



COUNTY OF EL PASO
County Purchasing Department
800 E. Overland, Suite 300
El Paso, Texas 79901
Phone (915) 546-2048

Notice to Interested Parties

The County of El Paso will receive Sealed Bids for **Bid 23-009 Fabens Dam Improvements (TX01958)**, until **2:00 p.m.**, on **Thursday, February 16, 2023**, at which time and place all bids will be publicly opened and read aloud. Submission may be electronic or hardcopy.

Electronic responses are to be submitted through epcountypurchasing.ionwave.net. Hardcopies must be submitted to the Purchasing Department Office, 800 East Overland, Rm. 300, El Paso, Texas 79901.

Hardcopy submissions only:

Sealed Bid *MUST BE IN A SEALED ENVELOPE AND MARKED:*
"Bid to be opened Thursday, February 16, 2023
Fabens Dam Improvements (TX01958)
Bid 23-009"

BASE BID

The project consists of but is not limited to the following:

Furnish all tools, quality labor, materials, equipment, qualified superintendence and all services, transportation, other incidentals, assurances and guarantees, assumptions of risk, and responsibility for the performance of all Pre/Post Construction Video operations as indicated on the Construction Drawings. The recording of all As-built Contract Drawings and As-built Specifications as required by the Contract Documents. Complete work as shown and specified herein. To perform all site demolition work as indicated in the Construction Drawings. Complete work as shown and specified herein. Perform all earthwork operations as indicated on the Construction Drawings. Furnish and place concrete, stone, cement-stabilized, or special riprap.

Solicitation documents are attached herein. Do not contact the requesting department.

Any questions by interested vendors must be entered on the Question tab of the e-bidding system or emailed to: bidquestions@epcounty.com before **Thursday, February 2, 2023, at 12:00 p.m.** If emailed, "Subject Line" should be the Bid Number and Title. Attempts to circumvent this requirement may result in rejection of the bid as non-compliant.

Any changes to the bid, specifications or other documents will be marked as an addendum to the solicitation. It shall be the respondent's responsibility to check the e-bid system prior to the Opening Date to verify whether any addendums have been issued.

All bid openings will occur via live video feed at the County YouTube Channel:

https://www.youtube.com/channel/UCXwcq_JYs28xwL14oGAVPZg/videos.

During the live broadcast, citizens may call in at telephone (915) 546-2048 ext. 2357. Allow for a 10-second delay during the live broadcast.

Award shall be let to the lowest responsible bidder, and the COMMISSIONER'S COURT RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS AND WAIVE TECHNICALITIES. Successful bidder shall not order items or services until a Purchase Order is received from the County Purchasing Department. Payment will not be made on items delivered without a Purchase Order. Payment shall be made through County current funds after completion of goods or services. Purchase Orders will be issued as required. Contract will be awarded by lump sum or line item, whichever is in the best interest of the County.

If the contract is for the construction of public works or is under a contract exceeding \$100,000 the bidder shall furnish a good and sufficient Bid Bond in the amount of 5% of the total contract price executed with a surety company authorized to do business in the State of Texas and must be included in the bid package. A cashier's check may be provided in lieu of a bid bond and made payable to the order of County of El Paso. Successful bidder must comply with all performance bond, payment bond, and insurance certificate requirements.

The Contractor must ensure that employees and applicants for employment are not discriminated against because of their race, color, religion, sex, or national origin.

The County of El Paso reserves the right to reject any or all Bids or to waive any technicalities in the bidding.

Bids may be held by the County of El Paso for a period not to exceed ninety (90) days, or such longer time as may be required by the funding agencies, from the date of the bid opening for the purpose of reviewing the Bids and investigating the qualifications of Bidders, prior to awarding of the Contract.

KAREN L. DAVIDSON
Purchasing Agent

**Fabens Dam Improvements
(TX01958)**

Bid 23-009



**Opening Date
Thursday, February 16, 2023**

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Specifications/ Scope of Work

See attachment "Agreement and Specifications".

General Requirements

County of El Paso, Texas

BIDDER IS TO READ THIS ENTIRE DOCUMENT CAREFULLY. BIDDER IS RESPONSIBLE FOR FULFILLING ALL REQUIREMENTS AND SPECIFICATIONS INDICATED HEREIN.

These General Requirements are considered standard language for all County of El Paso Construction Bid solicitations. If any “specific bid requirements” differ from the General Requirements listed here, the “specific bid requirements” shall prevail.

BID PACKET

The bid solicitation consists of the construction specifications/scope of work, general requirements, drawings, technical requirements, line items, contract documents, and all other documents provided by the County of El Paso related to the requested work. Each bidder is required to thoroughly review all documents to familiarize themselves with the bid provisions, plans and specifications for the requested work, as well as the terms of the contract the successful bidder will execute with the County.

The documents provided must be completed in its entirety and signed by an authorized representative. The signature acknowledges that the bidder has read the solicitation documents thoroughly before submitting a bid and will fulfill the obligations in accordance with the County of El Paso. Failure to complete and sign the solicitation document(s) may disqualify the bid from being considered.

Hard Copy Submittals: The bid packet, containing all the requested documents in this solicitation, the contractor’s bid response, and any additional requested or supporting documents, must be enclosed in a sealed envelope clearly labeled with the bid solicitation number, project name, and name of Bidder. The bid packet must be in the Purchasing Department BEFORE the opening hour and date specified. Late submittals will not be considered under any circumstances. Any bid packet sent via express mail or overnight delivery must have the bid solicitation number and project name clearly marked on the outside of the envelope or package. Failure to clearly identify your package may be cause for disqualification. Faxed or e-mailed bids will not be accepted. Bids received prior to the advertised hour of opening will be securely kept sealed. The officer whose duty it is to open them will decide when the specified time has arrived.

E-Bid/ Virtual Submittals: The Bid response and required documents must be submitted by the Closing Date and Time specified. It is the firm’s responsibility to ensure all required documents are successfully uploaded and entered information is accurate and complete before submitting. Missed submittals will not be considered under any circumstances. Bids received prior to the indicated Closing Date and Time will be kept virtually sealed until the officer whose duty it is to open the bids unseals virtually.

AUTHORIZED SIGNATURE

Any individual signing on behalf of the bidder expressly affirms that he or she is duly authorized to tender this bid and to sign the resulting bid contract. The bidder further understands that the signing of the contract shall be of no effect unless subsequently awarded and the contract properly executed by Commissioners’ Court.

BIDDER REQUIREMENTS AND INTEGRITY

The bidder must affirmatively demonstrate its responsibility. The bidder must also meet the following minimum requirements:

- Have been in business of providing services for a minimum of one (1) years;
- Have adequate financial resources or the ability to obtain such resources as required;
- Be able to comply with all federal, state, and local laws, rules, regulations, ordinances and orders regarding this Sealed Bid solicitation;
- Have satisfactory record of performance;
- Have a satisfactory record of integrity and ethics; and
- Be otherwise qualified and eligible to receive an award.

VIRTUAL SUBMITTALS

Google Chrome, Microsoft Edge, or a current internet browser that supports JavaScript is the recommended internet browser for use of the e-bidding system.

The County of El Paso uses Ion Wave Technologies as their third party bid management provider. Vendors that choose to submit virtually may submit through the electronic bidding (e-bidding) platform: <http://elpasotexaspurchasing.ionwave.net>. The County's e-bidding system will be accessible to registered users provided a unique username and password.

Submission of electronic documents with digital signatures and seals, including (without limitation) photocopied or .pdf forms or submittals, are binding and enforceable. The submitting vendor shall provide original documents upon request.

The County of El Paso is not responsible for non-delivery of an electronic response, including but not limited to equipment or software failure, internet failure, user error, or missed notification from e-bidding system. Vendors shall be solely responsible for informing themselves of the proper use of the electronic bidding platform and keep their information true and current to ensure all notices are received.

A bid packet may also be completed online, printed, and turned in as a hardcopy. In which case, the vendor must include the Signature Page provided in this solicitation. Any Bid that is submitted as a hard copy and received by the Purchasing Department prior to the indicated date and time, will be entered manually as an electronic entry after the opening. Once the manual response entry is complete, the vendor will receive a "Registration Invitation" email from Ion Wave. Only the link sent through this email will connect the vendor information to their submitted response.

MODIFICATION OF BID SUBMITTALS

A bid packet may be modified up until the time of opening. Bids may not be amended or altered after the official opening with the single exception that any product literature and/or supporting data required by the actual specifications, if any, will be accepted at any time prior to the Commissioners' Court consideration of same. No substitutions or cancellations for merchandise will be permitted without written approval of the County Purchasing Agent.

Hard Copy Submittals: A bidder may request their modification by letter at any time prior to the submission deadline. Modifications made before opening time must be initialed by the individual signing the bid package guaranteeing authenticity. Erasures or other changes must

be explained or noted beside the initial of the bidder. All figures must be written in ink or typed, figures written in pencil or with erasures are not acceptable. Mistakes may be crossed out, corrections inserted, and initialed in ink by the individual signing the bid package.

E-Bid/ Virtual Submittals: Bidder may retract, correct, and re-submitted as needed prior to the indicated Closing Date and Time. Any bid that is retracted for corrections **must be re-submitted** to be considered. Missed submittals will not be considered under any circumstances.

BID IDEAS AND CONCEPTS

The County reserves the right to adopt or use for its benefits, any concept, plan, or idea contained in any bid response.

WITHDRAWAL OF BID

Bidders may withdraw a bid packet prior to the scheduled solicitation opening time. No bid may be withdrawn for a period of sixty (60) calendar days after opening of the bids.

Hard Copy Submittals: The request for withdrawal must be submitted to the Purchasing Agent in writing.

E-Bid/ Virtual Submittals: Bidder may retract their response prior to the scheduled closing time and date. Bidder may also select "No Bid" and include reasoning.

EXEMPTIONS TO GENERAL REQUIREMENTS

The bidder may list any exceptions to the requirements of the bid. A separate document shall be labeled, "Exceptions to General Requirements", and attached to the bid response. If no exceptions are stated, it will be understood that all requirements will be complied with, without exception.

The Bidder must specify in its exceptions document any alternatives or suggested language it wishes to propose for consideration by the County. Each alternative should be sufficiently described and labeled within the bid response and should indicate its possible or actual advantage to the program being offered. The County reserves the right to offer these alternatives to other bidders.

RESTRICTIVE SPECIFICATIONS

It is the responsibility of the prospective bidder to review the entire specifications/scope of work and additional technical requirements and to notify the Purchasing Department if the specifications are formulated in a manner that would restrict competition or appear ambiguous. Any such protest or question(s) regarding the specifications or procedures must be received in the Purchasing Department no less than seventy-two (72) hours prior to the time set for the solicitation opening. The mention of any brand name or model in the specifications is not intended to be restrictive but is intended to describe the desired features, quality, or standards of existing comparable items. Bidders to propose an approved equal shall submit evidence that the item is equivalent in capability or characteristics.

SUBSTITUTES

It is not the County's intent to discriminate against any material of equal merit to those specified, however, should the proposer desire to use any substitutions prior written approval shall be obtained from the County Purchasing Agent sufficiently in advance in order that an addendum might be issued.

RECYCLED MATERIAL

Under Local Government Code Section 262.005 and Health & Safety Code Section 361.426, the County is required to give preference to products made of recycled materials if they meet specifications. The County is also required to encourage the use of recycled products in developing new procedures and specifications. They are also required to eliminate procedures and specifications that explicitly discriminate against products made of recycled materials.

ADDENDA

No oral interpretation of the bid solicitation will be made to any bidder, or as to the meaning of any part thereof. The County is not bound by any oral representations, clarifications, or changes made in the specifications by the County's employees, unless such clarification or change is publicly posted. Every request for such an interpretation shall be made in writing to the County of El Paso Purchasing Department. Any inquiry received prior to the deadline for questions will be given consideration, complied, and answers published as an addendum.

If it becomes necessary to revise or address any part of this solicitation, a written notice of such revision will be posted on the County Purchasing website or e-bid system as an addendum to the bid solicitation. The addendum will address the nature of the clarification or change at least five days before the solicitation is set to open. It shall be the bidder's responsibility to verify if any Addenda have been issued. All such Addenda shall become part of the Contract and all Bidders shall be bound by such Addenda, whether or not received by the Bidder.

COMMUNICATIONS

To prevent biased evaluations and to preserve the competitiveness and integrity of such procurement efforts, bidders are to direct all communications regarding this solicitation to the El Paso County Purchasing Agent or assigned designee.

CONTRACTOR INVESTIGATION

Before submitting a bid, each contractor shall make all investigations and examinations necessary to ascertain all site conditions and requirements affecting the full performance of the contract and to verify any representations made by the County upon which the contractor will rely. If the contractor receives an award as a result of its bid submission, failure to have made such investigations and examinations will in no way relieve the contractor from its obligation to comply in every detail with all provisions and requirements of the contract, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim whatsoever by the contractor for additional compensation. **Site visits by contractors are restricted to the date designated in the bid details.**

ESTIMATED QUANTITIES

Any reference to quantities shown in the bid solicitation are an estimate only. Since the exact quantities cannot be predetermined, the County reserves the right to adjust quantities as deemed necessary to meet its requirements.

ACCURACY OF DATA

Information and data provided through this solicitation are believed to be reasonably accurate.

DELAYS

The County reserves the right to delay the scheduled commencement date of the contract if it is to the advantage of the County. There shall be no additional costs attributed to these delays should any occur. Bidder agrees it will make no claim for damages, for damages for lost revenues, for damages caused by breach of contract with third parties, or any other claim by bidder attributed to these delays, should any occur. In addition, bidder agrees that any contract it enters into with any third party in anticipation of the commencement of the contract will contain a statement that the third party will similarly make no claim for damages based on delay of the scheduled commencement date of the contract.

TIME FOR COMPLETION

The County of El Paso will estimate the time for substantial and final completions. Substantial completion is the date in which the progress of the work has been sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the work for its intended use. The time for substantial completion normally starts from the date of a notice to proceed and the time for final completion is normally calculated from the date substantial completion is certified by the County and a punch-list is provided. The resulting contract must specify the time for completion; date may be negotiable.

LIQUIDATED DAMAGES

Liquidated damages guard against damages that the County might suffer if a project is delayed beyond the completion date set forth in the contract. **The amount specified in the contract documents will be charged on a daily basis until the project is complete. The successful bidder must carefully review, comment on, and approve the final contract, including the liquidated damages provisions.**

PREVAILING WAGES AND DEFINITIONS

Pursuant to Section 2258.021 of the Texas Government Code, a worker employed on a public work by or on behalf of the County of El Paso shall be paid, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

Employees and any workers enrolled in a U.S. Department of Labor certified apprenticeship program shall be paid the prevailing wage minimum rates in accordance with the Texas

Government Code, Chapter 2258. Any workers shall be properly classified and paid not less than the rate of wages prevailing in the locality of the work at the time of construction. It is the responsibility of the Contractor to maintain an adequate work force whether higher wages are required or not. Whenever indicated by the project details, the Davis-Bacon Act. (40 U.S.C. 276a) rate of wages will prevail.

The current prevailing wage rates are attached for the bidder's convenience.

APPRENTICESHIP PROGRAM

Pursuant to the Apprenticeship Program, approved by Commissioners Court on June 23, 2008, submitting bidders must adhere to the Apprenticeship Program outlined in the Order Of The Commissioners Court Of El Paso County Regarding Apprenticeship Program Requirements. Order is included in this solicitation for review.

The Apprenticeship Program mandates Bidders, and their subcontractors, to participate in apprenticeship programs certified by the U.S. Department of Labor (DOL). Construction projects must sponsor or participate in a DOL certified apprenticeship program for all job classifications utilized on the project and which are "apprenticeable occupations" as defined by DOL regulations, except when there is a state statute requiring certification for an occupation which has inconsistent requirements.

PRICING

Bid will be either lump sum or unit prices as indicated on bid specifications. A breakdown of the lump sum quote shall also be provided. Unit prices must include all-encompassing (labor, materials, removal, overhead, etc.) to cover the finished work of the work requested. If there are discrepancies between unit prices quoted and extensions, the unit price will prevail. Bid involving equipment shall offer new (unused) equipment or merchandise unless otherwise specified.

The net monetary values of change orders, if any, shall not increase the original contract price by more than twenty-five (25%), unless required to comply with a new law, rule, regulation, or judicial decision. The original contract price must not be decreased by twenty-five (25%) or more without the consent of the contractor. There is an exception to these for work not covered in the drawings and technical specifications as provided.

In case of default by the contractor, the County may procure the articles or services from other sources and may deduct from any monies due, or that may thereafter become due to the contractor, the difference between the price named in the contract of purchase order and the actual cost thereof to the County. Prices paid by the County shall be considered the prevailing market price at the time such purchase is made. Periods or performance may be extended if the facts as to the cause of delay justify such extension in the opinion of the Purchasing Agent and the Commissioners' Court.

Pricing on all transportation, freight or other charge is to be paid by the contractor and included in the bid prices, unless otherwise agreed to by both parties.

Bids subject to unlimited price increases will not be accepted. All pricings should not include tax either directly or indirectly. The County will sign tax exemption certificates covering these items.

The prices proposed will be considered firm and cannot be altered after the submission deadline.

Bids with incomplete prices and all information requested may be disregarded and given no consideration.

TAX EXEMPTION

Pursuant to Section 151.309 of the Texas Tax Code, El Paso County qualifies for exemption from sales, excise and use taxes imposed under the Limited Sales, Excise, and Use Tax Act, which is codified at Chapter 151 of the Texas Tax Code. In accordance with Section 151.309, a taxable item sold, leased, or rented to, or stored, used, or consumed by the County is exempt from the taxes imposed under Chapter 151.

DELIVERY AND SHIPPING

All delivery and freight charges shall be F.O.B. destination, if otherwise, show exact cost to deliver (merchandise only). The successful bidder shall not deliver products or provide services as part of this contract without a County of El Paso purchase order signed by the Purchasing Agent. Successful Bidder shall not deliver products or services which exceed the amounts specified on the purchase order.

ALTERNATIVE BIDS

No alternative bids will be considered unless alternative bids are specifically requested by the technical specifications.

RETAINAGE

The awarding contract will provide for **five percent (5%) retainage** as defined in Texas Government Code Sec. 2252.031; "retainage" means the part of a public works contract payment withheld by a governmental entity to secure performance of the contract.

INVOICES AND PAYMENTS

An invoice should be submitted after a notice to proceed date or a purchase order has been received, and after the delivery and/or service has been completed. Invoices must indicate the purchase order number and/or contract number and should be itemized. Any invoice, which cannot be verified by the contract price and/or is otherwise incorrect, will be returned for correction. Under term contracts, when multiple deliveries and/or services are required, the items may be invoiced in groups or individually. Invoice payment term is net 30. Prior to any and all payments made for goods and/or services provided under this contract, the vendor's W9 must be on file with the County Auditor's office. **Bidder must include a current, signed copy of their W9 in their bid response.** Failure to provide this information may result in a delay in payment and/or back-up withholding as required by the Internal Revenue Service.

PROOF OF INSURANCE

Contractor shall submit to the County, for approval, within ten (10) days from the date of award, all Certificates of Insurance evidencing the required coverage as described herein.

Bidder agrees to keep in full force and effect, a policy of public liability and property damage insurance, including (without limitation) automobile, products and completed operations, worker's compensation including occupational disease and employer's liability, hazardous substances (pollution) liability (when applicable), cyber, builder's "all risk" (if applicable), and boiler and/or machinery, issued by a casualty company authorized to do business in the State of Texas, and in standard form approved by the Board of Insurance Commissioners' of the State of Texas, with coverage provision insuring the public from any loss or damage that may arise to any person or property by reason of services limits of not less than the following sums:

Insurance Requirements

Professional Liability:	\$2,000,000 per claim and \$4,000,000 in the aggregate
Worker's Compensation:	\$1,000,000/\$1,000,000/\$1,000,000 Each accident/disease policy limit/disease each employee
General Liability:	
Per Occurrence	\$1,000,000
Aggregate	\$2,000,000 per project
Personal Injury	\$1,000,000 each person
Products/Completed Operations:	(see <u>Contract Amounts</u> for required limits)
Automobile Liability:	\$1,000,000 combined single limit
Cyber Liability:	\$1,000,000 per claim and in the annual aggregate (Must include 1 st and 3 rd party coverage)
Excess Umbrella Liability:	(see <u>Contract Amounts</u> for required limits)
Hazardous Substances (Pollution) Liability (When Applicable):	\$5,000,000
Builders Risk Insurance:	Insurable value of Contract

The General Liability and Auto Liability policies so issued in the name of CONTRACTOR shall also name the COUNTY OF EL PASO as additional insured, except for professional liability insurance and worker's compensation insurance. The General Liability, Auto Liability and Workers' Compensation policies so issued in the name of CONTRACTOR shall reflect the Waiver of Subrogation in favor of COUNTY OF EL PASO. Umbrella is to follow form. CONTRACTOR shall purchase and maintain Builders' Risk Insurance upon the entire Work at the site to the full insurable value thereof until Final Acceptance of the Work by the COUNTY OF EL PASO. Such insurance shall be "All Risk" insurance or "Special Form" coverage and shall name the COUNTY OF EL PASO as a Loss Payee.

Contract Amounts

Insurance requirements according to total contract amount.

Total Contract Amount	Products/Completed Ops	Umbrella
Less than \$100,000 :	\$1,000,000	n/a
\$100,000 - \$5,000,000 :	\$2,000,000	\$2,000,000 per occurrence/aggregate
\$5,000,001 - \$15,000,000 :	\$2,000,000	\$5,000,000 per occurrence/aggregate
Over \$15,000,000 :	\$2,000,000	\$10,000,000 per occurrence/aggregate

Certificate Of Liability Insurance

Under the Description of Operations section, the job description or project name and/or number. Current insurance Certificates certifying that such policies as specified above are in full force and effect shall be furnished by successful bidder to the County. Insurance is to be placed with insurers having a best rating of no less than A. The Bidder shall furnish the County with certificates of insurance and original endorsements affecting coverage required by these insurance clauses within ten (10) business days of execution of this contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The Bidder shall be required to submit annual renewals for the term of this contract prior to expiration of any policy.

In addition to the remedies stated herein, the County has the right to pursue other remedies permitted by law or in equity. The County agrees to provide Bidder with reasonable and timely notice of any claim, demand, or cause of action made or brought against the County arising out of or related to utilization of the property. Proposer shall have the right to defend any such claim, demand or cause of action at its sole cost and expense and within its sole and exclusive discretion. The County agrees not to compromise or settle any claim or cause of action arising out of or related to the utilization of the property without the prior written consent of the Bidder. In no event shall the County be liable for any damage to or destruction of any property belonging to the Bidder.

County of El Paso shall be listed as the additional insured on policy certificates and shall be notified of changes to the policy during the contractual period.

The County reserves the right to review the insurance requirements during the effective period of the contract and to require adjustment of insurance coverage and their limits when deemed necessary and prudent by the County based upon changes in statutory law, court decisions, or the claims history of the industry as well as the contractor.

Contractor agrees that, at its own cost and expense, it shall procure and continue in force throughout the term of this Agreement, for the benefit of the County of El Paso, its officers, agents, and employees, the following listed insurance in the designated amounts. All such policies of insurance shall be written by insurance underwriters authorized to do business in the State of Texas. All policies shall name the County of El Paso, its officers, agents, and employees as additional insureds. Contractor shall furnish to the El Paso County Risk Manager

a certificate from the insurance carrier showing such insurance to be in full force and effect during the term of this Agreement. Said certification shall contain a provision that written notice of cancellation or of any material change in said policy by the insurer shall be delivered to the El Paso County Risk Manager thirty (30) days in advance of the effective date thereof.

INDEMNITY

TO THE EXTENT PERMISSIBLE BY LAW, THE CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY AND SAVE HARMLESS THE OWNER, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST SUITS, ACTIONS, CLAIMS, LOSSES, LIABILITY OR DAMAGE OF ANY CHARACTER AND FROM AND AGAINST COSTS AND EXPENSES, INCLUDING IN PART, ATTORNEY FEES, INCIDENTAL TO THE DEFENSE OF SUCH SUITS, ACTIONS, CLAIMS LOSSES, DAMAGES OR LIABILITY ON ACCOUNT OF INJURY, DISEASE, SICKNESS, INCLUDING DEATH, TO ANY PERSON, OR DAMAGE TO PROPERTY, INCLUDING IN PART THE LOSS OF USE RESULTING THEREFROM, BASED UPON OR ALLEGEDLY BASED UPON ANY ACT, OMISSION OR OCCURRENCE OF THE CONTRACTOR OR HIS EMPLOYEES, AGENTS, SUBCONTRACTORS, OR SUPPLIERS, OR ANYONE ELSE UNDER THE CONTRACTOR'S DIRECTION AND CONTROL, (REGARDLESS IF CAUSED IN PART BY A PARTY INDEMNIFIED HEREUNDER), AND ARISING OUT OF, OCCURRING IN CONNECTION WITH, RESULTING FROM, OR CAUSED BY THE PERFORMANCE OR FAILURE OF PERFORMANCE OF ANY WORK OR SERVICES CALLED FOR BY THE CONTRACT, OR FORM CONDITIONS CREATED BY THE PERFORMANCE OR NO-PERFORMANCE OF SAID WORK OR SERVICES.

BID BOND

The bid bond must be submitted on the form provided by the county in this solicitation, excisions or special conditions shall not be made or included.

Pursuant to section 262.032 of the Texas Local Government, if the contract is for the construction of public works or is under a contract exceeding \$100,000, the bid specifications or request for proposals may require the bidder to furnish a good and sufficient bid bond in the amount of five percent (5%) of the total contract price. A bid bond must be executed with a surety company authorized to do business in this state.

The Bid Bond must ensure the execution of the contract. Revised Bids submitted before the opening of bids, whether forwarded by mail, if representing an increase in excess of two percent (2%) of the original Bid, must have the Bid Bond adjusted accordingly, otherwise the Bid will not be considered. A cashier's check may be provided in lieu of a bid bond and, similarly, must be adjusted of an increase in excess of two percent (2%). If a cashier's check is provided the Check Return Authorization Form, provided by the county in this solicitation, must be included with the check.

E-Bid/ Virtual Submittals: If bidder submits virtually and elects to provide a cashier's check, the check must be physically dropped off in a sealed envelope before the opening date and time. The envelope must include the Check Return Authorization Form and be labeled with the bid number and project name.

Certified cashier's checks or bid bonds of unsuccessful bidders will be returned as soon as practical after the opening date. If bidder is withdrawing their Bid, check will be returned promptly.

Bids submitted without the required bid bond or cashier's checks will be rejected.

PERFORMANCE BOND AND PAYMENT BOND

The performance and payment bonds must be submitted on the forms provided by the county in this solicitation, excisions or special conditions shall not be made or included. Only required of awarded bidder(s).

Pursuant to Texas Government Code Sec. 2253.021, a governmental entity that makes a public work contract with a prime contractor shall require the contractor, before beginning the work, to execute to the governmental entity, a performance bond if the contract is in excess of \$100,000. As well as pursuant to Texas Local Government Code Section 262.032(b), any successful bidder who is awarded any contract in excess of \$50,000 may be required to execute a performance bond to the County.

Pursuant to Texas Government Code Sec. 2253.021, a governmental entity that makes a public work contract with a prime contractor shall require the contractor, before beginning the work, to execute to the governmental entity a payment bond if the contract is in excess of \$25,000.

Having satisfied all conditions of award, the successful Bidder shall furnish the two (2) surety bonds within ten (10) days from the date of Award, each in a penal sum of 100% of the amount of the Contract. These bonds shall be signed by a surety company listed in the latest issue of the U.S. Treasury Circular 570 and such surety must be authorized to do business in Texas. The current power of attorney for the person who signs for any surety company shall be attached to such bonds.

Failure to supply the required bonds within ten (10) days, or within such extended period as the County may grant, the County may rescind its award and acceptance of the bid and may either award the contract to the next lowest responsible bidder or re-advertise for Bids. The County may charge against the Bidder the difference between the amount of their original Bid and the amount for which a Contract for the work is subsequently executed, irrespective of whether the amount thus due exceeds the amount of the Bid Bond. If a more favorable Bid is received by re-advertising the defaulting Bidder shall have no claim against the County for a refund.

NON-APPROPRIATIONS

Bidder acknowledges that funding to pay for support and services referenced herein is subject to annual appropriations by the County's governing body, and any termination, liability, indemnity, other provision in the Terms to the contrary does not apply to the County. In the event such funds are not appropriated in any fiscal year for support and services, the County may terminate the agreement between the parties upon no less than thirty (30) days prior written notice without incurring any termination liability or penalty. Such termination will not affect the County's obligation with respect to payment for satisfactory service or support received through the termination date.

BID DISCLOSURES

At the time and place fixed for the opening of Bids, the County will open and publicly read aloud every Bid received within the time set for receiving Bids, irrespective of any technicalities therein. Bidders and other persons properly interested may be present, in person or by representative. Interested parties may view live openings through County of El Paso ITD's YouTube channel, https://www.youtube.com/channel/UCXwcq_JYs28xwL14oGAVPZg.

All information contained in the bid response is available for public review. Requests must be made in writing and submitted by mail, in person, fax, or email to the Purchasing Department. Additional information may be found in the section titled "PUBLIC INFORMATION ACT".

PUBLIC INFORMATION ACT

County of El Paso is a governmental body for purposes of the Public Information Act, codified as Chapter 552 of the Texas Government Code and as such is required to release information in accordance with the Public Information Act. **BIDDER MUST MARK ANY INFORMATION THAT IT CONSIDERS TO BE CONFIDENTIAL, PROPRIETARY, AND/OR TRADE SECRET IN ITS BID PACKET.** If items are not marked CONFIDENTIAL, County of El Paso will not be liable for disclosing the information. County agrees to provide notice to bidder in accordance with the Public Information Act in the event the County receives a request for information under the Public Information Act for information that the bidder has marked as confidential, proprietary, and/or trade secret.

NO BOYCOTT OF ISRAEL

In accordance with Chapter 2271 of the Texas Government Code, a company, other than a sole proprietorship, with ten or more full time employees is required to certify in writing that it does not boycott Israel and will not boycott Israel during the term of the contract, if the contract has a value of \$100,000 or more.

NO BOYCOTT OF FIREARM ENTITIES OR FIREARMS TRADE ASSOCIATIONS

In accordance with Chapter 2274 of the Texas Government Code, a company, other than a sole proprietorship, with ten or more full time employees is required to verify in writing that it does not discriminate against, and will not discriminate during the term of the contract against a firearm entity or firearm trade association, if the contract has a value of \$100,000 or more.

SOVEREIGN AND/OR GOVERNMENTAL IMMUNITY

The County specifically reserves any claim it may have to sovereign, governmental qualified, or official immunity as a defense to any action arising in conjunction with this contract.

COUNTY OF EL PASO CODE OF ETHICS TRAINING

County of El Paso Code of Ethics Training Affidavit: Any vendor involved in a single procurement exceeding \$50,000 must read and sign the El Paso County Code of Ethics Training Affidavit that is included in each bid/proposal packet. By reading and signing the Affidavit form, the bidder has confirmed that they have been trained in the El Paso County Code of Ethics. The training must be completed by an officer, principal, or other person with the

authority to bind the company. The ethics training affidavit must be submitted using the document provided by the county in this solicitation, excisions or special conditions shall not be made or included.

Optional On-Line Training: As an alternative to reading and completing the El Paso County Code of Ethics Training Affidavit, in compliance with Section 161 of the Texas Local Government Code, the training on the El Paso County Code of Ethics is accessible in an online format to Vendors and Lobbyists on an ongoing basis, subject only to limitations due to technical resources. The optional On-Line Training may be accessed and completed at: http://www.epcounty.com/ethicscom/trainingvendor_files/frame.htm. If completed on-line, **the training receipt should be printed out and included with the BID.**

CERTIFICATIONS

Certifications regarding lobbying, debarment, suspension and other responsibility matters; drug-free workplace requirements; federal debt status, and nondiscrimination status and implementing regulations, must be submitted using the documents provided by the county in this solicitation, excisions or special conditions shall not be made or included.

Texas is required to obtain from all applicants of federal funds or pass-through certifications regarding federal debt status, debarment and suspension, and a drug free workplace. Institutional applicants are required to certify that they will comply with the nondiscrimination statutes and implementing regulations.

CONFLICT OF INTEREST

The Conflict-of-Interest Questionnaire - Form CIQ must be submitted on the form provided by the county in this solicitation, excisions or special conditions shall not be made or included. CIQ Forms may also be obtained on the Purchasing Department website at: http://epcounty.com/purchasing/documents/CIQ_Form.pdf.

Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity make certain disclosures. In 2015, the Texas Legislature updated the law and the Texas Ethics Commission made corresponding changes to the Conflict-of-Interest Questionnaire (Form CIQ), in which the vendor must disclose any covered affiliation or business relationship with County personnel that might cause a conflict of interest with a local government entity. A list of County elected officials and employees that will award the bid and/or make recommendations for award are included in this bid. By law, a completed questionnaire must be filed with the County of El Paso County, Texas. If no conflict of interest exists, write "N/A" or "None" in Box 3 of the CIQ Form.

DISCLOSURE OF INTERESTED PARTIES

The Certificate of Interested Parties – Form 1295 should only be submitted online. Only required of awarded bidder (s). Form shall be submitted on the Texas Ethics Commission website, https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm. Instructional videos are provided on site for assistance.

In 2015, the Texas Legislature added Section 2252.908 to Chapter 2252 of the Texas Government Code. Pursuant to Section 2252.908, for contracts entered into January 1, 2016 and after, the awarded vendor must submit to the County a completed "Certificate of Interested

Parties” form, which will be included in the Commissioners Court agenda at the time the contract is approved and sent to the Texas Ethics Commission within 30 days thereafter.

NON-COLLUSION AFFIDAVIT

The Non-Collusion Affidavit of Contractor must be submitted on the form (s) provided by the county in this solicitation, excisions or special conditions shall not be made or included.

By submitting a bid packet, the Bidder declares that:

- The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation;
- The bid is genuine and not collusive or sham;
- The contractor has not directly or indirectly induced or solicited another contractor to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any contractor or anyone else to put in a sham bid or that anyone shall refrain from bidding;
- The contractor has not in any manner, directly or indirectly, sought by agreement, communications, or conference with anyone to fix the bid price of the contractor of any other bidder, or to fix any overhead, profit or cost element of the bid price, or of that of any other contractor, or to secure any advantage against the public body awarding the contract to anyone interested in the proposed contract;
- That all statements contained in the bid packet are true; and
- The contractor has not (directly or indirectly) submitted his or her bid price or any breakdown thereof, divulged information or data relative thereto, or paid (and will not pay) any fee to any cooperation, partnership, company association, organization, bid depository, or to any member or agent thereof in order to effectuate a collusive or sham bid.

The bidder may not initiate any negotiations, decisions, or cautions based on any oral discussion with any County employee prior to the opening of responses to this bid solicitation.

County officers, employees, public officials, or elected officials that exercise any role in the review or approval of this bid award may not have any personal or financial interests in any contract or negotiation related to this bid.

Before executing any subcontract, the successful Bidder must submit the name of any proposed subcontractor for prior approval in a notarized affidavit. The Affidavit for a subcontractor is provided by the county in this solicitation, excisions or special conditions made or included will not be considered.

INDEPENDENT CONTRACTOR

Bidder expressly acknowledges that it is an independent contractor. Nothing in this agreement is intended nor shall be construed to create an agency relationship, an employer/employee relationship, a joint venture relationship, or any other relationship allowing County to exercise control or direction over the manner or method by which the Bidder or its subcontractors perform in providing the requirements stated in the Bid Solicitation.

MERGERS, ACQUISITIONS

The Bidder shall be required to notify the County of any potential for merger or acquisition of which there is knowledge at the time that a bid is submitted.

If subsequent to the award of any contract resulting from this BID the Bidder shall merge or be acquired by another firm, the following documents must be submitted to the County:

- Corporate resolutions prepared by the awarded Bidder and the new entity ratifying acceptance of the original contract, terms, conditions and prices;
- New Bidder's Federal Identification Number (FEIN); and
- New Bidder's proposed operating plans.

Moreover, the Bidder is required to provide the County with notice of any anticipated merger or acquisition as soon as the Bidder has actual knowledge of the anticipated merger or acquisition. The new Bidder's proposed plan of operation must be submitted prior to merger to allow time for submission of such plan to the Commissioners' Court for its approval.

EQUAL EMPLOYMENT OPPORTUNITY

The County of El Paso is an equal opportunity employer. The Bidder and its subcontractors will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin.

CONSIDERATION OF SAFETY RECORD

Pursuant to Texas Local Government Code section 262.0275, in determining who is a responsible bidder, the commissioners court may take into account the safety record of the bidder, of the firm, corporation, partnership, or institution represented by the bidder, or of anyone acting for such a firm, corporation, partnership, or institution if the commissioners court has adopted a written definition and criteria for accurately determining the safety record of a bidder; the governing body has given notice to prospective bidders in the bid specifications that the safety record of a bidder may be considered in determining the responsibility of the bidder; and the determinations are not arbitrary and capricious.

The Safety Record Questionnaire must be submitted on the forms provided by the county in this solicitation, excisions or special conditions shall not be made or included.

MONITORING PERFORMANCE

The County shall have the unfettered right to monitor and audit the Bidder/Contractor's work in every respect. In this regard, the Bidder/Contractor shall provide its full cooperation and insure the cooperation of its employees, agents, assigns, and subcontractors. Further, the Bidder/Contractor shall make available for inspection and/or copying when requested, original data, records, and accounts relating to the work and performance under this contract. In the event any such material is not held in its original form, a true copy shall be provided.

NO COMMITMENT BY COUNTY

This bid solicitation does not commit the County to award any costs or pay any costs, or to award any contract, or to pay any costs associated with or incurred in the preparation of a bid response to this solicitation, or to procure or contract for services or supplies.

SINGLE BID RESPONSE

If only one (1) bid response is received in for this bid solicitation, a detailed cost breakdown may be requested of the single bidder. A price analysis and evaluation and/or audit may be performed of the bid in order to determine if the price is fair and reasonable.

REJECTION/DISQUALIFICATION OF BIDS

County of El Paso reserves the right to reject any or all bids in whole or in part received by reason of this bid solicitation and may discontinue its efforts for any reason under this solicitation at any time prior to actual execution of the contract by the County. County of El Paso reserves the right to waive any informality, award by item or by total, and disregard the bid of any bidder determined to be not responsible. Bidders may be disqualified and rejection of bid may be recommended to the Commissioners Court for any of (but not limited to) the following causes:

- Bids received after date and time indicated for receipt.
- Failure to use the bid form(s) furnished by the County, if applicable.
- Lack of signature by an authorized representative that can legally bind the company on the bid packet.
- Failure to properly complete the bid packet.
- Bids that do not meet/agree to the mandatory requirements.
- Indication of collusion among bidders.
- Bids containing any irregularities.

The County may consider as irregular any Bid on which there is an alteration of or departure from the Bid Forms hereto attached and at its option may reject the same. The County reserves the right to consider as unqualified to do the work of general construction any Bidder who does not habitually perform with his own forces the major portions of the work outlined in this solicitation. The County further reserves the right to reject any bid due to failure of performance on deliveries as determined in writing by the County Purchasing Agent.

AWARD OF BID

Pursuant to the Texas Local Government Code, bids shall be awarded to the responsible bidder who submits the lowest and best bid.

The County reserves the right to accept or reject all or any part of the bid, waive minor technicalities, or to award by item or by lump sum. A vendor whose bid does not meet the mandatory requirements set forth in this solicitation will be considered noncompliant. The criteria utilized for determining responsibility includes, but is not limited to, the bidder's experience, skill, ability, business judgment, financial capacity, integrity, honesty, possession of the necessary facilities or equipment, previous performance, reputation, promptness, and any other factor deemed relevant by the County to determine whether a bidder is responsible

The Bidder to whom the award, and (if applicable) the selected Alternative Bid items, will be notified at the earliest possible date.

A vendor must give written notice that they intend to protest an award. The vendor has the right to appear before the commissioner's court. under rules established by the court. Protest Procedures are available for download on the Purchasing Department - Doing Business with the County webpage <http://epcounty.com/purchasing/business.htm>.

RESULTANT CONTRACT

The resultant contract shall become effective upon the Commissioners' Court award and the County Judge's signature. The contract documents shall consist of all the documents pertinent to the requested work including the contract, bid solicitation, drawings and technical requirements, addenda, change orders, bid response, wage rates, and any additional documents provided to complete work.

Within thirty (30) days after the prescribed forms are presented for signature, the successful Bidder shall execute and deliver to the County an Agreement the material terms of this bid document in such number of copies as the County may require.

The Contract will require the completion of the work according to the contract documents. The term of the resultant contract will begin as stated in the contract executed by the Commissioners' Court and will terminate on the date specified in the contract unless terminated earlier as herein set forth.

SUBCONTRACTING/ASSIGNMENT

Bidder shall not assign, sell, or otherwise transfer its contract in whole or in part without prior written permission of Commissioners' Court. Such consent, if granted, shall not relieve the bidder of any of its responsibilities under this contract.

Building - Prevailing Wage Rates and Definitions



2020 Wage Rates

CLASSIFICATION	BASE WAGE	BENEFIT S	HOURLY PREVAILIN G WAGE RATE	(8 HOURS) PER DIEM WAGE RATE
Asbestos/Lead Abatement/Mold Remediation	31.51	12.06	43.57	348.56
Automatic Fire Sprinkler Fitter, Certified	30.64	21.68	52.32	418.56
Block, Brick, and Stone Mason	17.97	0.00	17.97	143.76
Carpenters – Acoustical Ceiling Installation	17.36	0.00	17.36	138.88
Carpenter – Rough	17.64	0.00	17.64	141.12
Carpenter – All Other Work	17.40	0.00	17.40	139.20
Caulker / Sealers	11.29	0.00	11.29	90.32
Cement and Concrete Finishers	16.30	0.00	16.30	130.40
Commercial Truck Driver	14.75	0.00	14.75	118.00
Communication/Security Technician	16.50	2.12	18.62	148.96
Crane and Heavy Equipment Operator	31.05	0.00	31.05	248.40
Door & Hardware Specialist	12.00	1.35	13.35	106.80
Drywall and Ceiling Tile Installers	14.40	0.00	14.40	115.20
Drywall Finishers & Tapers	15.55	0.00	15.55	124.40
Electrician	22.70	7.32	30.02	240.16
Elevator Installers and Repairers	31.35	15.10	46.45	371.60
Fence Erectors – Include with Skilled Labor	10.00	0.00	10.00	80.00
Floor Layers- Carpet and Resilient	12.87	0.00	12.87	102.96
Floor Layers- Specialty	13.00	0.00	13.00	104.00
Floor Layers - Wood	11.50	0.00	11.50	92.00
Glaziers	15.86	1.00	16.86	134.88
Hazardous Materials Removal Workers	10.00	0.00	10.00	80.00
Heating, Air Conditioning and Refrigeration Service Technician	31.14	12.43	43.57	348.56
Insulation Workers – Mechanical	31.26	11.96	43.22	345.76
Irrigator – Landscape, Certified	15.28	0.00	15.28	122.24
Laborer	13.13	0.58	13.71	109.68
Locksmith	12.00	1.35	13.35	106.80
Mechanic	17.00	0.00	17.00	136.00
Painters - Building	13.86	0.00	13.86	110.88
Paper Hanger	14.00	0.00	14.00	112.00

Pipe Layer (Utility)	18.00	0.00	18.00	144.00
Pipe Fitters and Steamfitters	23.53	9.02	32.55	260.40
Plaster, Stucco, Lather and EIFS Applicator	16.82	0.00	16.82	134.56
Plumber/ Medical Gas Installer	31.39	10.77	42.16	337.28
Reinforcing Iron and Rebar Workers	22.69	0.00	22.69	181.52
Roofers	16.00	0.00	16.00	128.00
Scaffolding Erector	13.69	0.00	13.69	109.52
Sheet Metal Workers	27.16	0.00	27.16	217.28
Structural Iron and Steel Workers / Metal Building Erector	25.57	13.24	38.81	310.48
Tile Setters	13.86	0.00	13.86	110.88

APPROVED 12/14/2020
REVISED 1/25/21

2020 Definitions

1	Asbestos/Lead Abatement/Mold Remediation	<p>Assembles work platform and seals off work area, using plastic sheeting and duct tape. Positions mobile decontamination unit or portable showers at entrance of work area. Positions portable air evacuation and filtration system inside work area. Cuts and scrapes asbestos, mold or paint from surfaces, using knife and scraper. Assists in demolition and deconstruction activities of buildings. Shovels asbestos, mold or paint into plastic disposal bags and seals bags, using duct tape. Cleans work area of loose asbestos, mold or paint, using vacuum, broom, and dust pan. Places asbestos, mold or paint in disposal bags and seals bags, using duct tape, loads bags into truck. Cleans and maintains tools, sampling equipment and lab equipment. Responsible for keeping site and grounds clean and neat. Performs daily equipment checks. Picks up necessary supplies and tools from warehouse as directed. Loads and unloads scrap materials into trucks and roll off boxes. Performs work safely in accordance with departmental safety procedures and operates equipment safely. Reports any unsafe work condition or practice to supervisor. Performs other related and non-related duties as assigned.</p>
2	Automatic Fire Sprinkler Fitter, Certified	<p>Sprinkler Fitters specialize in piping associated with fire sprinkler systems. These types of systems are required to be installed and maintained in accordance with strict guidelines, usually National Fire Protection Association (NFPA) standards, in order to maintain compliance with building and fire codes. Sprinkler Fitters work with a variety of pipe and materials including: plastic, copper, steel, cast iron, and ductile iron. The fire suppression piping may contain: water, air, antifreeze, fire retardant foam, gas, or chemicals for hood systems. Sprinkler systems installed by Sprinkler Fitters can include but not limited: to underground supply, standpipes, fire pumps as well as overhead piping systems.</p>
3	Block, Brick, and Stone Mason	<p>Lay and bind building materials, such as: brick, structural tile, concrete block, cinder block, glass block, and terra-cotta block, with mortar and other substances to construct, or repair walls, partitions, arches, sewers, and other structures. Classify installers of mortarless segmental concrete masonry wall units. Constructs partitions, fences, walks, fireplaces, chimneys, smokestacks, et cetera using stone, marble, granite, slate. Cutting, grouting, and pointing of materials listed above which is necessary shall be part of this classification.</p>
4	Carpenters – Acoustical Ceiling Installation	<p>Construct, erect, install or repair acoustical ceiling grid, ceiling tile, and other items laid in acoustical grid.</p>

5	Carpenter – Rough	Construct, erect, install, or repair structures and fixtures made of wood, such as concrete forms; building frameworks, including partitions, joists, studding, and rafters; wood stairways, window and door frames. May also install cabinets, and siding. Include brattice builders who build doors or brattices (ventilation walls or partitions) in underground passageways to control the proper circulation of air through the passageways.
6	Carpenter – All Other Work	Construct, erect, install or repair cabinets and other fixtures or structures requiring a high level of workmanship. Includes Cabinetmakers and Bench Carpenters – cut, shape, and assemble wooden articles or set up and operate a variety of woodworking machines, such as power saws, jointers, and mortisers to surface, cut or shape lumber or to fabricate parts for wood products. Perform related duties such as trim work.
7	Caulker/Sealers	Applies water proofing agents or caulk to a variety of structures and materials.
8	Cement and Concrete Finishers	Smooth and finish surfaces of poured concrete, such as floors, walks, sidewalks, roads, or curbs using a variety of hand and power tools. Align forms for sidewalks, curbs, or gutters; patch voids; use saws to cut expansion joints. Classify installers of mortarless segmental concrete wall units.
9	Commercial Truck Driver	Drive a truck, van or tractor-trailer combination to transport and deliver goods, or materials in liquid, loose, or packaged form. May be required to unload truck.
10	Communication/Security Technician	Set-up, re-arrange, or remove switching and dialing equipment used in central offices. Service or repair telephones and other communication equipment on customers' property. May install equipment in new locations or install wiring and telephone jacks in buildings under construction. Install, program, maintain, and repair security and fire alarm wiring and equipment. Ensure that work is in accordance with relevant codes. Exclude "Electricians" who do a broad range of electrical wiring.
11	Crane and Heavy Equipment Operator	A worker who operates a crane or other types of heavy equipment to hoist and move materials, raise and lower heavy weights and perform other related operations. May be crawler type or rubber-tired. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
12	Door and Hardware Specialist	Installs or repairs doors, hardware and accessories. Are responsible for the installation of contract commercial hardware and custom architectural grade wood doors, steel doors and frames for all Prevailing Wage jobs. Shall be trained by their employer's, employer's apprenticeship, or in factory training classes in the proper methods and techniques and requirements for the installation of Architectural Grade commercial wood and metal doors, frames and hardware in conformance with all local, state, and federal code.

13	Drywall and Ceiling Tile Installers	Apply plasterboard, or other wallboard to ceilings, or interior walls of buildings. Apply or mount acoustical tiles or blocks, strips, or sheets of sound-absorbing materials to ceilings and walls of buildings to reduce or reflect sound. Materials may be of decorative quality. Includes metal stud framing. Exclude "Carpet Installers", "Carpenters – Acoustical Ceiling Installation", and "Tile and Marble Setters".
14	Drywall Finishers and Tapers	Seal joints between plasterboard or other wallboard, including bedding and texturing, to prepare wall surface for painting or papering.
15	Electrician	Plan and execute the layout and installation of electrical conduit, switch panels, buss bars, outlet boxes, electrical wires and cables, lighting standards, lighting fixtures, receptacles, switches, and other electrical devices and apparatus necessary for the complete electrical installation. To include the installation of cabling, wire, conduits and end devices for Temperature Control, Building Automation, and Energy Management Systems, et cetera. Includes installation of photovoltaic solar panels.
16	Elevator Installers and Repairers	Assemble, install, repair, or maintain electric or hydraulic freight or passenger elevators, escalators, dumbwaiters, or wheelchair lifts.
17	Fence Erectors - Include with Skilled Labor	Erect and repair metal and wooden fences and fence gates around highways, industrial establishments, residences, or farms, using hand and power tools. Excludes rock and stone fences.
18	Floor Layers – Carpet and Resilient	Apply blocks, strips, or sheets of shock-absorbing, sound-deadening, or decorative coverings to floors. Lay and install carpet from rolls, tiles or blocks on floors. Install padding and trim flooring materials. Installs variety of soft floor materials including vinyl and VCT. Exclude wood floors and specialty floors.
19	Floor Layers - Specialty	Prepares surface, installs and finishes specialty floor material such as manufactured or engineered and laminated wood.
20	Floor Layers - Wood	Install, scrape and sand wooden floors to smooth surfaces using floor scraper and floor sanding machine, and apply coats of finish to include gymnasium and bowling alleys.

21	Glaziers	Installs glass in windows skylights, store fronts and display cases, or on surfaces such as: building fronts, interior walls, ceilings and table tops. The installation, setting, cutting, preparing, fabricating, distributing, handling or removal of the following: glass and glass substitutes used in place of glass, pre-glazed windows, retrofit window systems, mirrors, curtain wall systems, window wall systems, cable net systems, canopy systems, structural glazing systems, unitized systems, interior glazing systems, photovoltaic panels and systems, suspended glazing systems, louvers, skylights, entranceway systems including doors and hardware, revolving and automatic door systems, patio doors, store front systems including the installation of all metals, column covers, panels and panel systems, glass hand rail systems, decorative metals as part of the glazing system, and the sealing of all architectural metal and glass systems for weatherproofing and structural reasons, vinyl, molding, rubber, lead, sealants, silicone and all types of mastics in wood, iron, aluminum, sheet metal or vinyl sash, doors, frames, stone wall cases, show cases, book cases, sideboards, partitions and fixtures. Performs other related duties.
22	Hazardous Materials Removal Workers	Identify, remove, pack, transport, or dispose of hazardous materials, including asbestos, lead-based paint, waste oil, fuel, transmission fluid, radioactive materials, contaminated soil, mold, et cetera. Specialized training and certification in hazardous materials handling or a confined entry permit are generally required. May operate earth-moving equipment or trucks.
23	Heating, Air Conditioning and Refrigeration Service Technician	Repair and service heating, central air conditioning, or refrigeration systems, including oil burners, hot-air furnaces, heating stoves, and air handlers. (Installation of systems is performed by sheet metal worker). Includes HVAC mechanic.
24	Insulation Workers – Mechanical	This work includes the preparation, alteration, application, removal, hauling, erection, assembling, molding, spraying, pouring, mixing, hanging, adjusting, repairing, dismantling, reconditioning, maintenance, finishing, and/or weatherproofing of cold or hot thermal insulations with such materials as may be specified when those materials are to be installed for thermal purposes in voids, or to create voids, or on either piping, fittings, valves, boilers, ducts, flues, tanks, vats and equipment, or on any hot or cold surfaces for the purpose of thermal control or to be installed for sound control purposes mechanical devices, equipment, piping, surfaces related in an integral way to the insulation of such mechanical devices, equipment and piping. This work also includes all labor connected with insulation for; temperature control, personnel protection, safety and/or prevention of condensation. This work also includes all labor connected with hauling, distribution and cleanup of materials on the job premises. All thermal tape, pads, metered fittings
25	Irrigator- Landscape, Certified	Certified by TCEQ to install watering systems in various sizes and grades of lawn in order to maintain sufficient pressure and to insure even dispersal of water.

26	Laborer	Laborer Performs manual duties in all phases of construction. Demolition (interior and exterior), Flagging and Traffic Control, General Clean-Up, Air and Power Tool Operators (Including chipping guns, jackhammers and tampers), all material handling and clean-up, except refractory, chute/hose operator, raking, shoveling and vibrating, raking, shoveling, luting, ironing, dumping and spreading, trenching, material handling, back filling (*Equipment Operators Incidental to Laborers' scope of work). Landscape or maintain grounds of property using equipment as needed. Workers typically perform a variety of tasks, which may include any combination of the following: sod laying, mowing, trimming, planting, watering, fertilizing, digging, raking, sprinkler repair, and installation of mortarless segmental concrete masonry wall units. Does not ordinarily perform work permitting exercise of independent judgment or without close direction by other workers.
27	Locksmith	Self-explanatory.
28	Mechanic	Maintains and repairs construction tools and equipment.
29	Painters - Building	Paint walls, equipment, buildings, bridges, and other structural surfaces, using brushes, rollers, and spray guns. May remove old paint to prepare surface prior to painting. May mix colors or oils to obtain desired color or consistency. Exclude "Paperhangers."
30	Paper Hanger	Measures, cuts, and hangs wallpaper and Fiber Reinforced Paneling.
31	Pipelayers (Utility)	Installs concrete, clay, steel, ductile iron, plastic, corrugated pipe and any other type of pipe for storm drainage, water lines, gas lines and sanitary sewer lines. Lays underground communication and electrical ducts. May install and set electrical ground boxes, hand holes, manholes, inlets and other structures. Caulks joints, makes threaded and flanged connections. Installs valves and other accessories. Performs other related duties.
32	Pipe Fitters and Steamfitters	Assemble, install, alter, and repair pipelines or pipe systems that carry water, steam, air, or other liquids or gases. May install heating and cooling equipment and mechanical control systems. Includes pressurized lines and flow lines for gas, air, and oil found in industrial settings.
33	Plaster, Stucco, Lather, and EIFS Applicator	Apply interior or exterior plaster, stucco, or similar materials. May also set ornamental plaster. Applies acoustical plaster, interior and exterior plastering of stone imitation or any patented materials when cast. Molds and sets ornamental plaster and trim and runs ornamental plaster cornice and molding.
34	Plumbers/ Medical Gas Installer	Assemble, install, alter, and repair pipelines or pipe systems that carry water, steam, air, or other liquids or gases. May install heating and cooling equipment and mechanical control systems. Assemble, install, alter, and repair pipelines or pipe systems that carry medical gases or liquids. Specialized training and certification required.

35	Reinforcing Iron and Rebar Workers	Position and secure steel bars or mesh in concrete forms in order to reinforce concrete. Includes post-tensioning. Use a variety of fasteners, rod-bending machines, blowtorches, and hand tools.
36	Roofers	Cover roofs of structures with shingles, tile, slate, asphalt, aluminum, wood, metal and related materials. May spray roofs, sidings, and walls with material to bind or seal sections of structures. Includes metal and membrane roofs.
37	Sheet Metal Workers	Fabricate, assemble, install, and repair sheet metal products and equipment, such as ducts, seal the system, pressure test and test and balance , control boxes, drainpipes, architectural sheet metal, hangers, brackets, used in the installation of sheet metal, and installs grills, registers, and furnace casings. Work may involve any of the following: setting-up and operating fabricating machines to cut, bend, and straighten sheet metal, operating soldering equipment to join sheet metal parts; inspecting, assembling, and smoothing seams and joints of burred surfaces, including metal flashings, gutters, canopies, soffit's, louvers, skylights and custom metal roofs. Installs warm air furnaces except where necessary piping for gas, or oil is performed under the plumbing and pipefitting classification. Include sheet metal duct installers who install prefabricated sheet metal ducts used for heating, air conditioning, or other purposes. Fire life safety, damper inspection, stairwell pressurization. May install other heating and cooling devices which are in connection with duct systems.
38	Structural Iron and Steel Workers/Metal Building Erector	Rigging, raise, place, and unite iron or steel, prefabricated metal buildings precast concrete, precast "tilt-up" panels, concrete and steel bridge members, concrete decking, ornamental iron, hand rails, stairs, curtain wall/glass framework, girders, columns, beams, and other structural members to form completed structures or structural frameworks using hand tools, power tools, and hoisting equipment. Erects frame of building, using hoist. Bolts steel frame members together. Attaches wire and insulating materials to framework. Attaches sheet metal panels to framework including standing seam sheets. Installs and trims sheet metal on prefabricated metal buildings, using cutting torch, power saw, and tin snips. Rigging of heavy equipment, assembly and disassembly of cranes. May erect metal storage tanks. Exclude "Reinforcing Iron and Rebar Workers".
39	Tile Setters	Apply hard tile, terrazzo tile and veneer to walls, floors, and ceilings. Includes surface preparation as necessary.
40	Scaffolding Erector	Erection of a temporary elevated platform (both supported and suspended) and its supporting structure (including points of anchorage) to be used for supporting employees or material or both.

- **Welder** - Receives rate prescribed for craft performing operation to which welding is incidental.
- **Fork Lift and Man Lift (boom and scissor)** - Receives rate prescribed for craft performing operation to which operation of this equipment is incidental.

Heavy / Highway - Prevailing Wage Rates and Definitions



2020 Wage Rates

CLASSIFICATION	BASE WAGE PER HOUR	TOTAL FRINGES PER HOUR	HOURLY PREVAILING WAGE RATE	PER DIEM WAGE RATE
Asphalt Distributor Operator	16.07	2.78	18.85	150.80
Asphalt Paving Machine Operator / Spreader Box Operator	14.62	1.42	16.04	128.32
Asphalt Raker	14.30	1.44	15.74	125.92
Backhoe Operator	16.43	1.25	17.68	141.44
Concrete Finishers (Paving and Structures)	15.58	1.41	16.99	135.92
Crane Operator, Lattice Boom	17.50	0.00	17.50	140.00
Crane Operator, Hydraulic	20.00	0.00	20.00	160.00
Electrician	23.62	1.97	25.59	204.72
Excavator Operator	18.61	1.52	20.13	161.04
Form Builder/Setter	17.84	0.75	18.59	148.72
Form Setter (Paving and Curb)	12.86	0.00	12.86	102.88
Front End Loader	16.28	1.09	17.37	138.96
Laborer	13.53	1.16	14.69	117.52
Laborer (Skilled)(Utility)	15.49	0.73	16.22	129.76
Mechanic	17.50	0.00	17.50	140.00
Milling Machine Operator	15.31	1.46	16.77	134.16
Motor Grader Operator (Fine)	20.76	2.41	23.17	185.36
Pavement Marking Machine Operator	16.28	1.09	17.37	138.96
Pipe Layer (Utility)	15.24	2.69	17.93	143.44
Reinforcing Steel Setter (Structure and Paving)/ Structural Steel Worker	17.00	0.00	17.00	136.00
Rock Mason	14.00	0.00	14.00	112.00
Roller Operator	14.96	2.32	17.28	138.24
Servicer	14.33	0.00	14.33	114.64
Truck Driver, Single Axle	13.56	0.00	13.56	108.48
Truck Driver, Tandem Axle	17.43	0.93	18.36	146.88
Utility Operator Grade 1	14.32	0.76	15.08	120.64
Utility Operator Grade 2	15.31	1.46	16.77	134.16
Welder, Certified/ Structural Steel Welder	20.00	0.00	20.00	160.00

APPROVED 12/14/2020
REVISED 3/22/21

2020 Definitions

1	Asphalt Distributor Operator	Drives distributor truck, sets spray bars and operates valves and levers to control distribution of bituminous material for highway surfacing. May oil, grease or otherwise service and make adjustments to equipment as needed. Performs other related duties.
2	Asphalt Paving Machine Operator/Spreader Box Operator	Operates paving machine that spreads and levels asphaltic concrete on highway. Controls movement of machine, raises and lowers screed, regulates width of screed. Operates spreader box by adjusting hopper and strike-off blade so that gravel, stone or other material may be spread to a specific depth on road surface during seal coat and surface treatment operations. May oil, grease, service and make adjustments to equipment as needed. Performs other related duties.
3	Asphalt Raker	Distributes asphaltic materials evenly over road surface by hand-raking and brushing material to correct thickness; may control screed to regulate width and depth of materials; directs Laborers (skilled and unskilled) when to add or take away material to fill low spots or to reduce high spots.
4	Backhoe Operator	Operates a rubber-tired machine mounted with a backhoe bucket on one end and a loader bucket on the other end. Used for excavating ditches and structures, laying pipe and precast concrete structures, carrying material in the loader bucket, and general excavation and backfill. May also be equipped with hydraulic attachments. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
5	Concrete Finisher (Paving and Structures)	Finishes the exposed surfaces of fresh concrete paving, median barrier and every element of concrete structures. Operates bridge deck finishing machine. Forms and finishes edges and joints. Finishes concrete curbs and gutters. Finishes exposed surface of concrete after forms have been removed by patching imperfections with fresh concrete, rubbing surface with abrasive stone, and directing others in removing excess or defective concrete with power tools. Performs other related duties.
6	Crane Operator, Lattice Boom	A worker who operates a lattice boom type crane to hoist and move materials, raise and lower heavy weights and perform other related operations. May be crawler type or rubber tired. May include placement of rock riprap, clamshell, dragline, pipe and pile driving operations. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

7	Crane Operator, Hydraulic	A worker who operates a hydraulic telescoping boom type crane to hoist and move materials, raise and lower heavy weights and perform other related operations. May be crawler type or rubber-tired. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
8	Electrician	Plan and execute the layout and installation of electrical conduit, switch panels, buss bars, outlet boxes, electrical wires and cables, lighting standards, lighting fixtures, receptacles, switches, and other electrical devices and apparatus necessary for the complete installation of wiring systems, works on overhead distribution systems and underground distribution systems. Includes installation of photovoltaic solar panels.
9	Excavator Operator	Operates a crawler or rubber-tired machine mounted with an excavator bucket. Used for excavating ditches and structures, laying pipe and precast concrete structures, loading trucks and placing rock riprap. May also be equipped with various hydraulic attachments. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
10	Form Builder/Setter	Works from plans to build, assemble, fit together, align, plumb, and set in place forms for molding concrete structures. Forms may be wood, steel, aluminum, fiberglass or any other type of material. Checks forms while concrete is being placed. May install miscellaneous materials integral to concrete structures. May set precast concrete elements. Prepares for slip forming traffic rail and median barrier. May install permanent metal deck forms. May work with power tools. Performs other related duties. Includes guardrail installation.
11	Form Setter (Paving and Curb)	Fits together, aligns and sets to grade metal and wooden forms for placement for concrete paving and curbs. Works with survey crew to set stringline for paving, curb and gutter and curb. Performs other related duties.
12	Front End Loader	Operates a rubber-tired, skid steer or crawler type tractor with an attached scoop type bucket on front end. Machine is used to load materials from stockpiles, excavation, charging batch plants, loading and unloading trucks. May be used with attachments in lieu of the bucket. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

13	Laborer	A general term used on construction work covering many unskilled classifications requiring work of a physical nature. Performs a variety of work ranging from pick and shovel work to cleaning up lumber with hammer, shoveling and placing concrete, uses air tools, under the supervision of qualified personnel. Cleans concrete joints and fills joints with sealing compound from bucket or with hose and nozzle from a central source, applies coating of oil to inside face of forms and strip forms, unloads and transports reinforcing steel, cures newly poured concrete, assists pipelayers, works with dirt crew keeping construction layout stakes out of the way of dirt-moving equipment. May fine grade excavation and ditches, shovels hot asphalt material. May use power tools and other necessary equipment in demolition work under the supervision of qualified personnel. Does not ordinarily perform work permitting exercise of independent judgment or without close direction by other workers. Installs and maintains erosion control. Performs other related duties.
14	Laborer (Skilled) (Utility)	Performs a variety of manual duties, usually working in a utility capacity by working on multiple projects and tasks where demands require workmen with varied experience and ability to work without close direction. Unloads and transports reinforcing steel. Directs laborers in pouring concrete. Erects trench shoring and bracing. Installs, operates, and maintains de-watering systems. May assist equipment operators in positioning machines, verifying grades and signaling operators to dumping positions to maintain grades as directed. Uses power tools and air tools. May work as lead man in a labor crew. Is more or less a general utility construction worker. May be a second step in learning a skill. Includes Concrete/Gunite Pump Operator, Concrete Saw Operator, Fence Erector, Flagger, and Sign Erector. Performs other related duties.
15	Mechanic	Assembles, assist set up, adjusts and maintains and repairs all types of construction equipment and trucks. May perform the duties of a welder in repair of equipment. Performs other related duties.
16	Milling Machine Operator	Operates power-driven milling machine that planes material off the roadbed and discharges the material into a hauling unit or a window. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
17	Motor Grader Operator (Fine)	Operates motor grader. Performs many of the same duties of Motor Grader, Rough, but in addition performs finish grade work to blue tops or other close specification control. This work is subject to strict inspection and must conform closely to specifications. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.

18	Pavement Marking Machine Operator	Operates a machine used in laying paint stripes or markers on all types of paving. Loads of machine with appropriate materials and may walk or ride on machine. May oil, grease or otherwise service and make necessary adjustments to equipment needed. Perform other related duties.
19	Pipelayer (Utility)	Installs concrete, clay, steel, ductile iron, plastic, corrugated pipe and any other type of pipe for storm drainage, water lines, gas lines and sanitary sewer lines. Lays underground communication and electrical ducts. May install and set electrical ground boxes, hand holes, manholes, inlets and other structures. Caulks joints, makes threaded and flanged connections. Installs valves and other accessories. Performs other related duties.
20	Reinforcing Steel Setter (Structure and Paving)/ Structural Steel Worker	Works from plans to lay out and install reinforcing steel within forms or in mats of concrete paving. Erects and places reinforcing steel and fabricated structural steel members, such as girders, plates, diaphragms, lateral bracing, and unites them permanently to form a completed structural steel unit, including reinforcing members. Fastens steel members together by welding or bolting. May include dismantling and erecting large units of equipment. Gives direction to reinforcing steel worker apprentice or utility laborers. Performs other related duties.
21	Rock Mason	Constructs partitions, fences, walls, using rock. Cutting, grouting and pointing of materials listed above which is necessary shall be part of this classification. May also build or repair rock retaining walls, cutting or placing of rock in mortar or other similar material.
22	Roller Operator	Operates a self-propelled machine with either steel wheels or pneumatic tires which is used to compact and smooth bituminous and flexible base materials and compact earth fills, subgrade, and all other types of materials. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. Performs other related duties.
23	Servicer	Drives a truck which carries various fuels, oils, greases and filters. Must have knowledge of and is responsible for the correct oiling and greasing and changing of filters on equipment according to manufacturers' specifications. Uses compressed air grease guns, wrenches and other tools. May make adjustments to clutches, brakes and other mechanical items. Keeps record of service for preventive maintenance records. . May require a Commercial Driver's License if driving truck on public highways. Performs other related duties.

24	Truck Driver, Single Axle	Drives a light capacity truck for transporting loads of construction material. The truck is of single rear axle type, may have various kinds of beds attached such as dump, flat bed, tank, etc. May require CDL license for driving on highway. May service and make necessary adjustments for proper operation of equipment. Performs other related duties.
25	Truck Driver, Tandem Axle	Drives a tandem axle powered vehicle. Hauls dirt, rock, aggregates or other material. May require CDL license for driving on highway. May service and make necessary adjustments for proper operation of equipment. Performs other related duties.
26	Utility Operator Grade 1	Clam, ditching machine, side booms (except those in Grade 2), operator on dredges, cleaning machine, coating machine, , blending machine, water-kote machine, equipment welder, track tractor, derrick, dragline, shovel, motor grader rough grade, Crawler tractor, foundation drill operator, crawler and truck mounted, and piled river.
27	Utility Operator Grade 2	Pipe, gin truck or winch truck with poles when used for hoisting, side boom (cradling rock drill), tow tractor, farm tractor road boring machine, fork lift (industrial type), pot fireman (power agitated), straightening machine, boring machine, bombardier (track or tow rig), , hydrostatic testing operator, scraper, stalking machine, plant mix pavement roller operator, plant mix pavement, pneumatic motor operator. Concrete paving curing, float, texturing machine, subgrade trimmer, slip-form machine, milling machine, self-propelled sweeping machine, trenching machine, directional drill, , trenching, screening plant, and joint sealer. Off Road Hauler, Pavement Marking Machine Operator Reclaimer/Pulverizer Operator, Slurry Seal or Micro-Surfacing Machine Operator.
28	Welder, Certified/ Structural Steel Welder	Certified by the American Welding Society to perform structural steel welding. Operates welding equipment. Welds structural steel girders and diaphragms. May weld permanent metal deck forms. Cuts, lays-out, fits and welds metals or alloyed metal parts to fabricate or repair equipment. Welds the joints between lengths of pipe for oil, gas or other types of pipelines. May assist in welding of permanent metal deck forms. Performs other related duties.

Apprenticeship Program

Order Of The Commissioners Court Of El Paso County Regarding Apprenticeship Program Requirements

Whereas, the County of El Paso supports the adoption of an apprenticeship program for all county building construction projects in the amount of \$50,000 and higher and desires the inclusion of language mandating participation in apprenticeship programs certified by the U.S. Department of Labor (DOL) in all County building construction contracts; and

Whereas, the purpose of the apprenticeship program is to require that only journeymen and apprentices registered in an apprentice program certified by DOL perform work on county building construction projects in order to ensure both quality construction work as well as provide training opportunities; and

Whereas, a DOL certified apprenticeship program requirement for local building construction projects is consistent with the state prevailing wage rate law pursuant to Chapter 2258, Texas Government Code.

NOW THEREFORE BE IT RESOLVED, that the County of El Paso adopts the El Paso County Apprenticeship Program requiring the following of all building contractors and their subcontractors on County Building Construction Projects:

1. must sponsor or participate in a DOL certified apprenticeship program for all job classifications utilized on the project and which are "apprenticeable occupations" as defined by DOL regulations, except when there is a state statute requiring certification for an occupation which has inconsistent requirements;
2. must hire registered apprentices enrolled in a DOL certified apprenticeship program;
3. may not substitute helpers or unregistered apprentices to perform apprentice level work in place of registered apprentices;
4. must pay wage rates and benefits package for apprentices as determined by apprenticeship program/DOL;
5. must comply with DOL requirements for the ratio of apprentices to journeymen;
6. must hire apprentices in all job classifications utilized on the project and which are "apprenticeable occupations" as defined by DOL regulations, unless such placement would not be approved by the apprenticeship program.

BE IT FURTHER RESOLVED that the County Purchasing Agent is hereby directed to include notice of the County apprenticeship requirements in all specifications for bids on building constructions projects in the amount of \$50,000 or higher.

APPROVED on this the 23rd day of June, 2008.

ANTHONY COBOS
EL PASO COUNTY JUDGE

El Paso County

2008 Required Apprenticeship Programs

1. Acoustical Carpenter
2. Bricklayer and Mason
3. Cabinet Maker
4. Carpenter
5. Cement Mason
6. Drywall Application
7. Electrician
8. Electronic Systems Technician
9. Elevator Constructor & Repairer
10. Floor Layer
11. Glazier
12. HVAC
13. Insulation Worker
14. Locksmith
15. Operating Engineer
16. Painters
17. Pipefitter
18. Plasterer
19. Plumber
20. Protective Signal Installer
21. Roofers
22. Sheet Metal Worker
23. Structural Steel/Ironworker
24. Tile Setter

Lump Sum Bid Form

Place County of El Paso Purchasing Department
Project 23-009 Fabens Dam Improvements (TX01958)

To The County of El Paso
Date _____

Bid of _____ (hereinafter called Bidder), a corporation organized under the laws of the State of _____/a partnership/an individual doing business as _____ (strike out inapplicable references) and authorized to do business in Texas.

The Bidder, in compliance with your Bid Solicitation for the construction of the **Fabens Dam Improvements (TX01958)** that consists of the following:

ARTICLE 1. Statement of Work

The project consists of but is not limited to the following:

Furnish all tools, qualified labor, materials, equipment, qualified superintendence and all services, transportation, other incidentals, assurances and guarantees, assumptions of risk, and responsibility for the performance of all Pre/Post Construction Video operations and Aggregate Base Course operations as indicated on the Construction Drawings. Recording of all As-built Contract Drawings and As-built Specifications as required by the Contract Documents. Perform all site demolition work, earthwork operations, as indicated in the Construction Drawings. Furnish and place concrete, stone, cement-stabilized, or special riprap.

ARTICLE 2. The Contract Price

Having read and understood the Bid documents and requirements, we submit the following bid:
LUMP SUM BID (\$ _____)

_____ DOLLARS

(Amount must be shown in both words and figures. In case of discrepancy, the amount shown in words will govern). The bidder agrees that this bid shall be good and may not be withdrawn for a period of 60 calendar days after the scheduled closing time for receiving bids. Bidder understands that the County of El Paso reserves the right to reject any or all bids and to waive any technicalities in the bidding.

THE AMOUNT ABOVE MAKES A REASONABLE EFFORT TO TAKE INTO ACCOUNT AND INCLUDE PROBABLE MATERIALS PRICE INFLATION FOR THE FOLLOWING 365 DAYS FROM THE DATE THE BID SUBMITTED.

ARTICLE 3. Completion of Work

Bidder hereby agrees to commence work under this contract on or before a date to be specified in a written "Notice to Proceed" of the County of El Paso and to fully complete the project within 360 consecutive calendar days thereafter as stipulated in the specifications. Bidder further agrees to pay as liquidated damages, the sum of \$500.00 for each consecutive calendar day thereafter as provided herein.

The bid security attached in the sum of _____ (_____) is to become the property of the in the event the contract and bonds are not executed within the time above set forth, as liquidated damages for the delay and additional expense to the County caused thereby.

The County of El Paso will pay the Contractor for the performance of the Contract in current funds, for the total quantities of work performed at the Contract price stipulated in the Bid or the several respective items of work completed subject to additions and deductions as provided in the Fixed Price Construction Contract.

ARTICLE 4. Contract

The awarded bidder will be asked to sign a Fixed Price Construction Contract. A sample contract has been provided in the bid solicitation for review. **The County will not agree to a contract that does not include the following, bid accordingly:**

- **A liquidated damages clause.**
- **5% Retainage.**
- **A specified time for completion.**
- **Use of the current prevailing wage rate.**
- **Use of Apprenticeship Program.**
- **Bid bonds, performance bonds, and payment bonds.**
- **Liability and builder’s all-risk insurance.**

By submitting a bid, you agree to enter into a contract that includes these minimum terms. A bidder that is unwilling to agree to the terms will be considered a non-responsive bidder and may be rejected.

The executed contract documents shall consist of the following:

- Lump Sum Bid Form
- Bid Solicitation
- Addenda
- Signed copy of Bid Response
- Prevailing wage rates
- Fixed Price Construction Contract (see sample contract included in this bid)
- Additional documents provided to complete work.

Respectfully submitted

By: _____

Title: _____

[standard form- will be modified to suit specific details of Bid Project]

Contract Between Owner and Contractor – Sample

This FIXED PRICE CONSTRUCTION CONTRACT (the "Contract") is made and entered into by El Paso County, Texas, a political subdivision of the State of Texas (the "Owner") and [CONTRACTOR NAME] (the "Contractor"). This Contract is executed under seal, and shall be effective on the date the last party executed it.

This Contract is for the construction of a project identified as [Description including bid number]

The parties agree:

1. DOCUMENTS INCORPORATED BY REFERENCE

This Contract includes the plans and specifications for the Project, plus the following:

- 1.1. A copy of County Bid # _____ entitled "[DESCRIPTION ON FIRST PAGE OF BID]" all Bid Addendums, insurance requirements, prevailing wages, apprenticeship order, and all technical specifications (if any) and appropriate excerpts (if any) from the Bid Response, attached as **Exhibit 1**;
- 1.2. Contractor's Payment Bond, attached as **Exhibit 2**;
- 1.3. A copy of Contractor's Performance Bond, attached as **Exhibit 3**; and
- 1.4. A copy of the Insurance Certificates, to be attached as **Exhibit 4**;
- 1.5. **NOTE: Some exhibits, for example Contractor's Payment Bond (Exhibit 2), are provided in blank as examples. Contractor agrees to provide executed copies of blank exhibits as part of its performance under this Contract. Executed exhibits will then be incorporated into this Contract by reference. Contractor's failure to provide executed exhibits is a failure of performance under this Contract. In addition, Contractor's insurance certificates shall be attached as Exhibit 4 and incorporated by reference when available and prior to commencement of construction. Change Orders issued hereafter, and any other amendments executed by the Owner and the Contractor, shall become and be a part of this Contract. Documents not included or expressly contemplated in this Section do not, and shall not, form any part of this Contract.**

2. REPRESENTATIONS OF THE CONTRACTOR

The Contractor makes the following express representations to the Owner:

- 2.1. The Contractor is fully qualified to act as the contractor for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the contractor for, and to construct, the Project. This representation includes all subcontractors who perform services under this Contract.
- 2.2. The Contractor has become familiar with the Project site and the local conditions under which the Project is to be constructed and operated. This representation includes all subcontractors who perform services under this Contract.

- 2.3. The Contractor has received, reviewed and carefully examined all of the documents which make up this Contract, including (without limitation) the plans and specifications, and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for construction. This representation includes all subcontractors who perform services under this Contract.
- 2.4. The Contractor shall ensure that it has an adequate number of personnel, and the proper equipment to perform the scope of services required to complete the Project. Failure to do so constitutes a material breach of this Contract.
- 2.5. If performance of this Contract requires entry into the County courthouse, a facility controlled by the County sheriff (e.g. a detention center), or any other secure county facility, the Contractor shall ensure that all employees of the Contractor as well as all subcontractors of the Contractor pass a criminal background check prior to being allowed perform the scope of services required to complete the Project.

3. OWNERS REPRESENTATIVE, PROJECT MANAGER(S), & ENGINEERS.

- 3.1. Owner's Representative is the Director of Public Works, Ms. Norma Rivera Palacios or her successor in office. The Project Manager for this Contract is [REDACTED]. (A Project Manager or Engineer may be the same person.) **The Powers and duties of any "project manager" may be carried out by Owner's Representative, a Project Manager appointed by Owner, or an Engineer appointed by Owner.** The office and mailing address is 800 E. Overland, Room 200, El Paso, Texas. The phone number is 915.546.2015; facsimile is 915.546.8194. The Director of Public Works, or her successor, may replace any Project Manager or Engineer of Owner is at any time at her discretion and will provide reasonable written notice of such change to Contractor. The El Paso County Commissioners Court may replace Owner's Representative at any time and at its discretion. The Court will provide reasonable written notice of any such change to Contractor.
- 3.2. The duties, obligations, and responsibilities of the Project Manager shall include the following:
 - 3.2.1. Unless otherwise directed by the Owner in writing, the Project Manager shall act as the Owner's agent from the effective date of this Contract until final payment has been made, to the extent expressly set forth in this Contract.
 - 3.2.2. Unless otherwise directed by the Owner in writing, the Owner and the Contractor shall communicate with each other in the first instance through the Project Manager.
 - 3.2.3. When requested by the Contractor in writing, the Project Manager shall render interpretations necessary for the proper execution or progress of the work.
 - 3.2.4. The Project Manager shall draft proposed Change Orders.
 - 3.2.5. The Project Manager shall approve, or respond otherwise as necessary concerning shop drawings or other submittals received from the Contractor.
 - 3.2.6. The Project Manager shall be authorized to refuse to accept work which is defective or otherwise fails to comply with the requirements of this Contract. If the Project Manager deems it appropriate, the Project Manager shall be authorized to call for

extra inspection or testing of the work for compliance with the requirements of this Contract.

- 3.2.7. The Project Manager shall review the Contractor's Payment Requests and shall approve in writing those amounts which, in the opinion of the Project Manager, are properly owing to the Contractor as provided in this Contract.
- 3.2.8. The Project Manager shall, upon written request from the Contractor, perform those inspections required in this Contract (unless a statute requires that they be performed by an engineer).
- 3.2.9. The Project Manager shall be authorized to require the Contractor to make changes which do not involve a change in the Contract Price or in the time for the Contractor's performance of this Contract consistent with the intent of this Contract.
- 3.3. THE DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR UNDER THIS CONTRACT SHALL NOT BE CHANGED, ALTERED, DISCHARGED, RELEASED, OR SATISFIED BY ANY DUTY, OBLIGATION OR RESPONSIBILITY OF THE PROJECT MANAGER (OR ENGINEER). THE CONTRACTOR IS NOT A THIRD-PARTY BENEFICIARY OF ANY CONTRACT BETWEEN THE OWNER AND THE PROJECT MANAGER (OR ENGINEER). THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE DUTIES OF THE CONTRACTOR TO THE OWNER ARE INDEPENDENT OF, AND ARE NOT DIMINISHED BY, ANY DUTIES OF THE PROJECT MANAGER (OR ENGINEER) TO THE OWNER.
- 3.4. From time to time, Owner may also appoint an engineer to manage the project by designating an engineer in writing. If the Owner should find it necessary or convenient to replace the Engineer, the Owner shall retain a replacement Engineer, and the role of the replacement Engineer shall be the same as the role of the Engineer. If Owner does not designate an engineer, then Owner's representative may fulfill the duties of the engineer to the extent permitted by law. The Engineer (if any) shall have the following duties, obligations, and responsibilities (without limitation):
- 3.4.1. The engineer (if any) shall have all the powers and duties of a Project Manager under this Contract. The engineer shall also have all the powers and duties allocated to an engineer under any Texas statute as long as the exercise of those powers and duties is consistent with the Owner's purposes and interests under this Contract.
- 3.4.2. If a project manager is not a licensed engineer, project manager may not perform the duties of an engineer.
- 3.5. If a dispute arises as to the respective powers and duties of the Engineer and Project Manager, those disputes shall be resolved by the Owner, or Owner's Representative, in her (or its) discretion.

4. INTENT AND INTERPRETATION

With respect to the intent and interpretation of this Contract, the Owner and the Contractor agree as follows:

- 4.1. This Contract, together with exhibits constitutes the entire and exclusive agreement between the parties with reference to the Project. This Contract supersedes all prior discussions, communications, representations, understandings, negotiations, or agreements.
- 4.2. Anything that may be required, implied or inferred by the documents which make up this Contract, or any one or more of them, shall be provided by the Contractor for the Contract Price.
- 4.3. Nothing contained in this Contract shall create, nor be interpreted to create, privity or any other relationship whatsoever between the Owner and any person except the Contractor.
- 4.4. When a word, term, or phrase is used in this Contract, it shall be interpreted or construed first, as defined in this Contract; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.
- 4.5. **THE WORDS "INCLUDE", "INCLUDES", OR "INCLUDING", AS USED IN THIS CONTRACT, SHALL BE DEEMED TO BE FOLLOWED BY THE PHRASE, "WITHOUT LIMITATION."**
- 4.6. The specification of any act, failure, refusal, omission, event, occurrence, or condition as constituting a material breach of this Contract shall not imply that any other (non-specified) act, failure, refusal, omission, event, occurrence, or condition is not a material breach of this Contract.
- 4.7. The Contractor shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract, shop drawings, and other submittals and shall give written notice to the Owner, Engineer (if any), and the Project Manager (if any) of any conflict, ambiguity, error or omission which the Contractor may find with respect to these documents before proceeding with the affected work. The express or implied approval by the Owner, the Project Manager, or Engineer (if any) of any shop drawings or other submittals shall not relieve the Contractor of the continuing duties imposed by this Contract, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Owner has requested the Project Manager to only prepare documents for the Project, including the plans and specifications for the Project, which are accurate, adequate, consistent, coordinated, and sufficient for construction. **HOWEVER, THE OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** The Contractor again hereby acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been, are, or will be made.
- 4.8. In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract, the following shall control:
 - 4.8.1. As between figures given on plans and scaled measurements, the figures shall govern.

4.8.2. As between large-scale plans and small-scale plans, the large-scale plans shall govern.

4.8.3. As between plans and specifications, the requirements of the specifications shall govern.

4.8.4. As between this document and the plans or specifications, this document shall govern.

5. OWNERSHIP OF THE DOCUMENTS WHICH MAKE UP THE CONTRACT

5.1. The documents which make up this Contract, as well as any other documents furnished by the Owner, shall remain the property of the Owner. The Contractor shall have the right to keep one copy of the Contract upon completion of the Project. However, the Contractor may not use, or permit to be used, any portion of the documents which make up this Contract on other projects without the Owner's prior written authorization.

6. CONTRACTOR'S PERFORMANCE

6.1. The Contractor shall perform all of the work required, implied, or reasonably inferable from this Contract including the following:

6.1.1. Construction of the Project;

6.1.2. The furnishing of a performance and payment bond in the full amount of the Contract and insurance;

6.1.3. The provision or furnishing, and prompt payment therefore, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, or other utilities, required for construction and all necessary building permits and other permits required for the construction of the Project. **CONTRACTOR SHALL LAWFULLY DISPOSE OF ALL CONSTRUCTION MATERIALS, CHEMICALS, AND DEBRIS AND SHALL INDEMNIFY AND HOLD OWNER HARMLESS FOR THE UNLAWFUL DISPOSAL OF ALL CONSTRUCTION MATERIALS, CHEMICALS, AND DEBRIS DONE BY CONTRACTOR OR ITS SUBCONTRACTOR IN FURTHERANCE OF THIS CONTRACT.**

6.1.4. The creation and submission to the Owner of detailed and comprehensive as-built drawings depicting all as-built construction. As-built drawings shall be submitted to the Owner upon final completion of the Project and receipt of same by the Owner shall be a condition precedent to final payment to the Contractor.

7. TIME FOR CONTRACTOR'S PERFORMANCE

7.1. The Contractor shall commence the performance of this Contract on the date authorized by Owner/Owner's Representative in a written Notice to Proceed and shall diligently continue its performance to and until final completion of the Project. The Contractor shall accomplish Substantial Completion of the Project on or before [insert number of days to substantial completion] consecutive calendar days from the receipt of the Notice to Proceed.

7.2. The Contractor shall pay the Owner the sum of \$XXXX.XX per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set

forth in this Contract for Substantial Completion. Any sums due and payable under this Contract by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at the time of executing this Contract. **These liquidated damages are based on a reasonable estimate of owner's cost of delay and include the cost of [insert rational here].** When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

- 7.3. **"Substantial Completion"** means that point at which, as certified in writing by the Project Manager, the Project is at a level of completion, in strict compliance with this Contract, such that the Owner or its designee can enjoy beneficial use or occupancy and can use or operate it in all respects, for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion.
- 7.4. When Substantial Completion has been achieved, the Contractor shall notify the Owner and the Project Manager in writing and shall furnish to the Project Manager a listing of those matters yet to be finished. The Project Manager will then conduct an inspection to confirm that the work is in fact substantially complete. Upon its confirmation that the Contractor's work is substantially complete, the Project Manager will so notify the Owner and Contractor in writing and note the date of Substantial Completion. If the Project Manager, through its inspection, fails to find that the Contractor's work is substantially complete, and is required to repeat all, or any portion, of its Substantial Completion inspection, the Contractor shall bear the cost of such repeat inspection(s) which cost may be deducted by the Owner from any payment then or thereafter due to the Contractor. Guarantees and equipment warranties required by this Contract shall commence on the date of Substantial Completion. Upon Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to 100% of the Contract Price. Owner may, however, deduct any amounts attributable to liquidated damages and 100% of the reasonable costs, as determined by the Owner, for completing all incomplete work, correcting and bringing into conformance all defective and nonconforming work, and handling any outstanding or threatened claims.
- 7.5. When the Project is **finally complete** and the Contractor is ready for a final inspection, it shall notify the Owner and the Project Manager in writing. The Project Manager will perform a final inspection of the Project. If the Project Manager confirms that the Project is complete in full accordance with this Contract and that the Contractor has performed all of its obligations to the Owner under this Contract, the Project Manager will furnish a final Approval for Payment to the Owner certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld under to this Contract. If the Project Manager is unable to issue its final Approval for Payment and is required to repeat its final inspection of the Project, the Contractor shall bear the cost of such repeat inspection(s), which costs may be deducted by the Owner from the Contractor's final payment.
- 7.6. If the Contractor fails to achieve final completion within **XX** days of the date of Substantial Completion, the Contractor shall pay the Owner the sum of **\$XX.xx** per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set

for final completion of the work. Any sums due and payable by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. These liquidated damages are based on a reasonable estimate of owner's cost of delay and include the cost of [insert rationale here]. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If the Contractor overcomes the delay in achieving final completion (or any part thereof) for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

7.7. All limitations of time in this Contract are material and are of the essence of this Contract.

8. PRICE AND CONTRACT PAYMENTS

- 8.1. The Owner shall pay, and the Contractor shall accept, as full and complete payment for the Contractor's timely performance of its obligations under this Contract the fixed price \$XXXXX.XX. This fixed price constitutes the Contract Price, which shall not be modified except by Change Order as provided in this Contract.
- 8.2. Prior to beginning construction, the contractor shall provide a Schedule of Values to the Project Manager which shall be adhered to by Contractor. The Schedule of Values shall apportion the Contract Price among the different elements of the Project for purposes of partial payments. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Project Manager's Schedule of Values will be utilized for the Contractor's Payment Requests but shall only be so utilized after it has been acknowledged in writing by the Project Manager and the Owner.
- 8.3. The Owner shall pay the Contract Price to the Contractor in accordance with the procedures set forth in this Paragraph. After the commencement of performance, the Contractor may submit a payment request for that portion of the work which has been completed, subject to the retainage described below. Contractor may submit subsequent payment requests no more often than once per 30 calendar days. A payment request shall be in such format and include whatever supporting information as may be required by the Project Manager. In any payment request, the Contractor may request payment for **95%** of that part of work that is complete, less the total amount of previous payments received from the Owner. Any payment on account of stored materials or equipment will be subject to the Contractor providing written proof that the Owner has title to such materials or equipment and that they are fully insured against loss or damage. Each such Payment Request shall be signed by the Contractor and shall constitute the Contractor's representation: that the quantity of work has reached the level for which payment is requested; that the work has been properly installed or performed in strict compliance with this Contract; and, that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Project Manager shall review the Payment Request and may also review the work at the Project site or elsewhere to determine whether the quantity and quality of the work is as represented in the Payment Request and is as required by this Contract. The Project Manager shall approve in writing the amount which, in the opinion of the Project Manager, is properly owing to the Contractor. **The Owner shall make payment to the Contractor within 30 days following the Project Manager's written approval of each Payment Request.** The amount of each such payment shall be the amount approved for payment by the Project

Manager less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Project Manager's approval of the Contractor's Payment Requests shall not preclude the Owner from the exercise of any of its rights as set forth in this Contract. The submission by the Contractor of a Payment Request also constitutes an affirmative representation and warranty that all work for which the Owner has previously paid is free and clear of any lien, claim, or other encumbrance of any person whatsoever. As a condition precedent to payment, the Contractor shall, if required by the Owner, also furnish to the Owner properly executed waivers of lien, in a form acceptable to the Owner, from all subcontractors, materialmen, suppliers or others having lien rights. The waiver shall acknowledge receipt of all sums due under all prior Payment Requests and waive and relinquish any liens, lien rights or other claims relating to the Project site. Furthermore, the Contractor warrants and represents that, upon payment of the Payment Request submitted, title to all work included in such payment shall be vested in the Owner.

- 8.4. When payment is received from the Owner, the Contractor shall immediately pay all subcontractors, materialmen, laborers, and suppliers the amounts they are due for the work covered by such payment. If the Owner becomes informed that the Contractor has not paid a subcontractor, materialman, laborer, or supplier as provided in this Contract, the Owner shall have the right (but not the duty) to: (1) issue future payment checks to the Contractor that name the Contractor and any such subcontractor, materialman, laborer, or supplier as joint payees; or (2) make direct payments to any unpaid subcontractor, materialmen, laborers, or suppliers that are due for performance of the Contract and make appropriate deductions from future payments to Contractor. If utilized by Owner, these remedies shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.
- 8.5. Neither payment to the Contractor, utilization of the Project for any purpose by the Owner, nor any other act or omission by the Owner shall be interpreted or construed as an acceptance of any work of the Contractor not strictly in compliance with this Contract.
- 8.6. The Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion of or the entire amount previously paid to the Contractor due to:
 - 8.6.1. The quality of a portion, or all, of the Contractor's work not being in accordance with the requirements of this Contract;
 - 8.6.2. The quantity of the Contractor's work not being as represented in the Contractor's Payment Request, or otherwise;
 - 8.6.3. The Contractor's rate of progress being such that, in the Owner's opinion, Substantial Completion or final completion, or both, may be inexcusably delayed;
 - 8.6.4. The Contractor's failure to use Contract funds, previously paid the Contractor by the Owner, to pay Contractor's Project-related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers;
 - 8.6.5. Claims made, or likely to be made, against the Owner or its property;
 - 8.6.6. Loss caused by the Contractor; or,
 - 8.6.7. The Contractor's failure or refusal to perform any of its obligations to the Owner.

- 8.6.8. If the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this section, the Contractor shall promptly comply with such demand;
- 8.7. If within 30 days from the date payment to the Contractor is due, the Owner, without cause, fails to pay the Contractor any amounts then due and payable to the Contractor, the Contractor shall have the right to cease work until receipt of proper payment after first providing **30 days'** written notice of its intent to cease work to the Owner. **Any payment not made within 30 days after the date due shall bear interest at rates provided under the Texas Prompt Pay Act, Tex. Gov't Code Ch. 2251.**
- 8.8. Prior to being entitled to receive final payment and as a condition precedent to final payment, the Contractor shall furnish the Owner, in the form and manner required by Owner, if any, with a copy to the Project Manager:
- 8.8.1. An affidavit that all of the Contractor's obligations to subcontractors, laborers, equipment or material suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied;
- 8.8.2. If required by the Owner, separate releases of lien or lien waivers from each subcontractor, lower tier subcontractor, laborer, supplier or other person or entity who has, or might have a claim against the Owner or the Owner's property;
- 8.8.3. If applicable, consent(s) of surety to final payment;
- 8.8.4. All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of the Contractor, or expressly required in this Contract, as a part of or prior to Project closeout;
- 8.9. The Owner shall, subject to its rights set forth in this Contract, make final payment of all sums due the Contractor within 10 days of the Project Manager's execution of a final Approval for Payment.

9. INFORMATION AND MATERIAL SUPPLIED BY THE OWNER

- 9.1. Contractor shall be responsible for obtaining any and all written and tangible material concerning conditions below ground at the site of the Project. Owner shall cooperate to assist (upon request) Contractor with obtaining such material concerning below ground conditions at the project site. If such materials are furnished to the Contractor by the owner, they are only furnished to make complete disclosure of such material as being in the possession of the Owner and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefore. The Owner shall also furnish, if appropriate, the legal description of the Project site, and any required survey;
- 9.2. The Contractor shall obtain all required permits, authorizations, approvals, easements, and the like.
- 9.3. The Owner will provide the Contractor one electronic copy of the complete Contract. The Contractor will be charged, and shall pay the Owner, a reasonable fee per paper copy of the Contract.

10. CEASE AND DESIST ORDER

- 10.1. If the Contractor fails or refuses to perform the work as required under this Contract, the Owner may instruct the Contractor to cease and desist from performing further work in whole or in part. Upon receipt of such instruction, the Contractor shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's instructions has been corrected, no longer exists, or the Owner instructs that the work may resume. If the Owner issues such instructions to cease and desist, and if the Contractor fails and refuses, within seven days of receipt of same, to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the work with its own forces, or with the forces of another contractor, and the Contractor shall be fully responsible and liable for the costs of performing such work by the Owner. The rights set forth in this paragraph are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Contractor.

11. DUTIES, OBLIGATIONS, AND RESPONSIBILITIES OF THE CONTRACTOR

- 11.1. In addition to any and all other duties, obligations and responsibilities of the Contractor set forth in this Contract, the Contractor shall have and perform the following duties, obligations, and responsibilities:
- 11.1.1. The Contractor shall not perform work without adequate plans and specifications, or, as appropriate, approved shop drawings, or other submittals. If the Contractor performs work knowing or believing it involves an error, inconsistency or omission in the Contract without first providing written notice to the Project Manager and Owner, the Contractor shall be responsible for such work and pay the cost of correcting same.
- 11.1.2. All work shall strictly conform to the requirements of this Contract.
- 11.1.3. The work shall be strictly supervised, the Contractor bearing full responsibility for any and all acts or omissions of those engaged in the work on behalf of the Contractor.
- 11.1.4. The Contractor warrants that all labor furnished under this Contract shall be competent to perform the tasks undertaken; that the product of such labor shall yield only first-class results; that all materials and equipment provided shall be new and of high quality; and that the completed work will be of high quality, without defects, and that all work strictly complies with the requirements of this Contract. Any work not strictly complying with the requirements of this Section constitutes a breach of the Contractor's warranty.
- 11.1.5. The Contractor shall obtain and pay for all required permits, fees, and licenses customarily obtained by the Contractor. The Contractor shall comply with all legal requirements applicable to the work. **CONTRACTOR SHALL LAWFULLY DISPOSE OF ALL CONSTRUCTION MATERIALS, CHEMICALS, AND DEBRIS AND SHALL INDEMNIFY AND HOLD OWNER HARMLESS FOR THE UNLAWFUL DISPOSAL OF ALL CONSTRUCTION MATERIALS, CHEMICALS, AND DEBRIS DONE BY CONTRACTOR OR ITS SUBCONTRACTOR(S) IN FURTHERANCE OF THIS CONTRACT.**
- 11.1.6. The Contractor shall comply with, the schedule (as prepared by Contractor, and approved by Owner) for completing the work. The schedule shall be updated no less

frequently than monthly (unless the parties otherwise agree in writing) and shall be updated to reflect conditions encountered from time to time and shall apply to the total Project. Each such revision shall be furnished to the Owner by the Contractor. Strict compliance with the requirements of this Section shall be a condition precedent to payment to the Contractor, and failure by the Contractor to strictly comply with these requirements shall constitute a material breach of this Contract.

- 11.1.7. The Contractor shall keep an updated copy of this Contract at the site. Additionally, the Contractor shall keep a copy of approved shop drawings and other submittals. All of these items shall be available to the Owner and the Project Manager at all regular business hours. Upon final completion of the work, all of these items shall be finally updated and provided to the Owner and shall become the property of the Owner.
- 11.1.8. Shop drawings and other submittals from the Contractor do not constitute a part of the Contract. The Contractor shall not do any work requiring shop drawings or other submittals unless such shall have been approved in writing by the Project Manager. All work requiring approved shop drawings or other submittals shall be done in strict compliance with such approved documents. However, approval by the Project Manager or the Owner shall not be evidence that work installed under shop drawings or submittals conforms to the requirements of this Contract. The Owner and the Project Manager shall have no duty to review partial submittals or incomplete submittals. The Contractor shall maintain a submittal log which shall include, at a minimum, the date of each submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. The Contractor shall have the duty to carefully review, inspect, and examine all submittals before submission of same to the Owner or the Project Manager.
- 11.1.9. The Contractor shall maintain the Project site in a reasonably clean condition during performance of the work. Upon final completion, the Contractor shall thoroughly clean the Project site of all debris, trash and excess materials or equipment.
- 11.1.10. At all times relevant to this Contract, the Contractor shall permit the Owner and the Project Manager to enter upon the Project site and to review or inspect the work without formality or other procedure.

12. INDEMNITY

- 12.1. **THE CONTRACTOR SHALL INDEMNIFY AND HOLD THE OWNER FROM ANY AND ALL CLAIMS, LIABILITY, DAMAGES, LOSSES, COSTS AND EXPENSES OF EVERY TYPE ARISING FROM CONTRACTOR'S PERFORMANCE OF THIS CONTRACT. THE PARTIES AGREE THAT THIS INDEMNITY WILL BE INTERPRETED BROADLY. THIS INDEMNITY INCLUDES (WITHOUT LIMITATION) ATTORNEYS' FEES AND EXPENSES, LIABILITY, DAMAGE, LOSSES, COSTS OR EXPENSES DUE (WITHOUT LIMITATION) TO SICKNESS, PERSONAL INJURY, DISEASE OR DEATH, AND/OR THE UNLAWFUL DISPOSAL OF CONSTRUCTION MATERIALS, CHEMICALS, OR DEBRIS. THIS INDEMNITY ALSO INCLUDES (WITHOUT LIMITATION) LOSS OR DESTRUCTION OF TANGIBLE PROPERTY, INCLUDING LOSS OF USE RESULTING THEREFROM. THIS INDEMNITY APPLIES WHETHER IT STEMS FROM ACTIONS OF THE CONTRACTOR OR ANYONE FOR WHOSE ACTS THE CONTRACTOR MAY BE LIABLE, REGARDLESS OF WHETHER SUCH LIABILITY, CLAIM, DAMAGE, LOSSES, COSTS, OR EXPENSE IS CAUSED IN PART BY THE OWNER.**

13. MISCELLANEOUS TERMS

- 13.1. Owner is a tax-exempt political subdivision of the State of Texas. Owner shall not be liable for any taxes from which it is exempt. Owner's Tax Identification Number is 746000762.
- 13.2. Nothing in any of the terms and conditions which comprise the Contract modifies or waives any governmental or official immunity or limitation of liability enjoyed by Owner, its elected officials, or employees at common law or under other Texas law. **Any indemnity or hold harmless provisions imposed on Owner in any of the Contractor's terms and conditions are deleted and invalid.** The Parties understand and agree that neither a tax nor interest and sinking fund has been set, adopted, or established for the payment of any such obligation as to Owner under this Contract.
- 13.3. The Parties understand and acknowledge Owner is subject to the Texas Open Meetings Act and Public Information Act, Chapters 551 and 552 of the Texas Government Code, respectively, which may require the disclosure of information despite any confidentiality, proprietary, or other provisions to the contrary in the Contract terms and conditions between the parties.
- 13.4. For any and all disputes arising out of the Contract, both parties retain all rights and remedies available to them under Federal and State law.
- 13.5. The Contract terms and conditions may not be amended or modified except in writing and executed by both parties to the Contract and authorized by their respective governing bodies.
- 13.6. If applicable, pursuant to Texas Government Code Section 2271.002, Contractor verifies it does not boycott Israel and will not boycott Israel as defined in Section 2271.001(1), for the duration of the Contract.

14. CLAIMS BY THE CONTRACTOR

Claims by the Contractor against the Owner are subject to the following:

- 14.1. All Contractor claims against the Owner shall be initiated by a written claim submitted to the Owner and the Project Manager. Such claim shall be received by the Owner and the Project Manager no later than 7 calendar days after the event, or the first appearance of the circumstances, causing the claim. The written claim must detail all known facts and circumstances supporting the claim.
- 14.2. The Contractor and the Owner shall continue their performance regardless of the existence of any claims submitted by the Contractor.
- 14.3. If the Contractor discovers previously concealed and unknown site conditions which are materially at variance from those typically and ordinarily encountered in the general geographical location of the Project, the Contract Price shall be modified, either upward or downward, upon the written claim made by either party within 10 calendar days after the first appearance to such party of the circumstances. As a condition precedent to the Owner having any liability to the Contractor due to concealed and unknown conditions, the Contractor must give the Owner and the Project Manager written notice of, and an

opportunity to observe, such condition prior to disturbing it. The failure by the Contractor to give the written notice and make the claim as provided by this Section shall constitute a waiver by the Contractor of any rights arising out of or relating to such concealed and unknown condition.

- 14.4. If the Contractor seeks to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner, the Contractor shall strictly comply with the notice requirements above and such claim shall be made by the Contractor before proceeding to execute any additional or changed work. Failure of the condition precedent to occur shall constitute a waiver by the Contractor of any claim for additional compensation.
- 14.5. In connection with any claim by the Contractor against the Owner for compensation in excess of the Contract Price, any liability of the Owner for the Contractor's cost shall be strictly limited to direct cost incurred by the Contractor and shall not include indirect cost or consequential damages of the Contractor. The Owner shall not be liable to the Contractor for claims of third-parties including subcontractors, unless and until liability of the Contractor has been established therefore in a court of competent jurisdiction and subject to Owner's Indemnity protection under this Contract.
- 14.6. If the Contractor is delayed in performing any task which at the time of the delay is then critical (or which during the delay becomes critical) as the sole result of any act or omission by the Owner or someone acting in the Owner's behalf; by Owner-authorized Change Orders; by unusually bad weather not reasonably anticipatable; or by fire or other Acts of God, then the date for achieving Substantial Completion, or, (as applicable) final completion, shall be appropriately adjusted by the Owner upon the written claim of the Contractor to the Owner and the Project Manager. A task is critical within the meaning of this Section if, and only if, the task is on the critical path of the Project schedule so that a delay in performing such task will delay the ultimate completion of the Project. Any claim for an extension of time by the Contractor shall strictly comply with the notice requirements above. If the Contractor fails to make such claim as required in this Section, any claim for an extension of time shall be waived.

15. SUBCONTRACTORS

- 15.1. Upon execution of this Contract, the Contractor shall identify to the Owner and the Project Manager, in writing, those parties intended as subcontractors on the Project. The Owner shall, in writing, state any objections the Owner may have to one or more of such subcontractors. The Contractor shall not enter into a subcontract with an intended subcontractor with reference to whom the Owner objects. All subcontracts shall afford the Contractor rights against the subcontractor which correspond to those rights afforded to the Owner against the Contractor in this Contract, including those rights of contract termination as set forth in this Contract.

16. CHANGE ORDERS

- 16.1. One or more changes to the work within the general scope of this Contract may be ordered by Change Order. The Contractor shall proceed with any such changes, and same shall be accomplished in strict accordance with the following terms and conditions:
- 16.1.1. "Change Order" shall mean a written order to the Contractor executed by the Owner and the Project Manager after execution of this Contract, directing a change in the work and may include a change in the Contract Price or the time for the Contractor's performance, or any combination thereof.
- 16.1.2. Any change in the Contract Price resulting from a Change Order shall be determined as follows:
- 16.1.2.1. By mutual agreement between the Owner and the Contractor as evidenced by the change in the Contract Price being set forth in the Change Order and executed by the Parties, or,
- 16.1.2.2. If no mutual agreement occurs between the Owner and the Contractor, the change in the Contract Price, if any, shall be derived by determining the reasonable actual costs incurred or savings achieved, resulting from revisions in the work. Such reasonable actual costs or savings shall include a component for direct jobsite overhead and profit but may not include home-office overhead or other indirect costs or components. Any such costs or savings shall be documented in the format and with such content and detail as the Owner or the Project Manager requires.
- 16.2. The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the work; this Contract as thus amended; and the Contract Price and the time for performance by the Contractor. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the work included within, or affected by, the executed Change Order.
- 16.3. The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent, or approval is required by the Owner, the Project Manager, the Contractor's surety, or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of, and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

17. DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

- 17.1. If the Contractor covers, conceals or obscures its work in violation of this Contract or in violation of a directive from the Owner or the Project Manager, such work shall be uncovered and displayed for the Owner's or Project Manager's inspection upon request, and shall be reworked at no cost in time or money to the Owner.
- 17.2. If any of the work is covered, concealed or obscured in a manner not covered by the paragraph above, it shall, if directed by the Owner or the Project Manager, be uncovered and displayed for the Owner's or Project Manager's inspection. If the uncovered work

conforms strictly to this Contract, the costs incurred by the Contractor to uncover and subsequently replace such work shall be borne by the Owner. Otherwise, such costs shall be borne by the Contractor.

- 17.3. The Contractor shall, at no cost in time or money to the Owner, correct work rejected by the Owner or by the Project Manager as defective or failing to conform to this Contract. Additionally, the Contractor shall reimburse the Owner for all testing, inspections, and other expenses incurred as a result of the rejected work.
- 17.4. In addition to its warranty obligations set forth elsewhere in this Contract, the Contractor shall be specifically obligated to correct all defective or nonconforming work for a period of **12 months** following final completion upon written direction from the Owner.
- 17.5. The Owner may, but shall not be required to, choose to accept defective or nonconforming work. In such event, the Contract Price shall be reduced by the greater of (1) the reasonable costs of removing and correcting the defective or nonconforming work, and (2) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for the acceptance of defective or nonconforming work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming work.

18. TERMINATION BY THE CONTRACTOR

- 18.1. If the Owner repeatedly fails to perform its material obligations to the Contractor for a period of **30** days after receiving written notice from the Contractor of its intent to terminate, the Contractor may terminate performance under this Contract by written notice to the Owner and the Project Manager. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience.

19. OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE

- 19.1. The Owner shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason, for a cumulative period of up to **3** calendar days. If any such suspension is directed by the Owner, the Contractor shall immediately comply.
- 19.2. In the event the Owner directs a suspension of performance under this Paragraph, through no fault of the Contractor, the Owner shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of:
 - 19.2.1. Demobilization and remobilization, including such costs paid to subcontractors;
 - 19.2.2. Preserving and protecting work in place;
 - 19.2.3. Storage of materials or equipment purchased for the Project, including insurance; and,
 - 19.2.4. Performing in a later, or during a longer time frame than that contemplated by this Contract.

20. TERMINATION BY THE OWNER

20.1. The Owner may, for any reason whatsoever, terminate performance under this Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective. The Contractor shall incur no further obligations in connection with the work and the Contractor shall stop work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title, and interest under termination orders or subcontracts to the Owner or its designee. The Contractor shall transfer title and deliver to the Owner such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has. When terminated for convenience, the Contractor shall be compensated as follows:

20.1.1. The Owner and the Contractor may agree to the compensation, if any, due to the Contractor under this paragraph;

20.1.2. The Contractor shall submit a termination claim to the Owner and the Project Manager specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner or the Project Manager. If the Contractor fails to file a termination claim within 1 year from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with the next subsection:

20.1.3. Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

20.1.3.1. Contract prices for labor, materials, equipment, and other services accepted under this Contract;

20.1.3.2. Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for direct jobsite overhead and profit thereon (such profit shall not include anticipated profit or consequential damages). However, if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any; and,

20.1.3.3. Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders under this Section. These costs shall not include amounts paid in accordance with other provisions of this Contract.

20.1.4. The total sum to be paid the Contractor under this Section shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

20.2. If the Contractor does not perform the work in a timely manner; supply adequate labor, supervisory personnel or proper equipment or materials; timely discharge its obligations for labor, equipment and materials; proceeds to disobey applicable law; or otherwise commits

a violation of a material provision of this Contract, then the Owner (in addition to any other rights it may have against the Contractor or others) may terminate the performance of the Contractor and assume possession of the Project site and of all materials and equipment at the site and may complete the work. In such case, the Contractor shall not be paid further until the work is complete. After final completion has been achieved, if any portion of the Contract Price, as it may be modified under this Contract, remains after all costs to the Owner of completing the work have been deducted by the Owner, such remainder shall belong to the Contractor. Otherwise, the Contractor shall pay and make whole the Owner for such costs. This obligation for payment shall survive the termination of the Contract. If the employment of the Contractor is terminated by the Owner for cause under to this Contract, and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall be deemed a Termination for Convenience under this Contract.

21. INSURANCE

- 21.1. The Contractor shall have and maintain insurance under the requirements stated in the bid attached and incorporated by reference.

22. SURETY BONDS

- 22.1. The Contractor shall furnish separate performance and payment bonds to the Owner prior to commencement of the Project. Each bond shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in a form suitable to the Owner and shall be executed by a surety, or sureties, reasonably acceptable to the Owner.

23. PROJECT RECORDS

- 23.1. All documents relating to the Project, or any designated portion of the Project, which are in the possession of the Contractor, or any subcontractor, shall be made available to the Owner or the Project Manager for inspection and copying upon written request by the Owner. Furthermore, these documents shall be made available, upon request by the Owner, to any state, federal or other regulatory authority and any such authority may review, inspect, and copy such records. These records include, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, audio recordings, videos, and all other writings or things which document the Project, its design, and construction. These records expressly include those documents reflecting the cost of construction to the Contractor. The Contractor shall maintain and protect these documents for at least 4 years after final completion of the Project, or for any longer period of time as may be required by law or good construction practice.

24. APPLICABLE LAW

- 24.1. The law applicable to this Contract is agreed to be the law of the State of Texas and venue in any dispute shall lie exclusively in El Paso County.

25. SUCCESSORS AND ASSIGNS

- 25.1. Each party binds itself, its successors, assigns, executors, administrators or other representatives to all terms and conditions of this Contract. The Contractor shall not assign this Contract without prior written consent of the Owner.

26. PREVAILING WAGE RATES AND APPRENTICESHIP PROGRAM

- 26.1. The Contractor is aware that and hereby agrees that not less than the prevailing wage rates included in the bid specifications, which have been adopted by the El Paso County Commissioners Court for Highway/Heavy Construction and for Building Construction Trades, shall be paid to all workers on the Project. Further, if this project is funded by federal funds, the applicable rates under the Davis Bacon Act shall be paid if they exceed the prevailing wage rates. If it is unclear whether this project is funded (in whole or in part) by federal money, it is the Contractor's responsibility to ascertain and clarify whether this project is funded by federal money. Owner's failure to explicitly disclose the use of federal money shall not relieve Contractor of its responsibilities under the Davis Bacon Act or the Texas Government Code. A copy of the prevailing wage rates is attached as part of Exhibit 1 and incorporated as part of this Contract.
- 26.2. Contractor agrees to comply with Tex. Gov't Code Sections 2258.001 through 2258.058 and acknowledges that it understands that it will pay to the Owner the sum of \$60.00 per day or part of a day, per worker, that a worker is paid less than the prevailing wage rates described in this Contract.
- 26.3. The Contractor agrees to keep records showing the name and occupation of each worker employed by the Contractor or subcontractor in the construction of the public work and the actual per diem wages paid to each worker. The Contractor further agrees that such records shall be open at all reasonable hours to inspection by the County (Owner) through its officers and agents.
- 26.4. Throughout the duration of the project, the Contractor shall post the prevailing wage rate schedules at each work site in a prominent location readily accessible to the workers. In addition, the Contractor shall post a notice to be provided by the County Director of Public Works regarding Prevailing Wage Rates and the County Apprenticeship Program, in English and Spanish, which shall be posted nearby the prevailing wage rate schedules.
- 26.5. Upon a determination by the County (Owner) that there is good cause to believe that Contractor or a subcontractor has violated Chapter 2258 of the Texas Government Code, the County may withhold any amount due under this Contract, up to and including the entire contract price, which the Commissioners Court or its agent, in the exercise of reasonable discretion, determines is sufficient to: 1) cover the costs to pay the worker the difference between the amount the worker received in wages for labor on the public work at the rate paid by the Contractor or subcontractor and the amount the worker would have received at the prevailing wage rate; 2) cover the costs of penalties under Section 2258.023; and, 3) ensure compliance with Chapter 2258 for the duration of the project.
- 26.6. **At the time the Contractor submits its applications for progress payments to the Project Manager, the Contractor shall provide a certified payroll for all employees during the period of that pay request.**
- 26.7. No worker shall be discharged by the Contractor or any Subcontractor or in any other manner discriminated against because such worker has filed an inquiry or complaint or

instituted, or caused to be instituted, any legal or equitable proceeding or has testified, or is about to testify, in any such proceeding under or relating to the prevailing wage rate laws, the apprenticeship program, or the provisions of this Contract.

- 26.8. The Contractor and subcontractors shall allow expeditious jobsite entry by the County Director of Public Works and her agents and representatives displaying and presenting proper identification credentials to the jobsite superintendent or her representative. While on the jobsite, the County Director of Public Works and her agents and representatives shall observe all jobsite rules and regulations concerning safety, internal security, and fire prevention. The Contractor and subcontractors shall allow the County Director of Public Works to interview project employees at random to facilitate compliance determinations regarding the prevailing wage rate payment provisions and apprenticeship program provisions of this Contract.
- 26.9. In the event a particular work element of the project calls for a certain employee classification and skill that is not listed in the prevailing wage rate schedules in the Contract, the Contractor shall notify the Executive Director of Public Works who shall investigate the matter and make a recommendation to the Commissioners Court to make a special wage rate determination as required.
- 26.10. In accordance with the Order of the Commissioners Court of El Paso County Regarding Apprenticeship Program Requirements adopted on June 23, 2008, the Contractor and all subcontractors must:
- 26.10.1. Sponsor or participate in a DOL certified apprenticeship program for all job classifications utilized on the project and which are “apprenticeable occupations” as defined by DOL regulations;
- 26.10.2. Hire registered apprentices enrolled in a DOL certified apprenticeship program. **No helpers are permitted;**
- 26.10.3. Not substitute helpers or unregistered apprentices to perform apprentice level work in place of registered apprentices;**
- 26.10.4. Pay wage rates and benefits package for apprentices as determined by the apprenticeship program/DOL;
- 26.10.5. Comply with DOL requirements for the ratio of apprentices to journeymen;
- 26.10.6. Hire apprentices in all job classifications utilized on the project and which are “apprenticeable occupations” as defined by DOL regulations, unless such placement would not be approved by the apprenticeship program.**
- 26.11. The Contractor shall provide the names of all apprentices on the project, verification of their status as registered apprentices, and documentation as to their proper wage rates and journeyman to apprentice ratios as determined by the apprenticeship program.
- 26.12. The County (Owner) reserves the right to terminate this Contract for cause if the Contractor and/or subcontractors breach any of these provisions regarding the payment of prevailing wages or the apprenticeship program.

- 26.13. **The Contractor shall cause these and any other appropriate prevailing wage rate and apprenticeship program provisions to be inserted in all subcontracts relative to the work to bind the subcontractors to the same prevailing wage rate and apprenticeship program provisions as are applicable to the Contractor.**

27. FORCE MAJEURE CLAUSE

- 27.1. A Force Majeure Event is an unpredictable or unanticipated event that makes a Party's further performance under this agreement impossible. A Force Majeure Event means an Act of God; an epidemic, pandemic, or other natural disaster declared by a governmental authority with appropriate jurisdiction over the matter; governmental rules, regulations, or orders issued in response to an epidemic, pandemic, or natural disaster; civil disorder, disturbances, riots, or war; utility-related closings; or any similar event beyond the reasonable control of such Party. **Contractor acknowledges the County Judge's authority to issue a disaster declaration under Texas law and waives any conflict of interest.**
- 27.2. The non-performing Party must give reasonably prompt written notice, to the other Party, of its inability to perform due to a Force Majeure Event, and such notice shall state the event and reason for such non-performance. Notwithstanding any provision to the contrary in this Contract, when an inability to perform has been declared under this paragraph, Contractor shall immediately cease performance of the Project and take steps to ensure public safety by improving the worksite(s) to reasonably similar or better condition than when the Project began. Each Party is responsible for its own demobilization and storage costs under this provision. The County (Owner) is only liable for payment for Contractor's satisfactory performance completed up to the date of written notice and the reasonable amount necessary to secure the site(s) for public safety. This paragraph 27 shall survive termination of the Contract.
- 27.3. CONTRACTOR ACKNOWLEDGES AND AGREES THAT IT HAS READ THIS ENTIRE CONTRACT, INCLUDING (WITHOUT LIMITATION) THIS PROVISION, AND HAS TAKEN APPROPRIATE MEASURES, AT ITS OWN EXPENSE, TO MITIGATE ITS OWN FINANCIAL RISKS UNDER THIS CONTRACT. SUCH MITIGATION MAY INCLUDE (BY WAY OF EXAMPLE ONLY) THE PROCUREMENT OF A POLICY OF INSURANCE THAT MITIGATES CONTRACTOR'S RISK OF A FORCE MAJEURE EVENT AS DEFINED ABOVE.

IN WITNESS WHEREOF THE PARTIES EXECUTE THIS CONTRACT:

THE COUNTY OF EL PASO, TEXAS - OWNER

Ricardo A. Samaniego,
El Paso County Judge
Date: _____

Approved as to form:

Norma Rivera Palacios
Director of Public Works

CONTRACTOR

(Signor must have authority to bind corporation or entity)

Printed Name

Title
Date: _____

For: _____

(Name of entity)

Non-Collusion Affidavit of Contractor

State of Texas

County of El Paso

_____, being first duly sworn, deposes and says that:

- (1) He/she is _____ of _____ hereinafter referred to as the "Contractor";
- (2) He is fully informed respecting the preparation and contents submitted _____, the Contractor for certain work in connection with the County of El Paso Contract pertaining to the Project in El Paso County, Texas;
- (3) This bid is genuine and is not a collusive or sham bid.
- (4) Neither the Subcontractor nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affidavit, has in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other Bidder, firm or person to submit a collusive or sham bid in connection with such Contract or to refrain from submitting a bid in connection with such Contract, or has in any manner, with any other Bidder, firm or person to fix the price or prices in said Contractor's Bid, or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the County of El Paso or any person interested in the proposed Contract: and
- (5) The prices quoted in the Contractor's bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees or parties in interest, including this affidavit.

(Signature)

(Title)

Subscribed and sworn to before me this ___ day of _____, 20____.

By: _____
(Notary Public)

My Commission Expires _____, 20 _____

Non-Collusion Affidavit of Subcontractor

State of Texas

()
()

County of El Paso

_____, being first duly sworn, deposes and says that:

- (1) He/she is _____ of _____ hereinafter referred to as the "Subcontractor";
- (2) He is fully informed respecting the preparation and contents of the Subcontractor's Proposal submitted by the Subcontractor to _____, the Contractor for certain work in connection with the County of El Paso Contract pertaining to the Project in El Paso County, Texas;
- (3) Such Subcontractor's Proposal is genuine and is not a collusive or sham proposal.
- (4) Neither the Subcontractor nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affidavit, has in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other Bidder, firm or person to submit a collusive or sham Proposal in connection with such Contract or to refrain from submitting a Proposal in connection with such Contract, or has in any manner, with any other Bidder, firm or person to fix the price or prices in said Subcontractor's Proposal, or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the County of El Paso or any person interested in the proposed Contract: and
- (5) The prices quoted in the Subcontractor's Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees or parties in interest, including this affidavit.

(Signature)

(Title)

Subscribed and sworn to before me this ___ day of _____, 20___.

By: _____
(Notary Public)

My Commission Expires _____, 20___

Bid Bond

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned, as PRINCIPAL, AND _____, as SURETY are held and firmly bound unto hereinafter called the "El Paso County", in the penal sum of _____ Dollars, (\$ _____), lawful money of the United States, for the payment for which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the accompanying Bid, dated _____, 20____, for Fabens Dam Improvements (TX01958).

NOW, THEREFORE, if the Principal shall not withdraw said Bid within the period specified therein after the opening of the same, or, if no period be specified, within thirty (30) days after the said opening, and shall within the period specified therefore, or if no period by specified, within ten (10) days after the prescribed forms are presented to him for signature, enter into a written Contract with The County in accordance with the Bid as accepted, and give bond with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract or in the event of the withdrawal of said Bid within the period specified, or the failure to enter into such Contract and give such bond within the time specified, if the Principal shall pay The County the difference between the amount specified in said Bid and the amount for which The County may procure the required work or supplies or both, if the latter be in excess of the former, then the above obligation shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounded parties have executed this instrument under their several seals this _____ day of, 20____, the name and corporate seal of each corporate party being hereto affixed and these present signed by its undersigned representative, pursuant to authority of its governing body.

(Forms of Bid Bonds prepared to meet the requirements of Local or State Laws or the needs of the County should be substituted for this form where necessary.)

Attest: _____ By: _____

Attest: _____ By: _____

Countersigned By: _____

Attorney-in-Fact, State of _____

Power-of-Attorney for person signing for the surety company must be attached to bond.

Certificate as to Corporate Principal

Required if Bidder is a Corporate

I, _____, certify that I am the, _____, Secretary of the Corporation named as Principal in the within bond; that, who signed the said bond on behalf of the Principal was then _____ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested to for and in behalf of said corporation by authority of this governing body.

_____(Corporate Seal)

_____ Title

Check Return Authorization Form

Bidder must complete this form and attach to cashier's check. All checks must be for the required amount and be payable to the County of El Paso, **not payable to any individual.**

The Purchasing Department may retain the bid checks of the three lowest bidders until after the award and approval of the contract. The Purchasing Department will return checks of all other bidders within seven (7) days following the opening of bids.

Authorization is hereby granted to return the cashier's check via regular mail to the address listed below without liability of any kind or nature if:

- I. we are an unsuccessful bidder, or
- II. upon completion of contract.

Bid No.: _____ Project Name: _____

Cashier's Check No.: _____ Dated: _____

Bank: _____ Drawn on: _____

Amount: \$ _____

Business Address: _____

Telephone No.: _____ Email: _____

Name: _____ Signature: _____

Mailing Address: _____

City: _____ **ST:** _____ **Zip Code:** _____

Optional Pick-Up at Purchasing Department Office

Name of Authorized Receiver: _____

For Use of Purchasing Dept. Only

Date Check Returned: _____ Bid Clerk: _____

Pick-Up Signature: _____ Print Name: _____

Safety Record Questionnaire

The following definitions and criteria shall be used to take into account the safety records of bidders:

Bidder – Includes any person who is an officer of, is in a management position with, or has an ownership interest in the firm, corporation, partnership, or institution, represented by the bidder or anyone acting for such firm, corporation, partnership or other entity which is submitting the response or proposal.

Worker Safety – refers to the working environment at the bidders' company, offices, jobsites, and any other place in which it does business. The term encompasses all factors that impact the safety, health, and well-being of employees. Work safety may include the prevention, enforcement, and/or remediation of environmental hazards, unsafe working conditions or processes, drug and alcohol abuse, and workplace violence. Workplace safety is monitored by state and national authorities such as the Occupational Safety and Health Administration.

Public Safety - involves protecting the public — safeguarding people from crimes, disaster, and other potential dangers and threats (including, without limitation, environmental hazards and safety threats).

Environmental Safety - Refers to pollution prevention as well as the prevention of other threats to the environment and protecting anyone that may be affected by pollution. It also includes the safe storage, use, disposal of various chemicals (including, without limitation, toxic chemicals) that may be used in workplaces, job sites, or other work areas.

Violation - Refers to any activity, occurrence, or condition that disregards established laws and regulations, results in non-compliance with, or results in a written complaint or other written claim from, a Governmental Authority with respect to applicable or governing law.

- 1) Within the past five (5) years of this Bid submittal, can the bidder identify any civil litigation, which resulted in final judgment against the Bidder, arising out of the performance of a construction contract within the State of Texas in which the Bidder was a named defendant in a lawsuit brought by or against the Owner. Do not include litigation which is limited solely to enforcement of mechanics' liens or stop notices.
 Yes No
- 2) Within the past five (5) years of this Bid submittal, has the bidder received any final determinations by a court or governmental agency for violations of Federal, State, or local laws including, but not limited to, violations of environmental safety laws, public health and safety laws, the Occupational Safety and Health Act ("OSHA") or similar laws or regulations.
 Yes No
- 3) Within the past five (5) years of this Bid submittal, can the bidder identify with any criminal convictions concerning any environmental safety, worker safety, or public safety laws.
 Yes No

If the bidder has indicated "Yes" to any question above, the bidder must provide with its bid submission the form titled ***Self-Disclosure of Environmental Safety Violations***.

If the bidder has indicated "No" to ALL questions above, the bidder must provide with its bid submission the form titled ***Civil Litigation Certification***.

Name: _____

Date: _____

Civil Litigation Certification

If the Bidder has no civil litigation history to report as described above, complete the following:

I, _____, certify that neither
(print name of owner, officer, manager, or licensee responsible for submission of Bid/Proposal)

(Bidder name as shown on Bid/Proposal)

nor _____
(name of responsible managing person licensed by the Contractors' State License Board)

has been the subject of a final judgment in civil litigation as described above.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day _____ of _____ at _____
(month and year) (city and state)

by _____
(signature of owner, officer, manager, or licensee responsible for submission of Bid/Proposal)

Self-Disclosure of Environmental Safety Violations

Contact Information for Individual Submitting the Self-Disclosure

Title: _____

First Name: _____

Middle Name (or initial): _____

Last Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: (_____) _____

Is the individual submitting this self-disclosure authorized by the company to make such a disclosure and is this person an authorized signatory (having authority to perform policy or decision-making functions of the company)? ____ Yes ____ No

Facility/Site Information

Facilities/sites involved with this environmental violation(s):

Note: If more than one facility/site is involved with the environmental violation(s), please indicate the number of facilities/sites below and attach a separate sheet for each violation to your final submission with the physical address for each facility/site, and identify which facilities/sites have which violation(s).

Facility/Site Physical Address: _____

Owner: _____

Address: _____

City: _____ State: _____ Zip: _____

Describe Environmental Safety Violation

NOTE: Each safety violation should be described as completely as possible and include the following information:

- Nature and description of violation(s) and specific regulatory, permit and/or statutory provision violated (include state references where appropriate).
- Identify the name, title, and employer of each person who discovered the safety violation, and what they were doing when the violation was discovered.
- How the safety violation was discovered; i.e., describe the moment at which the person first realized (objectively reasonable basis) that the violation(s) may have occurred or did occur.
- Physical location of violation.
- Please state if the safety violation was voluntarily discovered. Voluntary discovery did not occur if the violation was found through a legally required monitoring, sampling, or auditing procedure that is required by statute, regulation, permit, judicial or administrative order, or consent agreement.
- Please provide the date of discovery of each safety violation disclosed.

- How the safety violation was corrected and how any harm was remediated.
- Describe any environmental or human harm caused by the violation, and any measures undertaken to remediate such harm.
- Describe what steps were taken to prevent recurrence of the violation and provide the date that those measures were implemented. If the measures have not yet been implemented, provide the implementation schedule setting forth the dates of the anticipated actions.
- The name and court case identification number of each case.
- The jurisdiction in which it was filed.
- The outcome of the litigation, e.g., the cause number and date of any final judgment that was entered.

I declare under penalty of perjury that the foregoing is true and correct, nor have I withheld any relevant information in my statements.

Executed this _____ day _____ of _____ at _____
(month and year) (city and state)

by _____
(signature of owner, officer, manager, or licensee responsible for submission of Bid/Proposal)

County of El Paso Code of Ethics Training Affidavit

(This form must be signed by an officer, principal, or individual authorized to bind the company under a contract with the County.)

IN COMPLIANCE WITH CHAPTER 161 OF THE TEXAS LOCAL GOVERNMENT CODE, ANY VENDOR INVOLVED IN A SINGLE PROCUREMENT EXCEEDING \$50,000 MUST COMPLETE THE ENCLOSED ETHICS TRAINING BEFORE SUBMITTING A BID OR PROPOSAL WITH THE COUNTY OF EL PASO.

Purpose:

The stability of democracy depends upon the continuing consent of the governed, which in turn depends upon the trust the electorate holds for its government. The Ethics Commission of the County of El Paso, Texas, in concert with elected county officials, as well as leaders of the various county departments, recognizes the need to maintain the public trust and confidence in the workings of county government and thus adopts this Code of Ethics.

What is a vendor:

Any person or their representative or employee whose goods and services are purchased under the terms of a purchase order or contractual agreement with the county; and any other persons doing business with the County.

Procurement:

In advising upon, discussing, recommending, and/or granting any County purchases, bids or contracts, County public servants shall inform themselves about their financial interests, and shall make a reasonable effort to inform themselves about the financial interest of their family members.

County public servants shall excuse themselves from exercising influence, participating in, discussing, recommending, and/or granting of any County purchases, bids, or contracts if they or a family member have a substantial financial interest.

Private Communication:

No member of the El Paso County Commissioners Court, County Elected Officials/Department Heads or the El Paso County Hospital District Board of Managers shall permit any vendor, its lobbyists, representative, or employee to communicate with him privately regarding any procurement of items by the County or the Hospital District from the date that the bid, RFP, or RFQ is authorized or released, whichever is first. No private communication regarding the purchase shall be permitted by a member of the Commissioners Court, a county elected official/department head, or the hospital district board of managers until the procurement process is complete and a purchase order is granted or a contract is entered into.

Members of the Commissioners Court, county elected officials/department heads and the board of managers shall make a reasonable effort to inform themselves regarding procurements and shall have a duty to inquire of vendors, their lobbyists, representatives, or employees, the nature of the private communication being sought prior to engaging in any communication.

This prohibition against private communication with vendors, their lobbyists, representatives, or employees shall apply to commissioner's court approval of hospital district purchases.

I _____ am an officer, principal, or individual authorized to
(Full Name)

bind the company, known as _____.
(Company name)

By reading and signing this document, I confirm that I have been trained in the County of El Paso's Code of Ethics regarding Vendors. I understand that any contact by myself or any representative of the company with a County of El Paso official or county employee, other than those shown on the RFP or bid documents shall cause the bid or proposal to be immediately disqualified from consideration of award.

Name _____

Title _____

Company Name _____

Address _____

Signature _____

Date _____

Certifications

CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; DRUG-FREE WORKPLACE REQUIREMENTS; FEDERAL DEBT STATUS, AND NONDISCRIMINATION STATUS AND IMPLEMENTING REGULATIONS*

Instructions for the certifications:

General Requirements

The County of El Paso, Texas is required to obtain from all applicants of federal funds or pass-through certifications regarding federal debt status, debarment and suspension, and a drug free workplace. Institutional applicants are required to certify that they will comply with the nondiscrimination statutes and implementing regulations.

Applicants should refer to the regulations cited below to determine the certifications to which they are required to attest. Signature of the form provides for compliance with certification requirements under 21 CFR part 1405, "New Restrictions on Lobbying," 21 CFR part 1414, Government wide Debarment and Suspension (Non procurement), Certification Regarding Federal Debt Status (OMB Circular A-129), and Certification Regarding the Nondiscrimination Statutes and Implementing Regulations. The certifications shall be treated as a material representation of fact upon which reliance will be placed when the County of El Paso determines to award the covered cooperative agreement

1) LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented in 21 CFR part 1405, for persons entering into a cooperative agreement over \$100,000, as defined at 21 CFR Part 1405, the applicant certifies that;

- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement,
- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;
- c) The undersigned shall require that the language of this certification be included in the award document for all sub-awards at all tiers (including sub-grants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

2) DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension and implemented at 21 CFR Part 1404, for prospective participants in primary covered transactions, the applicant certifies that it and its principals:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;
- b) Have not within a three-year period preceding this application been convicted of or and a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State, or local) transaction or contract under a public transaction violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) terminated for cause or default; and

Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to the application.

3) DRUG-FREE WORKPLACE

As required by the Drug Free Workplace Act of 1988, and implemented at 21 CFR Part 1404 Subpart F, the applicant certifies that it will or will continue to provide a drug free workplace by:

- a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the applicant's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- b) Establishing an on-going drug free awareness program to inform employees about:
 - i) The dangers of drug abuse in the workplace;
 - ii) The applicant's policy of maintaining a drug free workplace;
 - iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - iv) The penalties that may be imposed upon employees for drug abuse violation occurring in the workplace;
- c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a)
- d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee must
 - i) Abide by the terms of the statement; and
 - ii) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.

- e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such convictions. Employers of convicted employees must provide notice including position title, to: The County of El Paso, Texas, 500 East San Antonio Street, Suite 406, El Paso, Texas 79901. Notice shall include the identification number of each affected grant
- f) Taking one of the following actions within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:
 - i) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - ii) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal State, or local health, law enforcement, or other appropriate agency
- g) Making a good faith effort to continue to maintain a drug free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

4) CERTIFICATION REGARDING FEDERAL DEBT STATUS (OMB Circular A-129)

The Applicant certifies to the best of its knowledge and belief, that it is not delinquent in the repayment of any federal debt.

5) CERTIFICATION REGARDING THE NONDISCRIMINATION STATUTES AND IMPLEMENTING REGULATIONS

The applicant certifies that it will comply with the following nondiscrimination statutes and their implementing regulations: (a) title VI of the Civil right Act of 1964 (42 U.S.C. 2000D et seq.) which provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of or be otherwise subjected to discrimination under any program or activity for which the applicant received federal financial assistance; (b) Section 504 of the rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in programs and activities receiving federal financial assistance; (c) title IX of the Education Amendments of 1972m as amended (20 U.S.C. 1981 et seq.) which prohibits discrimination on the basis of sex in education programs and activities receiving federal financial assistance; and (d) the Age Discrimination Act of 1975, and amended (42 U.S.C. 6101 ec seq.) which prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance, except that actions which reasonably take age into account as a factor necessary for the normal operation or achievement of any statutory objective of the project or activity shall not violate this statute.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

Business Name

Date

Name of Authorized Representative

Signature of Authorized Representative

*All four (4) pages of this document must be included in all responses.

Conflicts of Interest

Re: Bid 23-009, Fabens Dam Improvements (TX01958)

Dear Vendor:

The Texas Local Government Code Chapter 176 requires all vendors and potential vendors who contract or seek to contract for the sale or purchase of property, goods, or services with any local government entity to complete and submit a Conflicts of Interest Questionnaire. Attached is a copy of the questionnaire.

In filing out the Questionnaire, the following are the County Officers that will award the bid and the employees which will make a recommendation to the Commissioners' Court:

County Officers: County Judge Ricardo A. Samaniego
Commissioner Carlos Leon
Commissioner David Stout
Commissioner Iliana Holguin
Commissioner Sergio Coronado

County Employees: Karen Davidson, Purchasing Agent
Elvia Jauregui, Assistant Purchasing Agent
Araceli Hernandez, Formal Bid Buyer
Claudia Parra, Procurement Data Analyst
Betsy Keller, County Administrator
Edward Dion, County Auditor
Barbara Franco, Auditor First Assistant
Wallace Hardgrove, Budget & Financial Manager
Eddie Sosa, First Assistant County Attorney
Diana Shearer, Assistant County Attorney
Erich Morales, Assistant County Attorney
Lorena Rodriguez, Analyst
Fernando Hernandez, Infrastructure Service Director of Public Works
Norma Rivera Palacios, Executive Director of Public Works

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

FORM CIQ

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

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

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

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

OFFICE USE ONLY	
Date Received	

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

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

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

Name of Officer

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

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

Yes No

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

Yes No

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

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

7

Signature of vendor doing business with the governmental entity

Date

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

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

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

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

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

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

(2) the vendor:

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

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

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

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

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

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

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

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

(1) the date that the vendor:

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

(2) the date the vendor becomes aware:

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

Health Insurance Benefits Questionnaire

Texas Local Government Code Section 262.0271 states the County may give preference to bidders that provide reasonable health insurance coverage to its employees, over a bidder that doesn't provide such insurance. Complete the questionnaire below if applicable. If not, check box #3.

1. Do you or your subcontractor(s) currently offer health insurance benefits to your employees?

If so, please describe those health insurance benefits that you or your subcontractor(s) currently provide/offer to your employees.

2. What percentage, if any, of your or your subcontractor's employees are currently enrolled in the health insurance benefits program?

3. **No. The bidder is not requesting the Health Insurance Benefits Preference.**

Checking Box #3 will not disqualify you from participating in this bid selection process.

Business Name

Date

Name of Authorized Representative

Signature of Authorized Representative

Payment Bond

_____, as surety
("Surety"), (Insert Proper Name of Surety)

and _____
(Insert Proper Name of Contractor)

as principal ("Contractor"), enter into, execute this bond ("Payment Bond"), and bind

themselves in favor of _____,
(Insert Proper Name of Owner)

as obligee ("Owner") in the penal sum of \$ _____,
(Insert Penal Sum)

as of the _____.
(Insert Date of Construction Contract)

WHEREAS, the Contractor has executed a contract with the Owner of even date
herewith ("Construction Contract") for construction of _____

(Insert Description and Location of the Construction Project)

("Project"); and,

WHEREAS, the Owner has required the Contractor to furnish this Payment Bond
containing the terms and conditions set forth herein as a condition to executing the Construction
Contract with the Contractor;

NOW THEREFORE, the Surety and the Contractor, both jointly and severally, and for
themselves, their heirs, administrators, executors and successors agree:

1.

The Construction Contract is hereby incorporated herein and by reference made a part
hereof to the same extent and effect as though it were copied verbatim herein. The Surety and
the Contractor are bound for the full performance of the Construction Contract including without
exception all of its terms and conditions, both express and implied, and, without limitation,
specifically including Contractor's obligation to pay for labor, materials, services and equipment
provided in connection with the Construction Contract performance;

2.

For purposes of this Payment Bond, Beneficiary is defined as a person or entity who has
actually provided labor, material, equipment, services or other items for use in furtherance of the
Construction Contract, and having:

- (A) a direct contract with the Contractor; or
- (B) a direct contract with a subcontractor of the Contractor; or
- (C) rights, under the laws of the jurisdiction where the Project is located, to file a lien, a claim or notice of lien, or otherwise make a claim against the Project or against funds held by the Owner, if the Project is, or were, subject to such filing.

3.

The Surety shall not be obligated hereunder to a Beneficiary other than a Beneficiary having a direct contract with the Contractor unless such Beneficiary has given written notice of its claim to the Contractor and the Surety within the longer of:

- (A) ninety (90) days after such Beneficiary provided labor, material, equipment, services or other items for use in furtherance of the Construction Contract; or,
- (B) the period of time provided by the jurisdiction wherein the Project is located for (1) filing of a lien, claim of lien, notice of lien, if the Project is, or were, subject to such filing, or (2) otherwise making a claim against the Project or against funds held by the Owner; stating the amount claimed and identifying, by name and address, the person or entity to whom such labor, material, equipment, services or other items were provided.

4.

In no event shall the Surety be obligated hereunder for sums in excess of the Penal Sum.

5.

Upon receipt of a claim from a Beneficiary hereunder, the Surety shall promptly, and in no event later than 30 days after receipt of such claim, respond to such claim in writing (furnishing a copy of such response to the Owner) by:

- (A) making payment of all sums not in dispute; and,
- (B) stating the basis for disputing any sums not paid.

6.

No action shall be commenced by a Beneficiary hereunder after the passage of the longer of one (1) year following final completion of the Construction Contract or, if this bond is provided in compliance with applicable law, any limitation period provided therein. If the limitation period contained in this Paragraph is unenforceable, it shall be deemed amended to provide the minimum period for an action against the Surety on a payment bond by a third-party beneficiary thereof.

7.

Any and all notices to the Surety or the Contractor shall be given by Certified Mail, Return Receipt Requested, to the address set forth for each party below:

SURETY:

CONTRACTOR:

OWNER:

CONTRACTOR:

SURETY:

SEAL
(INSERT PROPER NAME OF CONTRACTOR)

SEAL
(INSERT PROPER NAME OF SURETY)

By: _____
(SIGNATURE OF AUTHORIZED SIGNATORY)

By: _____
(SIGNATURE OF AUTHORIZED SIGNATORY)

(OFFICE OR TITLE OF PERSON SIGNING)

(OFFICE OR TITLE OF PERSON SIGNING)

Note: Date of BOND must not be prior to date of Contract. If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the PROJECT is located.

Performance Bond

_____ as ("Surety"),
(Insert Proper Name of Surety)

and _____
(Insert Proper Name of Contractor)

as principal (Contractor"), enter into, execute this bond ("Performance Bond"), and bind themselves in favor of _____
(Insert Proper Name of Owner)

as obligee ("Owner"), in the penal sum of \$ _____,
(Insert Penal Sum)

as of the _____
(Insert Date of Construction Contract)

WHEREAS, the Contractor has executed a contract with the Owner of even date herewith ("Construction Contract") for construction of _____

(Insert Description and Location of the Construction Project)

and,

WHEREAS, the Owner has required the Contractor to furnish this Performance Bond containing the terms and conditions set forth herein as a condition to executing the Construction Contract with the Contractor;

NOW THEREFORE, the Surety and the Contractor, both jointly and severally, and for themselves, their heirs, administrators, executors and successors agree:

1.

The Construction Contract is hereby incorporated herein and by reference made a part hereof to the same extent and effect as though it were copied verbatim herein. The Surety and the Contractor are bound for the full performance of the Construction Contract including without exception all of its terms and conditions, both express and implied.

2.

If the Contractor is in default of the Construction Contract and the Owner, by written notice to the Contractor and the Surety, declares the Contractor to be in default and terminates the right of the Contractor to proceed, the Surety shall thereupon promptly notify the Owner in writing as to which of the actions permitted to the Surety in Paragraph 3 it will take.

3.

Upon default and termination of the Contractor and notice to the Contractor and Surety as provided in Paragraph 2 above, the Surety shall within 30 days proceed to take one or, at its option, more than one of the following courses of action:

- (A) Proceed itself, or through others acting on its behalf, to complete full performance of the Construction Contract including, without limitation, correction of defective and nonconforming work performed by or on behalf of the Contractor. During such performance by the Surety the Owner shall pay the Surety from its own funds only such sums as would have been due and payable to the Contractor in the absence of the default and termination.
- (B) Applicable law permitting, and with the prior written consent of the Owner, obtain bids or proposals from contractors previously identified as being acceptable to the Owner, for full performance of the Construction Contract. The Surety shall furnish the Owner a copy of such bids or proposals upon receipt of same. The Surety shall promptly select, with the agreement of the Owner, the best responsive bid or proposal and shall promptly tender the contractor submitting it, together with a contract for fulfillment and completion of the Construction Contract executed by the completing contractor, to the Owner for the Owner's execution. Upon execution by the Owner of the contract for fulfillment and completion of the Construction Contract, the completing contractor shall furnish to the Owner a performance bond and a separate payment bond, each in the form of those bonds previously furnished to the Owner for the Project by the Contractor. Each such bond shall be in the penal sum of the (1) fixed price for completion, (2) guaranteed maximum price for completion, or (3) estimated price for completion, whichever is applicable. The Owner shall pay the completing contractor from its own funds only such sums as would have been due and payable to the Contractor under the Construction Contract as and when they would have been due and payable to the Contractor in the absence of the default and termination. To the extent that the Owner is obligated to pay the completing contractor sums which would not have then been due and payable to the Contractor under the Construction Contract, the Surety shall provide the Owner with such sums in a sufficiently timely manner that the Owner can utilize such sums in making timely payment to the completing contractor; or,
- (C) Take any and all other acts, if any, mutually agreed upon in writing by the Owner and the Surety.

4.

In addition to those duties set forth hereinabove, the Surety shall promptly pay the Owner all loss, costs and expenses resulting from the Contractor's default(s), including, without limitation, fees, expenses and costs for architects, engineers, consultants, testing, surveying and attorneys, liquidated or actual damages, as applicable, for delay in completion of the Project, and fees, expenses and costs incurred at the direction, request, or as a result of the acts or omissions of the Surety.

5.

In no event shall the Surety be obligated to the Owner hereunder for any sum in excess of the Penal Sum.

6.

The Surety waives notice of any changes to the Construction Contract including, without limitation, changes in the contract time, the contract price, or the work to be performed.

7.

This Performance Bond is provided by the Surety for the sole and exclusive benefit of the Owner and, if applicable, any dual obligee designated by rider attached hereto, together with

their heirs, administrators, executors, successors or assigns. No other party, person or entity shall have any rights against the Surety hereunder.

8.

Any and all notices to the Surety, the Contractor or the Owner shall be given by Certified Mail, Return Receipt Requested, to the address set forth for each party below:

SURETY:

CONTRACTOR:

OWNER:

9.

Any statutory limitation, which may be contractually superseded, to the contrary notwithstanding, any action hereon may be instituted so long as the applicable statute of limitations governing the Construction Contract has not run or expired.

CONTRACTOR:

SURETY:

SEAL
(INSERT PROPER NAME OF CONTRACTOR)

SEAL
(INSERT PROPER NAME OF SURETY)

By: _____
(SIGNATURE OF AUTHORIZED SIGNATORY)

By: _____
(SIGNATURE OF AUTHORIZED SIGNATORY)

(OFFICE OR TITLE OF PERSON SIGNING)

(OFFICE OR TITLE OF PERSON SIGNING)

Certificate of Interested Parties

Effective January 1, 2016, Texas Legislature adopted [House Bill 1295](#), which states that a governmental 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. **This Certificate of Interested Parties - Form 1295 must be submitted before the county can enter into the contract.**

- The Form 1295 must be submitted online at https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.
- Upon completion, you will be provided a verification printout.
- The printout must be notarized and then submitted to the County of El Paso for verification.

Upon the County's receipt of your notarized Form 1295, the contracting process can begin. Failure to complete and submit the Form 1295 will delay the contract from possibly being awarded and could result in loss of the contract.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

Complete Nos. 1 - 4 and 6 if there are interested parties. Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.	OFFICE USE ONLY
1 Name of business entity filing form, and the city, state and country of the business entity's place of business.	
2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.	

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

4 Name of Interested Party	City, State, Country (place of business)	Nature of Interest (check applicable)	
		Controlling	Intermediary

5 Check only if there is NO Interested Party.

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address: _____, _____, _____, _____, _____
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

 Signature of authorized agent of contracting business entity
 (Declarant)

ADD ADDITIONAL PAGES AS NECESSARY

El Paso County Signature Page

Bid 23-009 Fabens Dam Improvements (TX01958)

Please submit one (1) original hard copy and one (1) electronic copy in Word/PDF Format of your bid. The electronic copies must reflect the original hard copy.

This signature acknowledges that the Bidder has read the bid solicitation thoroughly before submitting a response and will fulfill the obligations in accordance with the bid requirements and resulting contract if awarded. Your signature attests to your offer to deliver the goods and/or services in this bid according to the published requirements and certifies that all statements made by you are true, complete, and correct. A start date must be issued before commencing work or delivering goods.

Failure to provide signature on this form renders bid non-responsive.

*****E-Bid / Virtual submittals: This signature page will not need to be upload to Ion Wave. All information will be pulled from Company Profile and acknowledged with virtual signature.*****

Hard copy responses received by the Purchasing Department prior to the indicated date and time, will be entered manually as an electronic entry after the bid opening. If the vendor is not registered with the e-bid system, the information provided below will be used to register the vendor as an offline supplier.

_____ Company (Legal Name)	_____ DBA if applicable
_____ Federal Tax Identification No.	_____ Organization Type (e.g. Sole Proprietor, LLC, S or C Corporation, Non Profit, Foreign Entity, etc.)
_____ DUNS Number (Applicable to Grant Funded Project)	_____ Main Telephone Number with area code
_____ Email Address	_____ Company Address
_____ Representative Name & Title	_____ City, State, Zip Code
_____ Signature	_____ Date

*****THIS MUST BE THE FIRST PAGE ON ALL BIDS*****

Construction Bid Check List
Bid 23-009 Fabens Dam Improvements (TX01958)

THIS CHECKLIST IS PROVIDED FOR YOUR CONVENIENCE

(Incomplete bids will be rejected)

**** E-Bid / Virtual submittals: Please upload all applicable documents onto Ion Wave ****

_____ Attend pre-bid conference, .

_____ Check for bid addenda.

_____ Complete and include Bid Response

Complete and include required construction forms:

_____ Lump Sum Bid Form or Unit Prices Form and Price Sheet

_____ Non-Collusion Affidavit of Contractor

_____ Bid Bond or Cashier's Check

_____ Safety Questionnaire

_____ Civil Litigation Certificate or Self Disclosure of Environmental Safety Violations

Additional (whichever is applicable):

_____ Non-Collusion Affidavit of Subcontractor

_____ Check Return Authorization Form (if submitting cashier's check)

_____ Certificate as to Corporate Principal

Complete and include required bid forms:

_____ W9

_____ County of El Paso Code of Ethics Training Affidavit or Training Certificate

_____ Certifications

_____ Conflict of Interest- Form CIQ

_____ El Paso County Signature Page

Optional:

_____ Health Insurance Benefits Questionnaire

_____ Make County of El Paso Signature Page the first page of Bid Packet

_____ Hardcopy submittals: Provide one (1) original hard copy of your complete bid and one (1) electronic version (CD/ DVD/ Flashdrive) in Word/PDF Format. Electronic copy must reflect the hard copy.

_____ Deliver response to the County Purchasing Department by 2:00 p.m., 2/16/2023.

Upon award of contract the following forms will be required: Payment Bond, Performance Bond, Certificate of Interested Parties - Form 1295, and Insurance Certificates