

March 20, 2013

## **NOTICE TO BIDDERS**

Notice is hereby given that the City of Sweeny will receive sealed bids for the following items:

### **CLEARING AND REMOVING DEBRIS RELATED TO 2013 HURRICANE SEASON AND OTHER NATURAL DISASTERS**

Bids will be received until 2:00 P.M., WEDNESDAY, APRIL 10, 2013, at which time they will be publicly opened and read. The bid award will be considered and/or made at the April 16, 2013 regularly scheduled meeting of the City of Sweeny City Council. Bid information and specifications may be obtained from the City of Sweeny at City Hall.

All bids will be marked "SEALED BID - CLEARING AND REMOVING DEBRIS RELATED TO 2013 HURRICANE SEASON AND OTHER NATURAL DISASTERS, on the outside of a sealed envelope and submitted to the City of Sweeny, 102 W. Ashley Wilson Road, PO Box 248, Sweeny, Texas, 77480.

The City reserves the right to reject any and/or all bids.

Cindy King, City Manager  
City of Sweeny  
PH: 979-548-3321

**BID INVITATION**

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## **1.00 Standard Terms and Conditions**

The City of Sweeny, Texas desires to enter into a storm debris removal contract with up to two reliable firm(s) to furnish services for "Clearing And Removing Vegetative and other Debris Related to 2013 Hurricane Season and other Natural Disasters" in accordance with the following specifications.

The contract period shall begin once the contract is signed and shall continue for a period of one (1) year. However, the work shall not begin until a notice to proceed has been given. The contract may be used multiple times throughout the contract period or may not be used at all. The vegetative and other debris removal contract may be used for hurricanes, tropical storms, or any other event that causes vegetative or other debris to occur in the City of Sweeny.

Deviations from these minimum specifications are only acceptable when they tend to exceed specifications stated, or make the product bid stronger and more reliable. The apparent silence of these specifications as to any detail or the apparent omission from them of a detailed description concerning any point shall be regarded as meaning that only the best commercial practice shall prevail and that only material and workmanship of the first quality are acceptable. All interpretations of these specifications shall be made upon the basis of this statement.

It is understood that the City Council of the City of Sweeny reserves the right to reject any or all bids for any or all products and/or services covered in this bid request and to waive informalities of defects in such bids.

The contract is attached. All terms, conditions, and scope of work are included in the contract. Adherence to these specifications shall be required except where expressly allowed. Any deviation not pre-approved by the City found to be non-compliant with these minimum specifications shall be considered as grounds for release from contract.

### **1.01 Bid Instructions**

Each part of the bid package is broken into sections, and subsections. In the event a bidder cannot meet a specification, please state the exceptions for consideration on the SPECIFICATION COMPLIANCE CERTIFICATION FORM and furnish reason for non-compliance and specify alternatives offered, and why alternative has been selected.

Bidders should carefully examine all terms, conditions, specifications and related documents. Should a bidder find discrepancies in or omissions from the specifications or related documents, or should there be doubt as to their meaning, the City should be notified immediately for clarification prior to submitting the bid. In the event of any conflict between the terms and provisions of these requirements and the specifications, the specifications shall govern. In the event of any conflict of interpretation of any part of this overall document, the City of Sweeny's interpretation shall govern.

All bids are per cubic yard.

A. Bids shall be submitted to the following address:

City of Sweeny  
102 W. Ashley Wilson Road  
PO Box 248  
Sweeny, Texas 77480  
Sealed Bid – CLEARING AND REMOVING DEBRIS RELATED TO 2013 HURRICANE SEASON AND OTHER NATURAL DISASTERS.

B. The Bidder must complete and return to the Purchasing Department, attached to this

specification the "Bid Compliance Certification" form. **NO BID WILL BE ACCEPTED WITHOUT A SIGNED CERTIFICATION.**

- C. **One (1)** signed original.
- D. Proof of Insurance should be attached as a part of the bid.
- E. **Three** commercial references (preferably municipalities or other accounts of such size) must be provided.
- F. To obtain results, copies of the bid sheets, specifications, bidding documents or if you have other questions, please contact Sweeny City Hall or view information at [www.ci.sweeny.tx.us](http://www.ci.sweeny.tx.us).

### **1.02 Funding**

Funds for payment have been set aside in the Disaster Contingency Fund, approved by the City Council for natural or man made disasters. All payments made from this or other funds will be approved by the City Council.

### **1.03 Late Bids**

Bids received in the City Hall after the submission deadline will be considered void and unacceptable. The City of Sweeny is not responsible for lateness or non-delivery of mail, carrier, etc., and the date/time stamp in the Sweeny City Hall shall be the official time of receipt.

### **1.04 Altering Bids**

Bids cannot be altered or amended after submission deadline. Any alterations or erasures made before opening time must be initialed by the signer of the bid, guaranteeing authenticity.

### **1.05 Withdrawal of Bids**

Any bid may be withdrawn prior to the scheduling time for opening. Notice to withdraw the bid must be in writing and submitted to the City prior to the scheduled time for opening bids. Any bid withdrawal notice which is received after the deadline for receiving bids shall not be considered.

### **1.06 Sales Tax**

The City of Sweeny is exempt by law from payment of Texas Sales Tax and Federal Excise Tax. **Do not include tax in bid.**

### **1.07 Pricing**

Bidders are instructed to bid the total unit price on the item(s) specified where indicated on Tabulation sheet (p. 9). Prices for all goods and/or services shall be firm for the duration of this contract and shall be stated on the bid sheets. **Prices shall be all inclusive.** No price changes, additions or subsequent qualifications will be honored during the course of the contract. Additional changes not shown on the bid will not be honored. All prices must be in ink.

### **1.08 Bid Award**

If a contract is awarded, it will be awarded to up to two of the lowest responsible bidders meeting or exceeding the terms, conditions, and specifications of the bid. The City has the right to award a contract upon the conditions, terms, and specifications contained in a bid submitted to the City for a period of up to one hundred twenty (120) days following the date specified for the opening of bids. In awarding a contract, the City may waive minor technicalities and informalities in the bid process and bids received if they are not material to or alter any of the conditions, terms, or specifications contained in the bid. In determining the lowest responsible bidder, the City may

consider:

- A. Whether the bidder has adequate financial resources to comply with the contract awarded;
- B. Whether the bidder has a satisfactory record of performance with the City or other entities; and
- C. Any other factors that could be material to the bidder's ability to comply with the contract.

**1.09 Contract**

Contracts shall be executed upon award of the bid. No invoices will be paid prior to acceptance of contract by City of Sweeny. No different or additional terms will become a part of the contract.

**1.01 Rejection of Bids**

The City Council may choose to reject all bids and not award any contract. If the City Council does not award a contract within one hundred twenty (120) days following the date specified for the opening of bids, all bids are deemed to be rejected by the City Council.

**1.11 Purchase Order**

A purchase order shall be provided by the City of Sweeny to the successful bidder. The purchase order number must appear on all invoices, packing lists and all related correspondence. The City of Sweeny will not be responsible for any orders placed and/or delivered without a valid Purchase Order number.

**1.12 References**

The City of Sweeny requests bidder to supply with this bid, a list of three (3) references where like products or services have been supplied by their firm. Include name of firm, address, telephone number and contact name.

**1.13 Conflict of Interest**

No public official shall have interest in this contract except in accordance with Vernon's Texas Codes Annotated, Local Government Code Title 5, Subtitle C, Chapter 171.

**1.14 Ethics**

The bidder shall not offer or accept gifts or anything of value or enter into any business arrangement with any employee, official or agent of the City of Sweeny. More than one proposal on any one contract from a firm or individual under different names shall be grounds for rejection of all proposals in which the firm or individual has an interest. One or all proposals will be rejected if there is any reason to believe that collusion exists between bidders.

**1.15 Contractor's Liability**

The contractor shall be responsible for all damage or injury to property of any character during the execution of the work, resulting from any act, omission, neglect, or misconduct in his manner or method of executing the work, or at any time due to defective work or materials, and said responsibility will not be released until the project shall have been completed and accepted.

When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the work, or in consequence of the non-execution thereof by the contractor, he shall restore, at his own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise restoring as he may be directed, or he shall make

good such damage or injury in an acceptable manner.

**1.16 Descriptions**

Specifications may reference any catalog, brand name or manufacturer's model numbers. It is the intent of the City of Sweeny to be **DESCRIPTIVE - NOT RESTRICTIVE** and to establish a desired quality level of merchandise or to meet a pre-established standard of quality. Bidders may offer items of equal quality; and the burden of proof of such quality rests with them. The City of Sweeny shall act as sole judge in determining quality and acceptability of products offered.

**1.17 Addenda**

Any interpretations, corrections or changes to this Bid and Specifications will be made by addenda. Sole issuing authority of addenda shall be vested in the City of Sweeny City Council. Addenda will be mailed to all who are known to have received a copy of the Bid. Bidders shall acknowledge receipt of all addenda.

**1.18 Bids Must Comply**

Bids must comply with all federal, state, county and local laws concerning this type of good or service.

**1.19 Documentation**

Bidder shall provide with this bid response, all documentation required by this Bid. Failure to provide this information may result in rejection of bid.

**1.20 Indemnification**

The bidder shall indemnify, defend, and hold the City, its officers, agents, and employees, harmless from any claim, loss, damage, suit, and liability of every kind, including expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, or for damage to any property, arising from or caused by any act or omission of bidder, its officers, employees, agents, or subcontractors, in performing its obligation under this Contract.

**1.21 Termination of Contract**

The City of Sweeny reserves the right to terminate the contract immediately in the event the successful bidder:

- A. Fails to meet delivery schedules;
- B. Defaults in the payment of any fees;
- C. Otherwise fails to perform in accordance with this contract;
- D. Becomes insolvent and/or files for protection under the bankruptcy laws.

Such termination is in addition to and not in lieu of any other remedies which City of Sweeny may have in law or equity. Bidder, in submitting this bid, agrees that City of Sweeny shall not be liable to prosecution for damages in the event that the City declares the bidder in default.

**1.22 Notice**

Any notice provided by this bid or required by law to be given to the successful bidder by City of Sweeny shall be deemed to have been given and received on the next business day after such written notice has been deposited in the U.S. mail in Sweeny, Texas, by Registered or Certified Mail with sufficient postage affixed thereto, addressed to the successful bidder at the address so provided; provided this shall not prevent the giving of actual notice in any other manner.

**1.23 Invoices**

Invoices submitted for payment shall be addressed to City of Sweeny, Accounts Payable and shall reference the City of Sweeny approved purchase order number. Periodic payments will be made

within 30 days of invoice date or satisfactory delivery of the product or service, whichever is later, provided that all other requirements as detailed in the contract have been fulfilled.

**1.24 Law Governing and Venue**

This Contract shall be governed by the law of the State of Texas and no lawsuit shall be prosecuted on this Contract except in a court of competent jurisdiction located in Brazoria County, Texas.

**1.25 Assignment**

The successful bidder shall not sell, assign, transfer or convey this contract, in whole or in part, without the prior written consent of the City of Sweeny.

**1.26 Silence of Specification**

The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

**1.27 Warranty**

Successful bidder shall warrant that all items or services shall conform to the proposed specifications and all warranties as in the Uniform Commercial Code and be free from all defects in material, workmanship and title.

**1.28 Drug and Alcohol Testing**

The Contractor shall provide a drug and alcohol testing policy with bid, outlining the contractor's drug testing procedures. The expense of the drug testing shall be that of the contractor. When reasonable cause exists to believe that a contractor's employee is violating the provisions of the City's Substance Abuse Guidelines, the City reserves the right to inspect all contractor work areas, which include any personal items brought onto city premises including personal vehicles. Any violation of the provisions of the City Substance Abuse Guidelines by a contractor or contract employee will result in the immediate removal from the work site.

**1.29 Employee Background Checks**

The Contractor shall provide the name and social security number of all employees entering City Facilities. The City shall have the right to perform criminal background checks on all contractor employees entering city facilities for security clearance. The City reserves the right to not allow a contract employee that has not been approved for security clearance to work in city facilities.

**1.30 Contractor Past Performance**

Contractor shall not have significant performance deficiencies under City contracts in the last five (5) years, including but not limited to contract termination for cause, failure to maintain certain insurance requirements, failure to meet minimum contract requirements, or outstanding financial obligations to the City.

**1.31 Contractor Experience**

Contractor shall have provided services similar in scope to the services required in this specification on a continuing basis over a recent minimum three (3) year period. The bidder shall submit with this bid, detailed relevant company experience.

## 2.00 CONTRACTOR REFERENCES

Customer Name:	
Contact:	Title
Address:	Phone No.:
Scope of Work:	Length of Service:

Customer Name:	
Contact:	Title
Address:	Phone No.:
Scope of Work:	Length of Service:

Customer Name:	
Contact:	Title
Address:	Phone No.:
Scope of Work:	Length of Service:

### 3.00 BID PROPOSAL

We, the undersigned, have completely read the specification for:

#### **CLEARING AND REMOVING DEBRIS RELATED TO 2013 HURRICANE SEASON**

\$ \_\_\_\_\_ per cubic yard loaded and hauled to landfill

\$ \_\_\_\_\_ per cubic yard hauled only to landfill

\$ \_\_\_\_\_ per cubic yard loaded and hauled to burn site, less than 5 miles

\$ \_\_\_\_\_ per cubic yard loaded and hauled to a burn site more than 5 miles, less than 10 miles

\$ \_\_\_\_\_ per cubic yard loaded and hauled to a burn site more than 10 miles

Any burn site will be TCEQ approved.

This bid price includes all equipment, labor, supervision and material as set forth in the attached specification packet and instructions. I have read and agree to comply with all of these requirements.

Date: \_\_\_\_\_

**BIDDER:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**PHONE:** \_\_\_\_\_

\_\_\_\_\_  
**AUTHORIZED REPRESENTATIVE** **TITLE**

\_\_\_\_\_  
**AUTHORIZED SIGNATURE** **DATE**

**CERTIFICATION OF AUTHORIZED REPRESENTATIVE:**

I hereby certify that I possess the authority to submit a bid on behalf of the firm I represent and by my signature hereon I certify that the services/unit(s) I propose to furnish will meet or exceed every specification contained herein, and that I have read each and every page of the Standard Terms and Conditions and Technical Specifications and Bid Sheets. Further, I agree that if my bid is accepted, I shall perform as required in these contract documents. I am aware that, once accepted by City of Sweeny, my bid becomes a binding contract in accordance with the provisions herein of the aforementioned contract documents, and that I will not be permitted to attempt enforcement of any other contract or contract provisions.

\_\_\_\_\_  
Authorized Representative



protection of City. The Performance Bond shall remain in force one year after Final Completion of the Work.

4.3 A Payment Bond in an amount equal to the full Contract Price solely for the protection of the claimants supplying labor or materials to CONTRACTOR or his Subcontractors in the prosecution of the Work provided for in such Contract. The Payment Bond shall remain in effect for at least one year after Final Completion of the Work.

4.4 Each bond shall include a provision allowing the prevailing party in a suit on such bond to recover as a part of this judgment such reasonable attorney's fees as may be fixed by a judge of the court.

4.5 Each such bond shall be executed by a surety company or companies holding a certificate of authority to transact surety business in the State of Texas. The bonds shall be made payable and acceptable to City. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Texas or whose principal office is maintained in this State, and the bonds shall have attached thereto a certified copy of the Power of Attorney of the signing official.

## 5. **MISCELLANEOUS PROVISIONS**

5.1 Venue for any lawsuit involving this agreement shall be in Brazoria County, Texas.

5.2 Choice of Law: This contract is governed by the laws of the State of Texas.

5.3 Entire Contract: This agreement constitutes the entire agreement between City and CONTRACTOR, and all negotiations and all understandings between the Parties are merged herein. The terms and conditions of this contract specifically replace and supersede any prior discussions, terms, documents, correspondence, conversations, or other written or oral understanding not contained herein or specifically adopted by reference.

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

5.5 Survival: Any provisions which by their terms survive the termination of this contract shall bind its legal representatives, heirs, and assigns as set forth herein.

5.6 Assignment: CONTRACTOR shall not assign, transfer, or encumber any right or interest in this contract, in whole or in part, without prior written approval of City.

5.7 Notices: Each notice to City shall be sent to the designated City Representative and each notice to CONTRACTOR shall be sent to the designated Representative as outlined in this Agreement. Each formal notice required by the terms of this contract shall be in writing and sent by facsimile, telex, courier or by registered or certified mail.

5.8 Benefits: This contract shall bind, and the benefits thereof shall inure to the

respective parties hereto, their heirs, legal representative, executors, administrators, successors, and assigns.

5.9 Amendments: This contract can be supplemented and/or amended only by a dated written document executed by both parties.

5.10 Gender: Words of any gender used in this contract shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

5.11 Exhibits: All exhibits described in this contract are attached hereto and incorporated herein by reference for all purposes. Exhibits attached this contract are:

Exhibit A - Terms and Conditions

Exhibit B – Scope of Work

Exhibit C – Conflicts of Interest Form

5.12 Multiple Copies: This contract may be executed in multiple counterparts each of which constitutes an original.

5.13 Article and Section Headings: The Article and Section headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this contract.

5.14 Misspelled Words: Misspelling of one or more words in this contract shall not void this contract. Such misspelled words shall be read so as to have the meaning apparently intended by the parties.

**CITY OF SWEENY, TEXAS**

BY: \_\_\_\_\_  
Kenneth Lott, Mayor

ATTEST:

\_\_\_\_\_  
Reatta Minschew, City Secretary

Date Signed: \_\_\_\_\_

APPROVED AS TO FORM & LEGALITY:

\_\_\_\_\_  
R. C. Stevenson, City Attorney

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

# EXHIBIT A

## TERMS AND CONDITIONS

1. **City representative.** The **City Manager** for the City, and such other and additional persons as City may designate, shall be City's representative(s) and shall act for City in all matters concerning the project, including transmittal of instructions, receiving information, and interpreting and defining City policies and decisions with respect to the materials, equipment, elements, and systems of the project. City shall not be bound by the actions or representations of any other employee(s) or agent(s) of City.
  
2. **Submitting invoices.**
  - (a) In the event invoices are submitted or otherwise used pursuant to this contract or project, the billing party shall present invoices in the following form and content:
    - 1) Each invoice must have a billing number which reflects in sequence the number of invoices that have been previously submitted on the contract or project;
    - 2) Invoices shall be submitted each Monday for the previous week.
    - 3) Such information required herein must be submitted only on an invoice and not in any other non-invoice form or document.
    - 4) Each invoice will show the following:
      - i “Total of Work Completed to Date”;
      - ii “Total Fee Previously Billed” and,
      - iii “Invoice Total,” which is calculated by subtracting (ii) from (i).
  - (b) The invoice requirements stated herein shall not be read to disallow or exclude other information that may be otherwise required or requested by City.
  
3. **Infrastructure damage.** CONTRACTOR shall restore and or repair, at the CONTRACTOR’s cost, all damaged infrastructure such as broken curbs and crushed sidewalks back to its pre-existing condition.
  
4. **Compliance with Laws.** CONTRACTOR shall comply with all applicable laws, ordinances, and codes of the state, federal, and local governments and shall commit no trespass on any public or private property in performing any of the work embraced by this contract.
  
5. **Subcontracting.** As per the Robert T. Stafford Act and FEMA regulations, CONTRACTOR will be able to use his/her own subcontractor resources to meet the obligations of the contract. It is expected that the CONTRACTOR will utilize at least 30% of subcontractors located within the disaster areas, including, but not limited to,

procuring supplies and equipment, awarding subcontracts, and employing workmen. CONTRACTOR shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons, whether directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it. CONTRACTOR shall insert in each subcontract appropriate provisions requiring compliance with the labor standards provisions of this contract.

**6. Assignment.** CONTRACTOR shall not assign, sublet, or transfer its interests in this contract without the prior written approval of City; provided, however, that claims for money due, or to become due, CONTRACTOR from City under this contract may be assigned to a bank, trust company, other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to City.

**7. Successors.** City and CONTRACTOR each binds itself, its successors, executors, administrators, and assigns, to the other party in respect to all covenants of this contract, unless otherwise accepted herein.

**8. No interests by parties.**

(a) Members of City. No member of the governing body of City, and no other officer, employee, or agent of City who exercises any functions or responsibility in connection with the carrying out of the project to which this contract pertains, shall have any personal interest, direct or indirect, in this contract.

(b) Other local public officials. No member of the governing body of the locality in which the project to which this contract pertains is located and no other public official of such locality who exercises any functions or responsibilities in the review or approval of the carrying out of the project shall have any personal interest, direct or indirect, in this contract.

(c) Certain federal officials. No members of, or delegate to, the Congress of the United States and no resident commissioner shall be admitted to any share or part of this contract or to any benefit to arise therefrom.

**9. Insurance.**

- (a) Types; amounts. CONTRACTOR shall provide continuous enforcement of adequate insurance covering all employees employed by CONTRACTOR and shall keep in full force and effect during the term of this contract insurance in the following types and minimum amounts:

<b><u>TYPE</u></b>	<b><u>AMOUNT</u></b>
Comprehensive, General Liability, including contractual liability, premises/operations, and personal injury liability	<u>Bodily Injury:</u> \$1,000,000 per occurrence minimum
	<u>Property Damage:</u> \$1,000,000 per occurrence minimum
Workers' Compensation	Statutory
Comprehensive Automobile Liability, including owned, unowned and hired car coverage	<u>Bodily Injury:</u> \$1,000,000 per occurrence minimum
	<u>Property Damage:</u> \$1,000,000 per occurrence minimum

- (b) All parties to this contract understand and agree that the inability of CONTRACTOR to obtain such coverage, after having exercised reasonable diligence and its good faith effort to do so, will not result in a violation or breach of this contract, but shall result in CONTRACTOR's obligation to indemnify City as provided in the indemnification provision contained herein.
- (c) All insurance policies, except workers' compensation, shall name City and its officers, officials, and employees as additional insured if otherwise allowed by law. All insurance policies shall be subject to the examination and approval of City for adequacy as to form and content, form of protection, and insurance company. CONTRACTOR shall furnish to the City Manager of City certificates or copies of the policies, plainly and clearly evidencing such insurance, within ten (10) days after execution of the contract and thereafter new certificates or policies prior to the expiration date of any prior certificate or policy.
- (d) CONTRACTOR understands that it is its sole responsibility to provide this necessary information and that failure to timely comply with the requirements of this section shall

be a cause for termination of the contract or for the application of the indemnity provision contained herein should City choose not to terminate the contract.

- (e) CONTRACTOR shall maintain said insurance with insurance underwriters authorized to do business in the State of Texas satisfactory to City. All policies or certificates required herein shall also state that such insurance shall not be canceled or changed in limits by endorsement without a minimum of ten (10) days' advance notice in writing to City.
- (f) If requested by the City, CONTRACTOR shall provide the City with information and documents on the insurance maintained by any subcontractors to CONTRACTOR.

**10. Indemnity.**

**IF CONTRACTOR FAILS TO PROVIDE INSURANCE IN ACCORDANCE WITH THE INSURANCE PROVISIONS OF THIS CONTRACT, CONTRACTOR AGREES TO ASSUME FULL RESPONSIBILITY AND LIABILITY FOR THE WORK PERFORMED UNDER THIS CONTRACT AND HEREBY AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY OF SWEENY, ITS OFFICERS, AND EMPLOYEES FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER ARISING FROM THE PERSONAL INJURY OR DEATH OF AN OFFICER, AGENT, OR EMPLOYEE OF CONTRACTOR CAUSED BY OR ALLEGED TO BE CAUSED BY, OR ARISING OUT OF OR ALLEGED TO ARISE OUT OF, THE NEGLIGENCE OF CONTRACTOR OR AN OFFICER, AGENT, OR EMPLOYEE OF CONTRACTOR IN CONNECTION WITH THIS CONTRACT OR THE ACTIVITIES TO BE PERFORMED HEREUNDER. CONTRACTOR SHALL FURTHER INDEMNIFY AND HOLD HARMLESS THE CITY OF SWEENY, ITS OFFICERS, AND EMPLOYEES FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER ARISING FROM THE ACTIONS OF CITY OF SWEENY OR AGENTS OR EMPLOYEES OF THE CITY OF SWEENY CAUSED BY OR ALLEGED TO BE CAUSED BY, OR ARISING OUT OF OR ALLEGED TO ARISE OUT OF, THE NEGLIGENCE OF THE CITY OF SWEENY OR AN OFFICER, AGENT, OR EMPLOYEE OF THE CITY OF SWEENY IN CONNECTION WITH THIS CONTRACT OR THE ACTIVITIES TO BE PERFORMED HEREUNDER.**

**11. Waiver of Subrogation.** CONTRACTOR further agrees to waive any and all claims and suits covered by this indemnity provision and agrees that any insurance carrier involved shall not be entitled to subrogation under any circumstances against the city, its officers, agents, or employees. **Workers' compensation and employer's liability insurance policies will provide a waiver of subrogation in favor of the City.**

**12. CONTRACTOR as independent contractor.** In the performance of the professional services required by this contract, CONTRACTOR is and shall be deemed to be an "independent contractor," not an agent, servant, or employee of City. Likewise, employees

of CONTRACTOR are not the agents, servants, or employees of City. It is mutually agreed that nothing contained herein shall be deemed or construed to constitute a partnership or joint venture between CONTRACTOR and City.

**13. Tax Certification.** CONTRACTOR hereby certifies that it is not delinquent in the payment of any taxes owed to City or that it will pay any taxes owed to City so that such taxes will not become delinquent. If this certification is subsequently determined to be false, such false certification shall constitute grounds for termination of the contract at the option of City.

**14. Offset of Other Debts Against City.** CONTRACTOR agrees that City is entitled to counterclaim and offset against any debt, claim, demand, or account owed by City to CONTRACTOR, pursuant to this contract, for any debt owed to City, other than for arrearage of taxes, which are governed by Section 20 of this contract. City may withhold from payment under this contract an amount equal to the total amount of debts owed to City by CONTRACTOR. City may apply the amount withheld to the debts owed to City by CONTRACTOR until said debts are paid in full.

**15. Termination of Contract.**

- (a) For cause. If, through any cause, CONTRACTOR shall fail to fulfill in timely and proper manner its obligations under this contract, or if CONTRACTOR shall violate any of the covenants, agreements, or stipulations of this contract, City shall thereupon have the right to terminate this contract by giving written notice to CONTRACTOR of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination.
- (b) Offset for damages. Notwithstanding the above, CONTRACTOR shall not be relieved of liability to City for damages sustained by City by virtue of any breach to the contract by CONTRACTOR, and City may withhold any payments to CONTRACTOR for the purpose of offset until such time as the exact amount of damage due to City from CONTRACTOR is determined.
- (c) For convenience of City. City may terminate this contract at any time and for any or no reason by a notice in writing from City to CONTRACTOR. Written notice shall be deemed to have been duly served if delivered in person, or sent by registered or certified mail, to the last business address of CONTRACTOR known to City.
- (d) Compensation for services performed. If the contract is terminated by City as provided herein, CONTRACTOR shall be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of CONTRACTOR covered by this contract, less payments of compensation previously made; provided, however, that if less than sixty percent (60%) of the services covered by the contract have been performed upon the effective date of such termination, CONTRACTOR shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under the contract) incurred by CONTRACTOR during the contract period which are directly attributable to

the uncompleted portion of the services covered by this contract. If this contract is terminated due to the fault of CONTRACTOR, paragraph (a), hereof relative to termination, shall apply.

- (e) In the event this contract is terminated for any reason, all finished or unfinished documents, drawings, data, studies, and reports prepared by CONTRACTOR under this contract or prepared by any subcontractor of CONTRACTOR shall be the sole property of City, but CONTRACTOR shall be entitled to receive equitable compensation for any satisfactory work completed on such documents, drawings, data, studies, and reports as provided in (d).

# **EXHIBIT B**

## **SCOPE OF WORK**

### **1. Overview**

- 1.1 Under this contract, work shall consist of clearing and removing any and all “eligible” debris as defined by the Federal Emergency Management Agency (FEMA) Publication 325, all applicable State and Federal Disaster Specific Guidelines and policies, and as directed by CITY. Work will include 1) examining debris to determine whether or not debris is eligible; 2) loading the debris; and 3) hauling debris to approved Temporary Debris Storage and Reduction Sites (TDSRS), TCEQ approved burn sites or landfills. Debris not defined as eligible by FEMA Publication 325, all applicable State and Federal Disaster Specific Guidelines and policies will not be loaded, hauled, or dumped unless CITY gives written instructions to CONTRACTOR. It shall be the CONTRACTOR’s responsibility to load, transport, and properly dispose of any and all disaster generated debris which is the result of the event under which the CONTRACTOR was issued a notice to proceed, unless otherwise directly by the CITY in writing. All burnable debris will be separated from non-burnable debris if hauled to a TCEQ approved burn site. This includes:
  - 1.2 Vegetative Debris
    - a. Damaged and disturbed trees, tree limbs, bushes, shrubs, brush, untreated lumber and wood products.
    - b. Remains of standing trees which are clearly damaged beyond salvage.

### **2. Description of Designated Area**

- 2.1 The designated area for debris removal is bounded by the City of Sweeny city limits and includes all public right-of-ways (ROW), easements, parks, and debris staging areas, within the areas of the city.
  - 2.2 All debris identified by CITY shall be removed. CONTRACTOR shall not move from one designated work area to another designated work area without prior approval from the CITY. Any eligible debris, such as fallen trees, which extend onto the ROW from private property shall be cut at the point where it enters the ROW, and that part of the debris which lies within the ROW shall be removed. CONTRACTOR shall not enter onto private property during the performance of this contract unless specially authorized by CITY in writing.
  - 2.3 CONTRACTOR shall deliver debris to disposal sites as designated by the CITY.
  - 2.4 Debris shall be reasonably compacted into the hauling vehicle. No limbs shall be allowed to protrude more than 6” beyond the sides of the truck bed. Any debris extending above the top of the bed shall be secured in place so as to prevent it from flying off. Measures must be taken to avoid the blowing of debris out of the hauling vehicle during transport to the disposal site.
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- 2.5 All debris will be mechanically loaded. Hauling vehicles that are hand loaded or that require mechanical assistance for dumping will not be permitted to dump at TDSRS, unless approved in advance by the CITY.
- 2.6 Loose leaves and small debris in excess of one bushel basket shall be removed within the designated area. No debris shall be left on the road surface.
- 2.7 CONTRACTOR will provide an on-site Project Manager to CITY. The Project Manager shall provide a telephone number to CITY with which he or she can be reached for the duration of the project. The Project Manager will be expected to have daily meetings with CITY representatives. Daily meeting topics will include, but not be limited to, volume of debris collected, completion progress, local coordination, and damage repairs. Frequency of meetings may be adjusted by the CITY. The Project Manager must be available 24 hours a day, or as required by the CITY.
- 2.8 The TDSRS location, if required, will be designated by the City.
- 2.9 The CONTRACTOR shall conduct the work so as not to interfere with the disaster response and recovery activities of Federal, State, and local governments or agencies, or of any public utilities.
- 2.10 CITY reserves the right to inspect the TDSRS, verify quantities, and review operations at any time.

### **3. ROW Vegetative and other Debris Removal and Incineration**

- 3.1 Under this contract, work shall consist of all labor, equipment, fuel, and miscellaneous costs to pick up and transport vegetative and other debris existing in CITY's ROW to the TDSRS or other designated disposal facility.
- 3.2 Vegetative and other debris existing in the ROW is defined as debris resulting from a storm event which has been or will be placed along public right-of-ways, easements, City parks, alleys, debris staging areas, and other areas as designated by CITY.
- 3.3 For the purposes of this contract, vegetative and other debris which is piled in immediate close proximity to the actual legal street ROW, and which is accessible from the ROW line with loading equipment (i.e. not behind a fence or other physical obstacle) will be deemed to be on the ROW and is to be removed.
- 3.4 Entry onto private property for the removal of vegetative or other hazards will only be permitted when directed by the CITY or its authorized representative. The CITY will provide specific Right-of-Entry legal and operational procedures.

### **4. Working Hours**

- 4.1 CONTRACTOR shall work Monday through Saturday, 7 a.m. through 7 p.m., or as otherwise directed by the CITY.

### **5. Equipment**

- 5.1 All trucks or other equipment must be in compliance with all applicable Federal, State, and local rules and regulations. Any truck used to haul debris must be capable of rapidly dumping its load without the assistance of other equipment, be equipped with a tailgate that
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will effectively contain the debris during transport and permit the truck to be filled to capacity.

- 5.2 Sideboards or other extensions to the bed are allowable provided they meet all applicable rules and regulations, cover the front and both sides, and are constructed in a manner to withstand severe operation conditions. The sideboards are to be constructed of 2" by 6" boards or greater and not to extend more than 2' above the metal bedsides. In order to ensure compliance, equipment will be inspected by authorized CITY representatives prior to its use in the CITY.
- 5.3 Trucks or equipment designated for use under this contract shall not be used for any other work during the working hours of this contract. The CONTRACTOR shall not solicit work from private citizens or others to be performed in the designated work area during the period of this contract. Under no circumstances will the CONTRACTOR mix debris hauled for others with debris hauled under this contract.
- 5.4 Equipment used under this contract shall be rubber tired and sized properly to fit loading conditions. Excessive size equipment (100 CY and up) and non-rubber tired equipment must be approved for use on the road by the CITY.
- 5.5 Hand loaded vehicles are prohibited unless pre-authorized, in writing, by the CITY. All hand-loaded vehicles will receive an automatic 50% deduction for lack of compaction.

## **6. Traffic Control**

- 6.1 The CONTRACTOR shall provide, erect and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs and other traffic control devices at all CONTRACTOR work areas.
- 6.2 CONTRACTOR shall provide qualified flag personnel where necessary to direct the traffic and shall take all necessary precautions for the protection of the work, and the safety of the public.
- 6.3 Highways, streets or parts of the work closed to through traffic shall be protected by effective barricades, and obstructions shall be illuminated during the hours from sunset to sunrise. Suitable warning signs shall be provided to properly control and direct traffic.
- 6.4 All barricades, warning signs, lights, temporary signals, other protective devices, flag persons and signaling devices shall conform to the minimum requirements as set out in the Manual on Uniform Traffic Control Devices for Streets and Highways, Part VI, prepared by the National Joint Committee on Uniform Traffic Control Devices and current at the time bids are received.

## **7. Damage to Public or Private Property**

- 7.1 CONTRACTOR is responsible for all damage, injury, or loss to any property.
  - 7.2 CONTRACTOR shall restore all disturbed areas to their original condition, including re-grading, use of rye grass and permanent grass, and any other means determined to be necessary.
  - 7.3 CONTRACTOR's failure to restore damage to public or private property to the satisfaction of the CITY will result in the CITY withholding retainage money in an amount sufficient to make necessary repairs.
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## **8. Existing Utilities**

- 8.1 Some trees and debris which are to be removed under this contract may be blocked or entangled with overhead power, telephone, and television cables. In this case, it shall be CONTRACTOR's responsibility to coordinate directly with the utility owners to arrange for the removal of the debris without damage to the overhead and underground utility lines. CONTRACTOR shall pay all such costs to the utility company for any adjustments.
- 8.2 CONTRACTOR shall make the necessary repairs or pay all costs incurred to repair damaged utilities, as determined by the affected utility company. Repairs to all municipal and privately owned water and sewer facilities shall be made by the CONTRACTOR.

## **9. Environmental Protection**

- 9.1 All chemicals of whatever nature used during project construction or furnished for project operation must be state and federally certified. Their use and disposal of all residues shall be in strict compliance with instructions.
- 9.2 The CONTRACTOR shall, at its own expense, ensure that noise and dust pollution is minimized to comply with all Local and State regulations and the approval of the CITY. CONTRACTOR shall comply in a timely manner with all directions of the CITY regarding the use of a water truck or other approved dust abatement measures.
- 9.3 The CONTRACTOR shall comply with all Laws, Rules, Regulations and Ordinances regarding environmental protection.

## **10. Documentation and Measurement**

- 10.1 Prior to beginning of any work, the CITY shall clearly number each truck hauling debris or piece of equipment loading debris. All vehicles must be certified by CITY, or its representative, prior to debris collection. If a vehicle is working under multiple contracts or for multiple communities, it must be re-certified by an authorized CITY representative each time it returns to work from other contracts or communities.
  - 10.2 CONTRACTOR is responsible for ensuring that all SUB-CONTRACTORS maintain a valid driver's licenses and equipment legally fit for travel on the road.
  - 10.3 "Load tickets" will be provided by the CITY or its representative for recording volumes of debris removal.
    - 10.3.1. Each ticket shall be of a type that consists of one original and four carbon-copy duplicates.
    - 10.3.2. Load tickets will be issued by an authorized representative of the CITY at the loading site. The CITY representative will keep one copy of the ticket, and give one copy to the vehicle operator. Upon arrival at the dumpsite, the vehicle operator will give the copy to the CITY representative at the dumpsite. Trucks with less than full capacities will be adjusted down by visual inspection. This determination will be made by the CITY representative present at the dumpsite. The CITY representative will validate, enter the estimated debris quantity, and sign the ticket. The validated copy will be returned to the vehicle operator for the CONTRACTOR's records.
    - 10.3.3. The CONTRACTOR shall give written notice of the location for work scheduled 24 hours in advance.
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## EXHIBIT C

<p><b>CONFLICT OF INTEREST QUESTIONNAIRE CIQ</b></p>	<p><b>FORM</b></p>
	<p><b>OFFICE USE ONLY</b></p>
<p>This questionnaire is being filed in accordance with Chapter 176 of the Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with the City of Sweeny and the person meets the requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the City Secretary of the City of Sweeny not later than the 7<sup>th</sup> 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.</p> <p>A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.</p>	<p>Date Received:</p>
<p><b>1. Name of person who has a business relationship with the City of Sweeny.</b></p>	
<p><b>2. <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire.</b> (The law requires that you file an updated completed questionnaire with the City Secretary not later than the 7<sup>th</sup> business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)</p>	
<p><b>3. Name of local government officer with whom filer has employment or other business relationship.</b></p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Name of Officer</p> <p>This section must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of questionnaire?</p> <p style="text-align: center;">Yes _____ No _____</p> <p>B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than</p>	

investment income, from or at the direction of the local government officer named in this section AND the taxable income is not from the City of Sweeny?

Yes \_\_\_\_\_

No \_\_\_\_\_

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes \_\_\_\_\_

No \_\_\_\_\_

D. Describe each employment or business relationship with the local government officer named in this section.

4.

\_\_\_\_\_  
Signature of person doing business with the government entity

\_\_\_\_\_  
Date

List type of equipment proposed to use for debris removal:

List number of each type of equipment:

How many of each will be dedicated to the City of Sweeny for debris removal?

How long after a Notice To Proceed is given will equipment be in the City and clean up work underway?

**Use additional sheets if needed.**

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