered by Vendor breach or violate any of the provisions of this Agreement.

B. Upon termination or completion of this Agreement, City shall have no liability to Vendor except for charges for Materials provided by Vendor and accepted by the City prior to receipt of notice of termination or cancellation. The terms and conditions in this Agreement that by their sense and context are intended to survive the performance hereof by either or both parties hereunder shall so survive the termination, cancellation, or completion of performance of this Agreement.

SECTION V

MINIMUM INSURANCE REQUIREMENTS

Vendor shall be adequately insured and carry liability, workers compensation, automobile insurance and professional liability for injury to its employees and others incurring loss or injury as a result of the acts of Vendor or its employees. In accordance with City ordinances, Vendor shall be required to hold the following minimum insurance coverage throughout the duration of this agreement:

- A. Workers Compensation
In accordance with State statute.
- B. Comprehensive General Liability
 - 1. Bodily Injury
 - \$250,000 each person
 - \$500,000 each occurrence
 - 2. Property Damage
 - \$100,000 each occurrence
 - \$100,000 each aggregate

or \$500,000 combined single limits
- C. Comprehensive Auto Liability
 - 1. Bodily Injury
 - \$100,000 each person
 - \$500,000 each occurrence
 - 2. Property Damage
 - \$100,000 each occurrence
 - \$100,000 aggregate

or \$500,000 combined single limits

D. City's Protective Liability

1. Bodily Injury

\$250,000 each person
\$500,000 each occurrence

2. Property Damage

\$100,000 each occurrence
\$100,000 each aggregate

or \$500,000 combined single limits

E. Professional Liability

1. Professional

\$1,000,000 per claim and in the aggregate

F. Evidence of the above insurance coverage shall be required upon request and the City of Edinburg shall be listed as an additional insured.

G. If at any time and for any reason Vendor fails to provide, maintain, keep in force and effect, or deliver to the City proof of, any of the insurance required and such failure continues for ten (10) days after Notice thereof from City to Vendor, City may, but shall have no obligation to, procure single interest insurance for such risks covering City (or, if no more expensive, the insurance required by this Agreement), and Vendor shall, within ten (10) days following City's demand and Notice, pay and reimburse City therefor with interest at Prime Rate plus 2%, the Prime Rate being that in place on the date of Notice, from the date of payment by the City until repayment of City in full by Vendor.

H. With respect to each and every one of the insurance policies required to be obtained, kept, or maintained under the terms of this Agreement, on or before the date on which each such policy is required to be first obtained and at least fifteen (15) days before the expiration of any policy required hereunder previously obtained, Vendor shall deliver evidence reasonably acceptable to City showing that such insurance is in full force and effect.

I. Vendor hereby agrees as follows:

1. To punctually pay or cause to be paid all premiums and other sums payable under each insurance policy required to be obtained, kept, and maintained pursuant to this Lease;

2. To maintain in full force and effect the policies required to be carried to the extent so required to be carried pursuant to the terms hereof;

3. To ensure that all Casualty Proceeds are paid to the Party entitled to receive same;

4. Not, at any time, to take any action (or omit to take action) which action (or omission) would cause any insurance policies required to be obtained, kept, and maintained under this Lease to become void, voidable, unenforceable, suspended, or impaired in whole or in part or which would otherwise cause any sum paid out under any such insurance policy to become repayable in whole or in part; and

5. Promptly deliver Notice to City of any facts or circumstances of which it is aware which, if not disclosed to its insurers or re-insurers, is likely to affect adversely the nature or extent of the coverage to be provided under any insurance policy required hereunder.

SECTION VI

ALTERNATE DISPUTE RESOLUTION/NEUTRAL PARTY

A. If any dispute, controversy, or claim between or among the Parties arises under this Agreement or is related in any way to this Agreement or the relationship of the Parties hereunder (a "Dispute"), the Parties shall first attempt in good faith to settle and resolve such Dispute by meeting at a mutually agreeable time and place to discuss the Dispute within seven (7) days following the original written notice of any Dispute by the party making such a claim. The Parties shall seek to resolve the Dispute in writing within fourteen (14) days following the original written notice of any Dispute by the party making such a claim.

B. If a mutual resolution and settlement are not obtained at the meeting, the Parties shall participate in good faith in formal mediation, within thirty (30) days following the original written notice of any Dispute, with a mutually agreeable mediator at a mutually agreeable time and place. No settlement reached under this provision shall be binding on the Parties until reduced to a writing signed by a representative of Contractor and the City Manager. Unless the parties expressly agree otherwise, each party shall bear its own costs and legal and expert fees incurred in the mediation, and evenly share the costs of the mediator. If after proceeding in good faith the parties, with the assistance of a neutral mediator, do not resolve the dispute within forty-five (45) days following the original written notice of any Dispute, the parties may proceed in accordance with section below.

SECTION VII

CONTROLLING LAW, MANDATORY VENUE, AND FEES AND EXPENSES

A. After exhausting the procedures set forth above, either party may initiate litigation to resolve the dispute. The Law of the State of Texas shall control the Dispute. Venue is mandatory in in State courts located in Hidalgo County, Texas.

B. In the event of any litigation between the parties, the City shall be entitled to its attorneys' fees, costs, and expenses.

SECTION VIII

INDEMNIFICATION

A. To the maximum extent allowed by law, Vendor agrees to and shall indemnify, hold harmless, and defend City, its officers, agents, and employees from any and all claims, losses, causes of action and damages, suits and liability of every kind, including all expenses of litigation, court costs, and attorney's fees arising out of or directly connected with the negligent or willful conduct of Vendor, its agents, officers and employees.

B. Vendor agrees to assist City in defense of claims or litigation brought against the City related to this project, including but not limited to providing written witness statements, documents, and witness testimony upon demand.

SECTION IX

LIMITATION OF LIABILITY

A. Vendor agrees to limit the City's liability arising from City's acts, errors, or omissions such that the total liability of City shall not exceed Vendor's total fees paid by the City to Vendor for the Materials rendered pursuant to the Task Order which is the subject matter of the claim. Vendor agrees that City will not be liable for any indirect, incidental, special, or consequential punitive or multiple damages, including without limitation any damages resulting from loss of use, loss of business, loss of revenue, loss of profits, or loss of data, arising in connection with this Agreement, Vendor's performance of Materials, or of any other obligations relating to this Agreement, even if City has been advised of the possibility of such damages. The foregoing limitation of liability shall apply to the maximum extent allowed by law for limitation of City's liability, regardless of the cause of action under which such damages are sought.

SECTION X

AGREEMENT CONSTRUCTION

A. The headings of the Sections contained in this Agreement are for reference purposes only, and shall not affect the meaning or interpretation of this Agreement. The parties have been advised by counsel in connection with this Agreement. This Agreement shall be construed and interpreted in accordance with the plain meaning of its language, and not for or against either party, and as a whole, giving effect to all of the terms, conditions, and provisions of this Agreement. Nothing contained in this Agreement shall be deemed to confer any right or benefit on any person who is not a party to this Agreement.

SECTION XI

NO PENDING LITIGATION

A. Vendor represents that there is no action, proceeding, inquiry, or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending to the best knowledge of Vendor threatened against or affecting the Vendor or any subsidiaries of the Vendor, questioning the validity or any action taken or to be taken by the Vendor in connection with the execution, delivery, and performance by the Vendor of this Agreement to which the Vendor may be a party or seeking to prohibit, restrain, or enjoin the execution, delivery, or performance by the Vendor hereof or thereof, where in an unfavorable decision, ruling, or finding (i) would adversely effect the validity or enforceability of, or the authority or ability of the Vendor to perform, its obligations under this Agreement to which the Vendor may be party or (ii) would have an adverse effect on the consolidated financial condition or results of operations of the Vendor or on the ability of the Vendor to conduct its business as presently conducted or as proposed or contemplated to be conducted.

SECTION XII **SEVERABILITY**

A. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION XIII **NOTICE**

A. Any notices to be given under this Agreement shall be in writing, (i) sent by registered or certified mail, postage prepaid, return receipt requested or (ii) sent by nationally recognized overnight courier (e.g. Federal Express) with electronic tracking, and addressed to such party as follows:

(a) Notices to the City:

City of Edinburg
415 W. University Drive
Edinburg, Texas 78539
Attn.: City Manager

With a copy to:

City of Edinburg
415 W. University Drive
Edinburg, Texas 78539
Attn.: City Attorney

(b) Notices to Vendor:

Valley Caliche, Inc.

Attn: Cory Thompson
Vice-President
PO Box 1086
Mission, Texas 78573

B. Such Notices shall be deemed delivered (i) in the case of U.S. mail in the manner provided above, three (3) business days after posting or (ii) if sent by nationally recognized overnight courier with electronic tracking service, the next business day after depositing same with such overnight courier before the overnight deadline and if deposited with such courier after such deadline, then the next succeeding business day.

SECTION XIV **NON-APPROPRIATIONS**

A. Notwithstanding anything in the Agreement to the contrary, any and all payments which the City is required to make under this Agreement shall be subject to annual appropriation or other availability of funds, as certified by the Director of Finance.

B. If the City cannot appropriate sufficient funding, then either party has the right to terminate the Agreement by providing ten (10) days' written notice to the other party.

SECTION XV **SUCCESSORS AND ASSIGNS**

City and Vendor each bind themselves, their partners, successors, executors, administrators, and assigns to the other party of the Agreement in respect to all covenants of this Agreement. Neither City nor Vendor shall assign, sublet, or transfer interest in this Agreement without written consent of the other.

SECTION XVI **CONFLICT OF TERMS**

If any of the terms of this Agreement conflict in any respect with any of the terms of the attached Exhibits, the terms of this Agreement shall be controlling.

SECTION XVII **NO WAIVERS OR ACCORD AND SATISFACTION**

A. This Agreement may be amended only by written instrument signed by all parties.

B. No failure or delay of the City, in any one or more instances (i) in exercising any power, right, or remedy under this Agreement or (ii) in insisting upon the strict performance by Vendor of its covenants, obligations, or agreements under this Agreement, shall operate as a waiver, discharge, or invalidation thereof, nor shall any

single or partial exercise of any such right, power, or remedy or insistence on strict performance, or any abandonment or discontinuance of steps to enforce such a right, power, or remedy or to enforce strict performance, preclude any other or future exercise thereof or insistence thereupon or the exercise of any other right, power, or remedy. The covenants, obligations, and agreements of Vendor and the rights and remedies of the City upon a default shall continue and remain in full force and effect with respect to any subsequent breach, act, or omission.

C. Without limiting the generality of the above, the receipt by City of any Materials with knowledge of a breach by Vendor of any covenant, obligation, or agreement under this Agreement shall not be deemed or construed to be a waiver of such breach. No acceptance of Materials or payment to Vendor shall be deemed to be other than on account of the earliest installment of the amounts due under this Agreement, nor shall any endorsement or statement on any check, or any letter accompanying any check, wire transfer or other payment, be deemed an accord and satisfaction. City may accept Materials or make payment without prejudice to its rights under this Agreement or pursue any remedy provided in this Agreement or provided otherwise by law or equity.

EXECUTED by the parties in triplicate originals on this _____ day of _____, 2020.

CITY OF EDINBURG:

BY: _____
Mayra Ayala ,Interim City Manager
City of Edinburg
415 W. University Dr.
P.O. Box 1079
Edinburg, Texas 78540
Phone: (956) 388-8207
Fax: (956) 383-7111

ATTEST:

BY: _____
_____, Interim City Secretary

APPROVED AS TO FORM:

Omar Ochoa Law Firm, P.C.

BY: _____
Omar Ochoa
City Attorney

VALLEY CALICHE PRODUCTS, INC.

BY: _____

Phone:
Fax:
Mobile:
Email:

Attachments: Exhibit "A" Scope of Work (Construction Materials)
Exhibit "B" Insurance
Exhibit "C" Bid 2020-52 Notice to Bidders and Bid Form

EXHIBIT “A” FOR AGREEMENT BETWEEN THE CITY OF EDINBURG AND VALLEY CALICHE PRODUCTS, INC. FOR CONSTRUCTION MATERIALS

Scope of Work (Construction Materials)

TYPE “D” HOT MIX

1. Shall meet the Texas Department of Transportation (TXDOT) specifications for Type “D” Hot Mix Asphalt.
2. Hot Mix will be picked up at the plant, as needed, by the City of Edinburg trucks or a private trucking company.
3. Hot Mix must be available within a 25-mile radius of the City of Edinburg.
4. Hot Mix must be available with at least a 24-hour notice.

CONTRACT PRICES

Item	EST. QTY	Description	Unit Price	Extended Price
1	20,000	TYPE “D” HOTMIX	\$51.71	N/A

**The contract is being awarded based on the UNIT PRICE, and quantities are only an estimate, subject to increase or decrease to accommodate changes in project scope, schedules, locations, and funding.*

**EXHIBIT “B” FOR AGREEMENT BETWEEN THE CITY OF EDINBURG AND VALLEY
CALICHE PRODUCTS, INC. FOR CONSTRUCTION MATERIALS
(Certificate of Insurance)**

**EXHIBIT "C" FOR AGREEMENT BETWEEN THE CITY OF EDINBURG AND VALLEY
CALICHE PRODUCTS, INC. FOR CONSTRUCTION MATERIALS
(Notice to Bidders & Bidders Form)**