

VILLAGE OF JONES CREEK
 EMERGENCY MANAGEMENT DIVISION
 7207 STEPHEN F AUSTIN
 JONES CREEK, TEXAS 77541
 TEL: 979-233-9911 FAX: 979-230-0606

JONES CREEK SOLICITATION DOWNLOAD ACKNOWLEDGMENT

*Failure to return this form may result in disqualification

JONES CREEK
 William Tidwell, Marshal
 Emergency Management Division
 7207 Stephen F Austin
 Jones Creek, TX 77541

Solicitation Number: RFP #21-02 DEBRIS HAULING SERVICES

Open / Due Date: FRIDAY, APRIL 16, 2021 AT 12:00 P.M. (NOON) LOCAL TIME

VENDORS MUST IMMEDIATELY RETURN THIS FORM BY FAX TO 979-230-0606

Vendor Responsibilities:

Vendors are responsible to download and complete any addendums.
 (Addendums will be posted on the Village of Jones Creek website no later than five (5) business days prior
 to bid / proposal opening)
 Vendors will submit responses in accordance with requirements stated on cover of document.
 Vendors may not submit responses via email or fax

 Legal Name of Contracting Company

 Contact Person

 Complete Mailing Address

 Telephone Number

 Facsimile Number

 Email Address

 Signature

 Date

JONES CREEK REQUEST FOR PROPOSAL COVER SHEET

The enclosed REQUEST FOR PROPOSAL (RFP) and accompanying specifications and statement of work are for your convenience in submitting an offer for the enclosed referenced products and/or services for JONES CREEK.

Sealed bids shall be received no later than:

FRIDAY, APRIL 16, 2021 at 12:00 P.M. LOCAL TIME

PLEASE MARK ENVELOPE: "REQUEST FOR PROPOSAL FOR #21-02 DEBRIS HAULING"

Bidder shall sign and date the offer as requested on each page. Offers, which are not signed and dated in this manner, may be rejected.

DELIVER OFFER TO:

WILLIAM TIDWELL, MARSHAL
EMERGENCY MANAGEMENT COOR
VILLAGE OF JONES CREEK
7207 STEPHEN F AUSTIN
JONES CREEK, TEXAS 77541

****MAILING ADDRESS (SEE NOTE
BELOW)**
WILLIAM TIDWELL, MARSHAL
EMERGENCY MANAGEMENT COOR
VILLAGE OF JONES CREEK
7207 STEPHEN F AUSTIN
JONES CREEK, TEXAS 77541

JONES CREEK appreciates your time and effort in preparing this offer. Please note that all offers **must be received at the designated location by the deadline shown.** Offers received after the deadline will not be considered for the award of the Contract and shall be considered void and unacceptable.

****US Postal Service mailing address**

Packages delivered by the U.S. Postal Service to the Jones Creek mailing address are subject to delays that may cause a response to be rejected due to missing a solicitation receipt deadline.

Respondents using the U.S. mail should take this possible delay into account when using the U.S. mail.

JONES CREEK is very conscious and extremely appreciative of the time and effort you have expended to submit an offer. We would appreciate it if you would indicate on any "No Offer" response, any requirement of this ITB which may have influenced your decision to "No Offer". If your response to this ITB is a "No Bid" response, please complete the Statement of No Bid in this ITB and submit.

Any prospective bidder/offerer desiring any explanation or interpretation of the solicitation must make a written request which must be received by the Emergency Management Division at least five (5) business days prior to the scheduled time for the bid/offer opening. Any information given to a prospective bidder/offerer concerning this solicitation will be furnished promptly to all other known prospective bidders/offerers as a written amendment/addendum to the solicitation. Jones Creek reserves the right to accept or reject any or all bids/offers as it deems in its best interest and to waive any formalities.

It is the Bidder/Offerer's responsibility to verify the issuance of Addenda in regard to this Bid/Offer. All Addenda shall be submitted to all known bidders/offerers and shall be posted on the Village of Jones Creek www.villageofjonescreektx.com . Jones Creek shall not be responsible for failed internet connections or power interruptions.

All required Bid/Offer documents shown on the Package Checklist including any Addenda Receipt Forms which may have been issued must be included in a sealed envelope marked with the bidder's company name, the Bid/Offer name, number and due date.

William Tidwell, Marshal
Emergency Management Coordinator
Jones Creek
7207 Stephen F Austin
Jones Creek, Texas 77541

JONES CREEK BIDDER CERTIFICATION

ITB #21-02 DEBRIS HAULING

LEGAL NAME OF CONTRACTING COMPANY

FEDERAL I.D. # (Company or Corporation)

SOCIAL SECURITY # (Individual)

TELEPHONE NUMBER

FACSIMILE NUMBER

CONTACT PERSON

TITLE

COMPLETE MAILING ADDRESS

CITY & STATE

ZIP CODE

COMPLETE STREET ADDRESS

CITY & STATE

ZIP CODE

EMAIL ADDRESS

CERTIFICATION

By my signature hereon, I certify that the Goods and/or Services that I propose to furnish will meet or exceed every specification contained herein, and that I have read each and every page of the Specifications/Statement of Work, other requirements, as well as, the Standard Terms & Conditions and Bid/Offer Sheet. Further, I agree that if my offer is accepted, I shall perform as required in these Contract documents. I am aware that, once accepted by Jones Creek, my offer becomes a binding Contract in accordance with the provisions herein of the aforementioned Contract documents, and that I will not be permitted to attempt enforcement of any other Contract or Contract provisions.

SIGNATURE

DATE

Typewritten or Printed Name

Title

Published Dates:

WEDNESDAY MARCH 31, 2021

JONES CREEK CONTRACT SHEET

**THE STATE OF TEXAS
CITY OF JONES CREEK**

This memorandum of agreement made and entered into on the _____ day of _____, 2021, by and between Jones Creek in the State of Texas (hereinafter designated City), acting herein by Mayor Terry Jeffers by virtue of an order of Jones Creek City Council. and _____ (hereinafter designated Contractor).

WITNESSETH:

The Contractor and the City agree that the Specifications/Statement of Work, other requirements, as well as, the Standard Terms & Conditions for ITB #21-02 DEBRIS HAULING are hereto attached and made a part hereof, together with this instrument and the bond (when required) shall constitute the full agreement and Contract between parties and for furnishing the items set out and described; the City agrees to pay the prices stipulated in the accepted offer.

It is further agreed that this Contract shall not become binding or effective until signed by the parties hereto and a purchase order authorizing the items desired has been issued.

Executed at Jones Creek, Texas this _____ day of _____ 2021.

By: _____
mayor

By: _____
Printed Name

By: _____
Signature of Contractor

By: _____
Printed Name and Title

REQUEST FOR PROPOSAL PACKAGE CHECKLIST

RFP #21-02 DEBRIS HAULING

Items checked below represent components, which comprise this bid/offer package. If the item IS NOT checked, it is NOT APPLICABLE to this bid/offer. Bidders are asked to review the package to be sure that all applicable parts are included. If any portion of the package is missing, notify the Jones Creek Emergency Management Division immediately.

It is the bidder's responsibility to be thoroughly familiar with all requirements and specifications. Be sure you understand the following before you return your bid/offer packet. Failure to provide these items may result in rejection of bid/offer.

1. **Solicitation Download Acknowledgement**
 2. **Cover Sheet**
 3. **Bidder Certification** -Must be signed (IN INK) by an authorized representative of the offerer having the authority to bind the firm into a contract.
 4. **Contract Sheet** - Must be signed (IN INK) by an authorized representative of the offerer having the authority to bind the firm into a contract (TO BE SUBMITTED BY VENDOR UPON AWARD)
 5. **Package Checklist**
 6. **Instructions to Respondents**
 7. **Specifications / Statement of Work**
 8. **Bid / Offer Sheet** - Must be signed (IN INK) by an authorized representative of the offerer having the authority to bind the firm into a contract.
 9. **Statement of No Offer**
 10. **Standard Terms and Conditions**
 11. **Special Requirements**
 12. **Bidder/Offerer's Affirmation**
Company name, identifying information and signature (IN INK).
 13. **SDNs/Blocked Persons Affirmation**
 14. **Title VI Policy Statement**
 15. **Conflict of Interest Questionnaire – Form CIQ.**
 16. **Certificate of Interested Parties Form 1295-(TO BE SUBMITTED BY VENDOR UPON AWARD)**
 17. **Insurance Requirements**
 18. **Bid Bond Requirement**
 19. **Payment Bond Requirement**
 20. **Performance Bond Requirement**
 21. **Return Label**
- Attachments:** The documents marked below are hereby attached and made a part of this package.
- **Offerer Data Sheet** (Offerer information and W-9 Form must be completed and returned with offer)

Initials _____

JONES CREEK INSTRUCTIONS TO BIDDERS

RFP #21-02 DEBRIS HAULING SERVICES

The following requirements and specifications shall be in addition to the other requirements contained herein and shall supersede the other requirements where applicable.

1.0 SCOPE

- 1.1. Jones Creek is requesting pricing for debris hauling as a result of non-declared and / or declared storm events as indicated on the bid offer sheet in accordance with Texas Local Government Code 262.022, (5-a) which states, "Lowest and best" means a bid or offer providing the best value considering associated direct and indirect costs, including transport, maintenance, reliability, life cycle, warranties, and customer service after a sale. Jones Creek may award based on best value to the City.
- 1.2. Jones Creek reserves the right to add or delete like items to contract as may be in the best interest of Jones Creek. Any such added items shall be provided to Jones Creek at the same discount bid on other similar products.
- 1.3. Jones Creek may make partial or complete awards to vendors whichever is in the best interest of the City.

2.0 PRE-BID / OFFER MEETING

A non mandatory pre-bid/offer Zoom meeting is scheduled for Tuesday, April 6, 2016 at 11:00 a.m. local time Invite link- <https://zoom.us/j/92982433487?pwd=Y0tsaXU5QUN6SkloUG5KS2JacDZLdz09> passcode rfp2102 Attendance is not mandatory in order to submit an offer; however, it is highly recommended if you have questions.

3.0

PERIOD OF CONTRACT

- 3.1. This contract shall be for the period of twelve (12) months to begin upon award with option of three (3) twelve (12) month renewals subject to City Council approval. This contract may be terminated by either party for any reason by giving thirty (30) days written notice of the intent to terminate.
- 3.2. Renewals shall be subject to approval by Jones Creek City Council each period.

4.0 REQUIREMENTS

4.1. Invoices

- 4.1.1. Invoices shall be mailed to the address on the Bid Package.
- 4.1.2. Jones Creek will pay invoices NET THIRTY (30) days from receipt of invoice by Jones Creek
- 4.1.3. All invoices must reference the appropriate project number.
- 4.1.4. Invoices shall include additional detailed information such as an itemized listing of the items ordered to include, but not be limited to the following:
 - 4.1.4.1. Jones Creek road number/ name where debris was removed
 - 4.1.4.2. Quantity of material hauled in cubic yards
 - 4.1.4.3. Dump / Disposal location used
 - 4.1.4.4. All invoices shall be typed. No hand written invoices will be accepted

Initials _____

- 4.1.4.5. Breakdown of all labor and equipment rates with both regular and if required overtime rates
- 4.1.4.6. Equipment number / ID numbers for all equipment / trucks being used
- 4.1.4.7. Number of loads hauled for each truck operating
- 4.1.4.8. Per Diem mileage for each truck operating

4.2. Pricing:

- 4.2.1. All prices shall be firm and shall not be subject to escalation for the term of this contract except as specifically stated herein.
- 4.2.2. Jones Creek shall be eligible for any additional discounts, specials and/or promotions offered by the vendor during the term of the contract should those discounts, specials and/or promotions offer a lower cost to the City.

5.0 REFERENCES

Bidder must furnish with bid, a list of three (3) references from customers with a similar or larger operation as Jones Creek . References must include company name, contact person and telephone number.

4.1	_____	_____	_____
	Contact Name	Company Name	Telephone
4.2	_____	_____	_____
	Contact Name	Company Name	Telephone
4.3	_____	_____	_____
	Contact Name	Company Name	Telephone

6.0 QUANTITIES

Any stated quantities are provided for information purposes. Jones Creek makes no guarantee of actual contract expenditure.

7.0 START UP TIME

After Notice of Award, awarded Vendor may be given a maximum of fifteen (15) days to become acclimated with City facilities and procedures prior to startup of services and delivery to the County.

8.0 INSURANCE

Contractor shall furnish certificates of insurance to City evidencing compliance with the insurance requirements hereof for the duration of the project. Certificates shall indicate name of Contractor, name of insurance company, policy number, term of coverage and limits of coverage.

Insurance shall be placed with insurers having an A.M. Best's rating of no less than A. Such insurance must be 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 provisions insuring the public from loss or damage that may arise to any person or property by reason of services rendered by Contractor.

Initials _____

Insurance required herein shall be maintained in full force and effect during the life of this contract and shall be issued on an occurrence basis. Contractor shall require that any and all subcontractors that are not protected under the Contractor's own insurance policies take and maintain insurance of the same nature and in the same amounts as required of Contractor and provide written proof of such insurance to Contractor. Proof of renewed/replacement coverage shall be provided upon expiration, termination, or cancellation of any policy. Contractor shall not allow any subcontractor to commence work on the subcontract until such insurance required for the subcontractor has been obtained and approved.

In the event that the insurance is renewed during the duration of the contract, Contractor shall furnish certificate of insurance to the City evidencing renewal of policy within 30 days of renewal. Contractor shall provide City with at least 30 days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation or non-renewal of the insurance coverage required under this Agreement.

Certificates of Insurance, fully executed by a licensed representative of the insurance company written or countersigned by an authorized Texas state agency, shall be filed with the Emergency Management Division within ten (10) business days of issuance of notification from the Emergency Management Division to Bidder that the contract is being activated as written proof of such insurance and further provided that Bidder shall not commence work under this contract until it has obtained all insurance required herein and provided written proof as required herein.

WAIVER OF SUBROGATION:

All policies of insurance shall waive all rights of subrogation against Jones Creek, its officers, employees and agents.

ADDITIONALLY INSURED:

Further, on vendor's certificate of insurance supplied to Jones Creek, Jones Creek shall be listed as additionally insured with the exception of workers compensation insurance.

DISCLOSURE OF CERTAIN RELATIONSHIP

9.0

Texas Local Government Code chapter 176 requires that any vendor or person who enters or seeks to enter into a contract with a local governmental entity (including any agent of such person or vendor) disclose in the Questionnaire Form CIQ the vendor or person's employment, affiliation, business relationship, family relationship or provision of gifts that might cause a conflict of interest with a local governmental entity. By law, this questionnaire must be completed and filed with the records administrator of Jones Creek no later than the seventh business day after the date the person engages or communicates with Jones Creek or becomes aware of facts that require the completion of the questionnaire pursuant to Texas Local Government Code section 176.006.

A person commits an offense if the person knowingly violates Texas Local Government Code section 176.006. An offense under this section is a Class C misdemeanor.

A copy of House Bill 23 which amended the Texas Local Government Code Chapter 176 is available at: <http://www.capitol.state.tx.us/tlodocs/84R/billtext/html/HB00023F.HTM>

Texas Local Government Code Chapter 176 can be found here: <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>

Questionnaire Form CIQ is included in this bid/offer

By submitting a response to this request, the vendor or person represents compliance with the requirements of Texas Local Government Code chapter 176. If required, completed forms should be sent to:

Brazoria County Courthouse
County Clerk's Office
111 E. Locust Street, Suite 200
Angleton, TX 77515

Initials _____

10.0 CERTIFICATE OF INTERESTED PARTIES

Effective January 1, 2016, all contracts and contract amendments, extensions, or renewals executed by the City Council will require the completion of Form 1295 "Certificate of Interested Parties" pursuant to Government Code § 2252.908. Form 1295 must be completed by awarded vendor at time of signed contract submittal.

Form 1295 and definitions are included in this bid/offer for your information

11.0 REQUEST FOR CLARIFICATIONS

Any prospective bidder desiring any explanation or interpretation of the bid must make a written request at least five (5) business days prior to the scheduled time for the bid opening. The request must be addressed to, Emergency Management Division, at the address listed below or faxed to (979) 230-0606.

Jones Creek
Attn: William Tidwell
7207 Stephen F Austin
Jones Creek, TX 77541

Bidders may also email requests for clarification to: knew@hmicac.org

12.0 HISTORICALLY UNDERUTILIZED BUSINESSES (HUB's)

Historically Underutilized Businesses (HUB's) are encouraged to participate in the bid/RFP processes. Although Jones Creek does not certify HUB vendors, Jones Creek recognizes the certifications of other governmental entities. If you are certified by a government entity, please include your certificate in your bid submittal.

Per Code of Federal Regulations, Title 2, § 200.321, "Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms", if awarded vendor is a prime contractor and subcontractors are to be let by prime contractor, the following affirmative steps are required of the prime contractor:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce

13.0 INCLEMENT WEATHER:

In case of inclement weather or any other unforeseen event causing the City to close for business on the date of a bid/proposal submission deadline, the bid closing will automatically be postponed until the next business day the City is open. If inclement weather conditions or any other unforeseen event causes delays in carrier service operations, the City may issue an addendum to all known vendors interested in the project to extend the deadline. It will be the responsibility of the vendor to notify the City of their interest in the project if these conditions are impacting their ability to turn in a submission within the stated deadline. The City reserves the right to make the final judgment call to extend any deadline.

Initials _____

JONES CREEK SPECIFICATIONS / SCOPE OF WORK

RFP #21-02 DEBRIS HAULING SERVICES

1.0 SCOPE

The intent of Jones Creek is to award to multiple contractors in a fast response capacity of no more than eight (8) hours from activation in order to assist Jones Creek with storm debris loading and hauling services in a non-declared and or declared storm event from county roads, including labor and equipment and other related work for Jones Creek as specified herein as well as meeting the standards provided for in the FEMA "Debris Management Guide". The eight (8) hour time frame begins upon activation and ends upon arrival on location.

In addition, the awarded contractors will conduct all debris related loading and hauling operations in accordance with all applicable federal, state and local laws, rules and regulations.

Awarded contractors may also work with the City's designated Disaster and or Storm Recovery contractors and disaster monitoring consultants.

1.1. Jones Creek reserves the right to add or delete like services to contract as may be in the best interest of Jones Creek. Any such added services shall be provided to Jones Creek at the same discount bid on other similar services.

2.0 DEBRIS SITES

Jones Creek has designated debris and disposal sites located throughout the City.

Loading / collection locations generally shall be no further than an estimated twenty-seven (27) miles to the nearest designated debris site. The contractor is required to submit a price per mile for any miles traveled greater than the estimated range.

The storm road priority maps will be available through the County Engineer's office.

3.0 LANDFILL SITES

Jones Creek has a designated landfill site which is located in Brazoria County.

If the landfill is located outside of the estimated twenty-seven (27) mile range, the Contractor is required to submit a price per mile for any miles traveled greater than the estimated range.

The City has estimated that the maximum distance from main hauling sites to the designated DMS locations is no more than 27 miles. The contractor will need to justify any reason for selecting an alternate route that proves to be longer than the recommended routes.

4.0 MILEAGE

4.1.1. The distance from the hauling sites to the designated debris sites around the City should not exceed an estimated 27 miles. If it does, the contractor shall be reimbursed for the additional mileage per the mileage rate submitted in the bid.

4.1.2. Jones Creek will calculate the distance of the haul route based upon the shortest feasible route from the haul locations to the debris sites. The contractor will be required to submit a detailed mileage log reflecting the pickup and delivery locations.

4.1.3. Jones Creek will not be charged for any non designated and approved routes

5.0 DEBRIS COLLECTION HOURS

The debris collection will be completed during daylight hours, six (6) to seven (7) days per week, as agreed to by both parties.

6.0 REQUIREMENTS

- 6.1. As directed by Jones Creek , contractors are to load, clear and haul storm debris from City roads and right-a-way's.
- 6.2. Contractors shall provide Jones Creek with debris load tickets for each truckload of debris hauled to the debris management sites or disposal sites. The debris load tickets will be handed to the load monitor at the DMS or land fill.
- 6.3. Invoices will be submitted to the assigned Jones Creek Project Manager for review and approval.
- 6.4. Contractors are required to submit a detailed listing to the City of the type of equipment they have access to in order to remove, load and haul storm debris.
- 6.5. Contractor shall monitor all crews assigned to ensure that all personnel are following the proper safety regulations.

7.0 EMERGENCY PUSH

- 7.1. If requested by the City, contractors will do an "emergency push" procedure in order to clear debris that is blocking important City roads from emergency traffic.
- 7.2. The "emergency push" is defined as debris being pushed off roads onto shoulders, roadside ditches or maintained right-of-ways in order to provide emergency access.
- 7.3. Contractors will be required to keep separate log sheets that reflect the number of hours charged to the City. Hours will be itemized per separate road number.
- 7.4. Bidders are to submit pricing based upon a cost per hour on the bid / offer sheet for any roads that apply to an emergency push procedure.

HEAVY HAUL PERMITS

8.0

Please see the County Engineer's Office and City Hall for any heavy haul permits that may be required.

9.0

ADDITIONAL INFORMATION

- 9.1. The haulers load boxes will be certified and monitored per FEMA requirements in order for reimbursement to the City. The City may monitor the boxes on location or at the landfills.
- 9.2. Environmental Clearance: Pre-event site approvals cannot be completed prior to a storm. The DMS (debris management sites) that are utilized by Jones Creek are cleared yearly.

10.0 REQUIREMENTS UNDER THE UNIFORM RULES

- 10.1. Termination for Cause and Convenience:

"Upon written notice to the bidder/vendor of a defect or breach of this Agreement, bidder/vendor has five (5) business days to cure any defect(s) or breach(es) cited in said notice. If bidder/vendor fails to cure the defect(s) or breach(es) within the five (5) business days allowed, this Agreement shall immediately terminate.

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Nevertheless, Jones Creek reserves the right to provide written notice to the bidder/vendor that this Agreement shall continue for an additional fifteen (15) business days if bidder/vendor has in good-faith commenced efforts to cure said defect(s) or breach(es) and bidder/vendor agrees, in writing, to continue to act without undue delay to cure said defect(s) or breach(es) within said additional fifteen (15) business days if so provided.

Notwithstanding the preceding, this Agreement shall be for a period of twelve (12) months to begin upon award with an option of three (3) twelve (12) month renewals subject to City Council approval. This Agreement may be terminated by either party for any reason by giving the other party thirty (30) days written notice of the intent to terminate."

10.2. Remedies:

"If the bidder/vendor fails to comply with the terms and conditions of this Agreement, Jones Creek may take one or more of the following actions, as appropriate to the circumstance:

- 10.2.1 Temporarily withhold payments pending the bidder/vendor commencing in good-faith corrective action to cure the deficiency:
- 10.2.2 Permanently withhold payments; and/or
- 10.2.3 Take any and all other remedies that may be legally available.

10.3. Equal Opportunity Clause:

"During the performance of this contract, the contractor agrees as follows:

- 10.3.1 The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 10.3.2 The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- 10.3.3 The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 10.3.4 The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 10.3.5 The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

Initials _____

10.3.6 In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

10.3.7 The contractor will include the portion of the sentence immediately preceding paragraph 10.3.1 and the provisions of paragraphs 10.3.1 through 10.3.7 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States."

10.4. Copeland Anti-Kickback Act

"Compliance with the Copeland "Anti-Kickback" Act

(1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12."

10.5. Contract Work Hours and Safety Standards Act

"Compliance with the Contract Work Hours and Safety Standards Act

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation: liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

Initials _____

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

10.6. Access of Records (Required under 2 CFR 200.336)

Access to Records. The following access to records requirements apply to this contract:

(1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of grantee), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.”

10.7. Retention of Records (Required under 2 CFR 200.333)

Retention of Records. The contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the (name of the state agency or local or Indian tribal government), (name of grantee), the FEMA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related to the litigation or settlement of claims.”

10.8. Clean Air Act and Federal Water Pollution Control Act

Clean Air Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of grantee), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

Initials _____

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of grantee), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.”

10.9. Debarment and Suspension

“Suspension and Debarment

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. (3) This certification is a material representation of fact relied upon by Brazoria County. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Texas Department of Emergency Management and Brazoria County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

10.10. Byrd Anti-Lobbying

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. 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 an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

10.11. Procurement of Recovered Materials

1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

Initials _____

Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <http://www3.epa.gov/epawaste/conservation/tools/cpg/index.htm>

The list of EPA-designate items is available at
<http://www3.epa.gov/epawaste/conservation/tools/cpg/products/index.htm>

10.12. DHS Seal

"The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval."

10.13. Compliance with Federal Law, Regulations, and Executive Orders

"This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives."

10.14. No Obligation by Federal Government

"The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract."

10.15. Program Fraud and False or Fraudulent Statements or Related Acts

"The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract."

11.0 PROJECT MANAGER

Jones Creek Emergency Management Representatives

Initials _____

JONES CREEK BID / OFFER SHEET

RFP #21-02 DEBRIS HAULING SERVICES

- 1.0 PRICE PER EACH CUBIC YARD HAULED \$ _____
 (amounts in figures)
- 2.0 PRICE PER MILE PER CUBIC YARD \$ _____
 (over the estimated 27 miles) (amounts in figures)
- 3.0 EMERGENCY PUSH
- 3.1 PRICE PER HOUR

Please fill in the chart below. Vendor is to quote equivalent or if you are pricing an alternate size or type of equipment, please state the size and model.

Heavy Equipment	Size or Type	Make / Model	U/M	Unit Price
Bucket Truck	Up to 50' reach		Hour	\$
Bucket Truck	50' to 75' reach		Hour	\$
Self Knuckle Truck Loading Boom	25-35 CY Body		Hour	\$
Self Knuckle Truck Loading Boom	35-45 CY Body		Hour	\$
Haul Vehicles	Size or Type	Make / Model	U/M	Unit Price
Dump Truck	10 -15 CY		Hour	\$
Dump Truck	16 – 20 CY		Hour	\$
Trailer w/Tractor Dump	30 - 40 CY		Hour	\$
Trailer w/Tractor Dump	41 – 50 CY		Hour	\$
Trailer w/Tractor Dump	51 – 60 CY		Hour	\$
Trailer w/Tractor Dump	61 – 70 CY		Hour	\$
Walking Floor Trailer w/Tractor	100 CY		Hour	\$
Personnel	Description or Type		U/M	Unit Price
				\$
				\$
				\$

Additional Heavy Equipment or Haul Vehicles	Size or Type	Make / Model	U/M	Unit Price
			Hour	\$
			Hour	\$
			Hour	\$
			Hour	\$
			Hour	\$
			Hour	\$
			Hour	\$
			Hour	\$
			Hour	\$

GENERAL:

Jones Creek reserves the right to accept or reject any or all bids and waive all technicalities.

The undersigned bidder has carefully examined the Invitation to Bid package and the Certification, the Standard Terms and Conditions, the Technical Specifications and all other documents and requirements included therein.

Further, the undersigned understands that by his signature affixed below, he agrees to enter into a contract with Jones Creek in accordance with the requirements of the City as stated in the above-referenced contract documents.

Signature: _____ Date: _____

Printed Name: _____ Title: _____

Company Name: _____ Tel: _____

**JONES CREEK
STATEMENT OF NO BID**

RFP #21-02 DEBRIS HAULING SERVICES

If bidder is not bidding on the goods and/or services as stated in this ITB, please complete and return this form to:
Jones Creek, Emergency Management Division, 7207 Stephen F Austin, Jones Creek, Texas 77541.

NAME OF FIRM: _____

ADDRESS: _____

SIGNATURE: _____

TELEPHONE: _____ DATE: _____

The above has declined to submit a bid response for the following reason(s) [please check all that apply]:

- Specifications too "restrictive", i.e., goods offered by our company do not meet stated specifications.
- Specifications unclear (please explain below).
- We do not offer this commodity and/or service or an equivalent.
- Insufficient time to respond to the RFP.
- Our schedule would not permit us to perform.
- Can not meet insurance requirements.

Remarks: _____

JONES CREEK SPECIAL REQUIREMENTS

RFP #21-02 DEBRIS HAULING SERVICES

BIDDER INSTRUCTIONS:

READ THIS ENTIRE DOCUMENT CAREFULLY. FOLLOW ALL INSTRUCTIONS. YOU ARE RESPONSIBLE FOR FULFILLING ALL REQUIREMENTS AND SPECIFICATIONS. BE SURE YOU UNDERSTAND THEM.

The following requirements and specifications supersede other requirements where applicable.

General

All bids inclusive of pricing shall remain firm for acceptance for a minimum period of ninety (90) days from opening date unless otherwise specified by Jones Creek.

Prices bid shall reflect the full Specifications/Statement of Work as defined per the ITB documents, inclusive of all associated costs for insurance, taxes, overhead, profit and bonding, if required and so identified.

Bidder must include all incidental costs in his pricing. Jones Creek will not provide or allow for parking or travel reimbursements for the bidder's employees. Bidder's offices, administration and/or place of business will not be on Jones Creek premises and will be the bidder's responsibility. Only those costs shown on the Pricing/Delivery Sheet and confirmed by a purchase order will be paid.

It is also understood that any and all persons who provide services under Contract to Jones Creek, resulting from this Invitation to Bid, shall be and remain employees of the Contractor, not Jones Creek. It is understood and agreed that the bidder is solely responsible for all services being provided and shall provide adequate insurance to cover against any and all losses incurred by the bidder's employees and or equipment during the course of the Contract.

All correspondence relating to this ITB, from receipt to award shall be sent to the Jones Creek Emergency Management Division.

No award or acquisition can be made until City Council approves such action.

This Request for Proposal in no manner obligates Jones Creek or any of its agencies to the eventual purchase of any goods and/or service described, implied or which may be bid, until confirmed by a written Contract and purchase order. Progress toward this end is solely at the discretion of Jones Creek and may be terminated at any time prior to the signing of a Contract.

Jones Creek will not be liable for any costs incurred by the bidder in preparing a response to this ITB. Jones Creek makes no guarantee that any goods and/or services will be purchased as a result of this Invitation to Bid, and reserves the right to reject any and all bids. All bids and their accompanying documentation will become the property of Jones Creek.

The bidder is expected to examine all documents, forms, specifications, and all instructions. Failure to do so will be at bidder's risk.

RFP Form Completion

Bidder shall fill out, SIGN, and return to the Jones Creek Emergency Management Division one (1) unbound original, one (1) digital PDF format and Six (6) copies of the complete RFP form. An authorized representative of the bidder **MUST** sign the Contract Sheet. The Contract will be binding only when signed by the Jones Creek Mayor and a purchase order authorizing the item(s) desired has been issued. The use of liquid paper is **NOT** acceptable and may result in the disqualification of RFP. If an error is made, bidder **MUST** draw a line through the error and initial each change. **PLEASE NOTE:** Unless otherwise specified, **ALL** RFPs are to be **F.O.B.**

Destination, Net Thirty (30) Days.

Initials _____

Exceptions

Bidder/Offerer Terms & Conditions are subject to the review and approval of Jones Creek. In the event of conflicting Terms & Conditions, the terms and conditions contained in the solicitation package shall prevail. Bidder/Offerer must clearly identify any conflict with terms & conditions by denoting them on the same page where the conflicting terms and conditions appear.

Open Records

All responses to this solicitation are in their entirety, subject to the Texas Open Records Act. Jones Creek will respond to open records requests in accordance to law by providing all requested response information unless respondent (offeror) has specifically identified, in the response package, any section or part respondent deems confidential and/or proprietary. Respondent must note and identify such information on the page where such information appears in the same manner as other exceptions.

RFP Returns

Bidders must return all completed bids to the Jones Creek Emergency Management Division at the address below **no later than 12:00 P.M.** on the date specified. Late ITBs will not be accepted. ITBs must be submitted in a sealed envelope and addressed as follows:

ADDRESS:
JONES CREEK
WILLIAM TIDWELL, MARSHAL
EMERGENCY MANAGEMENT DIVISION
7207 STEPHEN F AUSTIN
JONES CREEK, TEXAS 77541

RFP #21-02 DEBRIS HAULING SERVICES

PREPARATION OF BID/OFFERS: Bid/offers must be submitted on the forms provided in this package, in ink or typewritten.

Late Bid/Offers

Bids/Offers received in the office of Jones Creek Emergency Management Division after submission deadline will be considered void and unacceptable. Jones Creek is not responsible for lateness or non-delivery of mail, carrier, etc., and the date/time stamp in the office of the Emergency Management Division shall be the official time of receipt.

Altering Bids/Offers

Bids/Offers cannot be altered or amended after submission deadline. Any interlineation, alteration, or erasure made before opening time must be initialed by the signer of the bid/offer, guaranteeing authenticity.

Substitutions to Bid/Offer

Bidders offering substitutions shall state these by attachment as part of the bid/offer. Jones Creek reserves the right to accept any and all or none of the substitutions deemed to be in the best interest of the County.

Withdrawal of Bid/Offer

A bid/offer may not be withdrawn or canceled by the bidder without the permission of Jones Creek for a period of ninety (90) days following the date designated for the receipt of bids/offers, and bidder so agrees upon submittal of their bid/offer.

Descriptions

Any reference to model and/or make/manufacturer used in bid/offer specifications or scope of work are descriptive, not restrictive. It is used to indicate the type and quality desired. Bids/Offers on items of like quality will be considered. Bid must provide hardware specifications where hardware is offered.

Terms of Payment

Terms of payment shall be Net Thirty (30) Days from receipt of acceptable invoice and/or acceptance of conforming goods, whichever is later. However, alternate terms will be considered and may be bid. Invoices for installed equipment and software will not be paid prior to complete acceptance by Jones Creek unless otherwise specified. If installation of equipment and software is delayed, the City reserves the right (without extra expense or penalty) to delay a portion of the payment until equipment is installed and functioning properly.

Initials _____

Contract Term

Award will be made to the lowest and best bid meeting specifications. Renewal shall be subject to approval by Jones Creek City Council each period. Once renewal option is exhausted, the Contract must be re-bid.

Jones Creek retains the option to rebid at any time if in its best interest and is not automatically bound to renewal or rebid.

Pricing / Delivery

All items should be priced – FOB Destination Full Freight Allowed, inside delivery. Jones Creek will not pay for any additional transportation and/or shipping charges.

No charges may be billed to the City unless such costs were explicitly included in the bid/proposal. Bidder will incur any costs not explicitly included in the bid/proposal and/or mutually agreed to in writing by the Jones Creek Emergency Management Division.

Reduction in Price: If during the life of the contract, the successful bidder’s net prices to other customers for items awarded herein are reduced below the contracted price, it is understood and agreed that the benefits of such reduction shall be extended to Jones Creek

Price Increase: A price redetermination may be considered by Jones Creek only after six (6) months of the contract period has elapsed, and request for same shall be substantiated in writing addressed to the Emergency Management Division, 7207 Stephen F Austin, Jones Creek, Texas 77541. Awarded vendor must provide supporting documentation (i.e., increase in manufacturers direct cost, etc.) with request for price increase. The bidder’s past history of honoring contracts at the bid/offer price will be an important consideration in the determination of requested price increase. Jones Creek reserves the right to accept or reject any/all of the price redeterminations as it deems to be in the best interest of the City. If rejected, either party may terminate the contract in accordance with the provisions of TERMINATION OF CONTRACT as included herein.

Contract Obligations

This bid, submitted documents and any negotiations, when properly accepted by Jones Creek shall constitute a Contract equally binding between the successful bidder and Jones Creek. The selected bidder will be considered as the prime Contractor and shall assume responsibility for the goods and/or services. Failure to meet obligations may result in the cancellation of any Contracts.

The bidder’s response may be incorporated into any Contract which results from this ITB, therefore, bidders are cautioned not to make claims or statements which they are not prepared to commit to contractually. Failure by the bidder to meet such claims will result in a requirement that the bidder provide resources necessary to meet submitted claims and/or breach of Contract.

Initials _____

JONES CREEK STANDARD TERMS AND CONDITIONS

1. **FUNDING:** Funds for payment have been provided through the Jones Creek budget approved by the City Council for the current fiscal year only. State of Texas statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. Therefore, anticipated orders or other obligations that may arise past the end of the current Jones Creek fiscal year shall be subject to budget approval.
2. **DELIVERY:** Items ordered from this bid/offer may require delivery to various locations throughout Jones Creek, as specified in this bid/offer or at time of order. All delivery and freight charges (F.O.B. Jones Creek designated location) are to be included in the bid/offer price except as noted herein.
3. **AWARD OF CONTRACT:** Jones Creek reserves the right to reject any or all bids/offers, and to select any part or parts thereof without accepting the entire bid/offer. All solicitations may be compared with contracts available to the City through other sources such as Interlocal Agreements and other appropriate sources. Jones Creek may purchase through the source that provides the lowest and best bid/offer to the City. Successful bidder will be notified of award as promptly as a thorough analysis of bids/offers will permit, and shall have ten (10) calendar days following date of notification of award in which to supply bonds and certificate of insurance as may be required herein.
 - 3.1 Jones Creek hereby notifies Bidder/Offerer that pursuant to Texas Local Government Code §262.0276 (effective September 1, 2003) Jones Creek is prohibited from entering into a contract or other transaction which requires approval by the City Council with an individual, sole proprietorship, corporation, non-profit corporation, partnership joint venture, limited corporation or other entity which is indebted to the City. Further, that this contract may be terminated and payment withheld if awarded Bidder/Offerer becomes indebted to the City during the term of the Contract.
4. **EQUAL EMPLOYMENT:** All contracts will be awarded by Jones Creek without consideration as to race, religion, sex, national origin or disability of bidder. Successful bidders are required to adhere to the provisions of 42 USCA Sec. 12101 et seq., Americans with Disabilities Act.
5. **CONTRACT:** The bid/offer, when properly supplemented by any bonds and/or certificate of insurance as may be required herein, and when accepted by Jones Creek, shall constitute a Contract equally binding between the successful bidder and Jones Creek. No invoices will be paid prior to acceptance of Contract by Jones Creek. No different or additional terms will become a part of this Contract.
6. **INTERLOCAL PARTICIPATION:** It is hereby made a precondition of any bid/offer for a Contract for supplies or services and a part of these specifications, that the submission of any bid/offer in response to this request constitutes a bid/offer made under the same conditions, for the same price, and for the same effective period as this bid/offer, to any other governmental entity having an interlocal agreement with Jones Creek.
 - 6.1 It is further understood, that any other governmental entity that elects to use a Jones Creek Semi-annual or annual award will issue its own Contracts or purchase orders and will require separate billing.
7. **DEFAULT OF BIDDER:** If successful bidder defaults by failing to supply bonds and/or certificate of insurance within the ten (10) day period allotted, award shall pass to the next lowest bidder upon the approval of City Council.
 - 7.1 Bidder, in submitting this bid/offer, agrees that Jones Creek shall not be liable to prosecution for damages in the event that the City declares the bidder in default.
8. **ADDENDA:** Any interpretations, corrections or changes to these Contract documents and specifications will be made by addenda. Sole issuing authority of addenda shall be vested in the Jones Creek Emergency Management Division. Addenda will be sent to all that are known to have received a copy of the bid/offer package and/or Contract. Bidders shall acknowledge receipt of all addenda.

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- 9. SALES TAX:** Jones Creek is exempt by law from payment of Texas Sales Tax and Federal Excise Tax.
- 10. ETHICAL CONDUCT:** The bidder shall not offer or accept gifts or anything of value, not enter into any business arrangement with any employee, official, or Director of Jones Creek. No public official shall have interest in this Contract, in accordance with Texas Local Government Code Annotated Title 5, Subtitle C, Chapter 171.
- 10.1** The bidder affirms that the only person or parties interested in this bid/offer as principals are those named herein, and that this bid/offer is made without collusion with any other person, firm, or corporation.
- 11. MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE BIDDERS:** A prospective bidder must affirmatively demonstrate bidder's responsibility. A prospective bidder must meet the following requirements:
- 1) Have adequate financial resources, or the ability to obtain such resources as required;
 - 2) Be able to comply with the required or proposed delivery schedule;
 - 3) Have a satisfactory record of performance;
 - 4) Have a satisfactory record of integrity and ethics;
 - 5) Be otherwise qualified and eligible to receive an award.
- 11.1** Jones Creek may request representation and other information sufficient to determine bidder's ability to meet these minimum standards listed above.
- 12. REFERENCES:** During an analysis of all bids/offers, Jones Creek may request bidder to supply a list of three (3) references to which like services or materials have been supplied by bidder. If requested, references should include name of firm, address, telephone number and name of representative.
- 13. INSURANCE:** Prior to acceptance of contract by Jones Creek, the successful bidder must furnish a Certificate of Insurance from an approved insurance carrier for the coverage indicated.
- 14. SILENCE OF SPECIFICATIONS:** The apparent silence of the specifications contained as a part of this package as to any detail or to the apparent omission of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.
- 15. INDEMNIFICATION:** The successful bidder (herein after referred to as Contractor), shall defend, indemnify, and save harmless Jones Creek and all its officers, Directors, and employees from all suits, actions, or other claims of any character, name, and description brought for or on account of any injuries or damages of any negligent act or fault of the Contractor; or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act of omission, neglect, or misconduct of said Contractor; or because any claims or amount recovered from any infringements of patent, trademark, or copyright; or from any claims or amounts arising recovered under the Worker's Compensation Act, or any other law ordinance, order, or decree; or of any Director, employee, subcontractor, or supplier in the execution of, or performance under, any Contract which may result from award of bid/offer. **15.1** Further, Contractor indemnifies and will indemnify and save harmless Jones Creek from liability, claim or demand on their part, their Directors, servants, customers, and/or employees, whether such liability, claim, or demand arise from event or casualty happening within the job site itself or elsewhere. Contractor shall pay any judgment with costs which may be obtained against Jones Creek growing out of such injury or damages.
- 15.2** Money due the Contractor under and by virtue of his Contract as may be considered necessary by the City for such purpose may be retained for the use of the City, or in case no money is due, his surety may be held until such suit or suits action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and suitable evidence to the effect furnished to the City, except that money due the Contractor will not be withheld when the Contractor produces satisfactory evidence that he is adequately protected by public liability and property damage insurance.

Initials _____

- 16. THIRD PARTY BENEFICIARY CLAUSE:** It is specifically agreed between the parties executing the Contract that it is not intended by any of the provisions of any part of the Contract to create with the public or any member thereof a third party beneficiary or to authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.
- 17. PURCHASE ORDERS REQUIRED:** All orders for materials or work must be authenticated by a purchase order issued by the Brazoria County Purchasing Department. Invoices not bearing a purchase order number will not be paid.
- 18. TESTING:** All materials being used in fulfillment of this Contract are subject to inspection or test at any time during their preparation, delivery, or use. At the option of the Emergency Management Division, they may be sampled and tested in order to determine compliance with the governing specifications. Materials not conforming to the requirements of these specifications shall not be used in fulfillment of this Contract with Jones Creek. The City reserves the right to immediately cancel any Contract found not to be in compliance with governing specifications as a result of testing by the City.
- 19. WAGES:** Contractor shall pay or cause to be paid, without cost or expense to Jones Creek, all Social Security, Unemployment and Federal Income Withholding Taxes of all employees; and all such employees shall be paid wages and benefits as required by Federal and/or State law. Contracts involving construction work or supply of materials in place shall abide by the provisions of Article 5159d Texas Revised Civil Statutes Annotated.
- 20. TERMINATION OF CONTRACT:** This Contract shall remain in effect until Contract expires, or until terminated by either party upon thirty (30) days written notice. The Contractor must state in such notice the reasons for such cancellation, and shall address it to the Emergency Management Division, 7207 Steohen F Austin, Jones Creek Texas 77541. Jones Creek reserves the right to award canceled Contract to next lowest and best bidder as it deems to be in the best interest of the City.
- 20.1** In the event of breach or default of this Contract, Jones Creek reserves the right to enforce the performance of this Contract in any manner prescribed by law or deemed to be in the best interest of the City.
- 20.2** In the event the Contractor shall fail to perform, keep, or observe any of the terms and conditions to be performed, kept, or observed, Jones Creek shall give the Contractor written notice of such default; and in the event said default is not remedied to the satisfaction and approval of the City within two (2) working days of receipt of such notice by the Contractor, default will be declared and all the Contractor's rights shall terminate.
- 21. DELIVERY OF NOTICES:** Any notice provided by this Contract (or required by law) to be given to the Contractor by Jones Creek shall be conclusively deemed to have been given and received on the next day after such written notice has been deposited in the mail in Jones Creek, Texas, by Registered or Certified mail with sufficient postage affixed thereto, addressed to the Contractor at the address so provided; provided this shall not prevent the giving of actual notice in any other manner.
- 22. DELIVERY TICKETS:** Delivery tickets shall accompany each order shipped, and shall show Contractor's name and address, delivery location, Jones Creek project number and descriptive information as to item and quantity delivered.
- 23. HAZARDOUS SUBSTANCES:** State law requires that shipments of hazardous substances shall include MATERIAL SAFETY DATA SHEETS (MSDS). MSDS must be supplied with the first order shipped under any contract, and at any time MSDS is revised.
- 24. PAYMENT:** Payment shall be made upon receipt and/or acceptance in accordance with the terms of this Contract by the City of items(s) ordered, and receipt of a valid invoice in accordance with Article 601f Texas Revised Civil Statutes Annotated. Contractor is required to pay subcontractors within ten (10) days.
- 25. CONTRACTOR'S LIABILITY:** The Contractor shall be responsible for all damage or injury to property of any character during the execution of the work, resulting from any act, omission, neglect, or misconduct in his manner or method of executing the work, or at any time due to defective work or materials, and said responsibility will not be released until the project shall have been completed and accepted.

Initials _____

- 25.1 When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the work, or in consequence of the nonexecution thereof by the Contractor, he shall restore, at his own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise restoring as he may be directed, or he shall make good such damage or injury in an acceptable manner.
26. **DEFECTIVE MATERIALS:** Unless otherwise stated herein, items supplied under this Contract shall be subject to the City's approval. Items found defective or not meeting specifications shall be picked up and replaced by the Contractor at the next service day at no expense to the City. If item is not picked up within one (1) week after notification, the item will become a donation to the City for disposition.
27. **WARRANTY:** Contractor shall warrant that all items/services shall conform to the proposed specifications and/or all warranties as stated in the Uniform Commercial Code and be free from all defects in material, workmanship and title. Contractor and the City agree that both parties have all rights, duties, and remedies available as stated in the Uniform Commercial Code. Further, Contractor shall provide additional warranty requirements as defined in the Scope of Work attached. Offerer must provide all warranty terms and conditions in response package.
28. **ASSIGNMENT:** Contractor shall not sell, assign, transfer or convey this Contract, in whole or in part, without the prior written consent of Jones Creek.
29. **GOVERNING LAW:** Contractor is advised that these requirements shall be fully governed by the laws of the State of Texas and that Jones Creek may request and rely on advice, decisions and opinions of the Attorney General of Texas and the City Attorney concerning any portion of these requirements. All disputes arising out of this agreement will be resolved in Brazoria County, Texas.

All documents are subject to Texas Open Records requirements.

30. **DRAWINGS:** All plans and specifications are hereby attached and made a part of this Contract.
31. **RIGHT TO AUDIT:** At anytime during the term of this contract and for a period of four (4) years thereafter, the State of Texas, Jones Creek, and/or other federal, State and local agencies which may have jurisdiction over this contract and/or purchase order, at reasonable times and at its expense reserve the right to audit successful bidder's records and books. If needed for audit, original or independently certified copies of off-site records will be provided to auditors at successful bidder's expense within two (2) weeks of written request.
32. **BID BOND:** *If marked on the "Invitation to Bid Package Checklist" as an applicable component*, all offerers must submit, with bid/proposal, a cashier's check or certified check for at least five percent (5%) of the total bid/proposal price, if the bid/proposal exceeds \$100,000 in contract price or if the contract includes construction of public work. Such cashier's check shall be payable to the order of Jones Creek, or a Bid/Proposal Bond in the same amount issued by a surety, acceptable to Jones Creek, authorized to do business in the State of Texas, as a guaranty that the offerer will enter into a contract with Jones Creek (as outlined in the Specifications/Statement of Work and attachments) and that offer will furnish the requisite performance and payment bonds as may be required. (See *Package Checklist*.)
33. **PERFORMANCE AND PAYMENT BONDS:** (Public Works Contract or as Required by City Council) *If marked on the "Invitation to Bid Package Checklist" as an applicable component*, in the event the total accepted bid/proposal price exceeds \$25,000 the successful offerer must provide to the office of the Emergency Management Division, a payment bond, and if the price exceeds \$100,000 the successful offerer must also provide a performance bond, each in the amount of one hundred percent (100%) of the total contract sum within ten (10) calendar days after receipt of notification of bid/proposal award. Such bonds shall be executed by a corporate surety or corporate sureties in accordance with Article 7.19-1, Vernon's Texas Insurance Code. Such corporate surety/sureties shall be duly authorized and admitted to do business in the State of Texas and licensed in the State of Texas to issue fidelity and surety bonds with a Best Rating of "A" or better and have a bonding capacity adequate for the prescribed amount. Jones Creek reserves the right to accept or reject any surety company proposed by the offerer. In the event Jones Creek rejects the proposed surety company, the offerer will be afforded five (5) additional days to submit the required bonds issued by a surety company acceptable to Jones Creek. (See *Package Checklist*.)

Initials _____

- 34. APPLICABLE LAW:** All applicable laws and regulations of the State of Texas and ordinances and regulations of Jones Creek shall apply.
- 35. COMPLIANCE WITH APPLICABLE LAWS:** Offerer shall at all times observe and comply with all federal, state, local and municipal ordinances, rules, regulations, relating to the provision of the services contracted to be provided by offerer hereunder or which in any manner affect this Contract.
- 36. FORCE MAJEURE:** Neither the City nor the successful offerer shall be deemed in violation of this Agreement if either is prevented from performing its obligations hereunder for any reason beyond its control, including but not limited to, acts of God, civil or military authority, acts of public enemy, war riots, rebellions, accidents, fires, explosions, earthquakes, floods, or catastrophic failure of public transportation; provided however, that in the event of strikes or labor disputes, an inability to procure raw materials, equipment, power or supplies, or the enactment of any law, order, proclamation, regulation, ordinance, demand, or other requirement of any governmental agency or intergovernmental body, which prevents, restricts, interferes or delays with the performance of this Contract, the party so affected, upon giving notice to the other party, shall be excused from such performance to the extent of such prevention, restriction, delay or interference, so long as the party so affected shall use reasonable efforts under the circumstance to avoid or remove such causes of nonperformance, and shall continue performance hereunder with the utmost dispatch whenever such causes are removed.
- 37. SEVERABILITY:** If any provision of this Contract is held to be unenforceable for any reason, the unenforceability thereof shall not affect any other provision contained herein, and the remainder of the Contract shall remain in full force and effect, and enforceable in accordance with its terms.
- 38. QUANTITIES:** Jones Creek requests purchase prices for the items identified in this bid/offer, and in accordance with the specifications provided herein. The quantities provided are given as a guideline only for the purpose of bid/offer preparation. These quantities shall not be construed as the total number of purchases for the Contract. This estimated figure may increase and/or decrease throughout the year. No guarantee is expressed or implied as to the total quantity of items to be purchased under this Contract.
- 38.1** Jones Creek reserves the right to add or delete like or related items at any time during the term of this Contract. The additions or deletions shall be incorporated into the contract in the form of an addendum. Additional items shall be priced in accordance with this contract with appropriate discounts being applied.
- 39. PURCHASE FROM OTHER SOURCES:** Jones Creek reserves the right to purchase goods and/or services specified herein, or of equal or like kind, through contracts established by other governmental agencies or thorough separate procurement actions due to the unique or special needs of Jones Creek. Further, the City reserves the right to obtain such goods and/or services from others without penalty or prejudice to the City or the offerer and such action shall not invalidate in whole or in part this Contract or any rights or remedies Jones Creek may have hereunder.

Initials _____

**JONES CREEK
BIDDER/OFFERER'S AFFIRMATION**

RFP #21-02 DEBRIS HAULING SERVICES

This sheet must be completed, signed, and returned by Bidder/Offerer

NOTE: FAILURE TO SIGN AND RETURN THIS FORM WITHIN 10 DAYS OF AWARD NOTIFICATION MAY RESULT IN THE TERMINATION OF ANY RESULTING PURCHASE ORDER OR CONTRACT.

1. Bidder/Offerer affirms that they are duly authorized to execute this Contract, that this company, corporation, firm, partnership or individual has not prepared this bid/offer in collusion with any other bidder, and that the contents of this bid/offer as to prices, terms or conditions of said bid/offer have not been communicated by the undersigned nor by any employee or Director to any other person engaged in this type of business prior to the official opening of this bid/offer.

2. Bidder/Offerer hereby assigns to purchaser any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code, Section 15.01, et seq.

3. Pursuant to §262.076 (a) of the Texas Local Government Code Bidder/Offerer, hereby affirms that Bidder/Offerer:

(Please check all that are applicable)

_____ Does not own taxable property in Jones Creek.

_____ Does not owe any ad valorem taxes to Jones Creek or is not otherwise indebted to Jones Creek.

If any additional information is required regarding these requirements, please contact The Jones Creek
Emergency Management Division PRIOR to execution.

Bidder/Offerer Company Name _____

Bidder (Signature) _____ Date _____

Bidder (Print Name) _____ Date _____

Position with Company _____

Signature of Company Official
Authorizing the Bid/Offer _____ Date _____

Company Official
(Printed Name) _____

Official's Position _____

Corporate Vendors Shall Furnish the Following Information:

Where Incorporated _____ Charter Number _____

**JONES CREEK
BIDDER/OFFERER'S SDNs/BLOCKED PERSONS
AFFIRMATION**

RFP #21-02 DEBRIS HAULING SERVICES

This sheet must be completed, signed, and returned by Bidder/Offerer

NOTE: FAILURE TO SIGN AND RETURN THIS FORM WITHIN 10 DAYS OF AWARD NOTIFICATION MAY RESULT IN THE TERMINATION OF ANY RESULTING PURCHASE ORDER OR CONTRACT.

1. Pursuant to §2155.077 of the Texas Government Code Bidder/Offerer, hereby affirms that Bidder/Offerer:

(Please check all that are applicable)

_____ Is not excluded from doing business at the federal level.

_____ Is not listed as Specially Designated Nationals (SDNs)/Blocked Persons (individuals and companies owned or controlled by or acting for or on behalf of targeted Countries; or individuals, groups and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific).

2. Jones Creek may not make procurement transactions with SDNs/Blocked Persons.

If any additional information is required regarding these requirements, please contact The Jones Creek
Emergency Management Division PRIOR to execution.

Bidder/Offerer Company Name _____

Bidder (Signature) _____ Date _____

Bidder (Print Name) _____ Date _____

Position with Company _____

Signature of Company Official
Authorizing the Bid/Offer _____ Date _____

Company Official
(Printed Name) _____

Official's Position _____

Corporate Vendors Shall Furnish the Following Information:

Where Incorporated _____ Charter Number _____

Title VI and Related Statues
Nondiscrimination Statement

Jones Creek, as a recipient of Federal financial assistance and under Title VI of the Civil Rights Act of 1964 and related statutes, ensures that no person shall on the grounds of race, religion (where the primary objective of the financial assistance is to provide employment per 42 U.S.S. § 2000d-3), color, national origin, sex, age or disability be excluded from participation be denied the benefits of; or otherwise be subjected to discrimination under any Department programs or activities.

Mayor, Jones Creek

Titulo VI y Estatutos Relacionados
Declaration de No Discriminacion

Jones Creek, como beneficiario de la asistencia financiera federal y segun el Titulo VI de la Ley de Derechos Civiles de 1964 y los estatutos relacionados, asegura que ninguna persona sera excluida por motivos de raza, religion (donde el objetivo principal de la ayuda financiera es proporcionar empleo por 42 USS § 2000d-3), color, origen nacional, sexo, edad o discapacidad de participacion en, o negado los beneficios de, ni sera sujeto a discriminación bajo ningun programa o las actividades del Departamento.

Mayor, Jones Creek

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

FORM CIQ

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

OFFICE USE ONLY	
Date Received	

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

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

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

Name of Officer

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

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

Yes No

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

Yes No

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

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

7

Signature of vendor doing business with the governmental entity Date

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

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

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

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

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

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

(2) the vendor:

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

(i) a contract between the local governmental entity and vendor has been executed;

or

(ii) the local governmental entity is considering entering into a contract with the vendor;

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

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

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

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

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

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

(3) has a family relationship with a local government officer of that local governmental entity.

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

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

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
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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 goods or services 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 AFFIDAVIT I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day
of _____, 20_____, to certify which, witness my hand and seal of office.

Signature of officer administering oath Printed name of officer administering oath Title of officer administering oath

ADD ADDITIONAL PAGES AS NECESSARY

Chapter 46. Disclosure of Interested Parties
(effective December 24, 2015)
Text of Adopted Rule

The adopted new language is indicated by underlined text.

Chapter 46. DISCLOSURE OF INTERESTED PARTIES

§46.1. Application

(a) This chapter applies to section 2252.908 of the Government Code.

(b) Section 2252.908 of the Government Code applies only to a contract of a governmental entity or state agency entered into after December 31, 2015, that meets either of the following conditions:

(1) The contract requires an action or vote by the governing body of the entity or agency; or

(2) The value of the contract is at least \$1 million.

(c) A contract does not require an action or vote by the governing body of a governmental entity or state agency if:

(1) The governing body has legal authority to delegate to its staff the authority to execute the contract;

(2) The governing body has delegated to its staff the authority to execute the contract; and

(3) The governing body does not participate in the selection of the business entity with which the contract is entered into.

§46.3. Definitions

(a) "Contract" includes an amended, extended, or renewed contract.

(b) "Business entity" includes an entity through which business is conducted with a governmental entity or state agency, regardless of whether the entity is a for-profit or nonprofit entity. The term does not include a governmental entity or state agency.

(c) "Controlling interest" means: (1) an ownership interest or participating interest in a business entity by virtue of units, percentage, shares, stock, or otherwise that exceeds 10 percent; (2) membership on the board of directors or other governing body of a business entity of which the board or other governing body is composed of not more than 10 members; or (3) service as an officer of a business entity that has four or fewer officers, or service as one of the four officers most highly compensated by a business entity that has more than four officers.

(d) "Interested party" means: (1) a person who has a controlling interest in a business entity with whom a governmental entity or state agency contracts; or (2) a person who actively participates in facilitating a contract or negotiating the terms of a contract with a governmental entity or state agency, including a broker, intermediary, adviser, or attorney for the business entity.

(e) "Intermediary," for purposes of this rule, means a person who actively participates in the facilitation of the contract or negotiating the contract, including a broker, adviser, attorney, or representative of or agent for the business entity who:

(1) receives compensation from the business entity for the person's participation;

(2) communicates directly with the governmental entity or state agency on behalf of the business entity regarding the contract; and

(3) is not an employee of the business entity.

§46.5. Disclosure of Interested Parties Form

(a) A disclosure of interested parties form required by section 2252.908 of the Government Code must be filed on an electronic form prescribed by the commission that contains the following:

(1) The name of the business entity filing the form and the city, state, and country of the business entity's place of business;

(2) The name of the governmental entity or state agency that is a party to the contract for which the form is being filed;

(3) The name of each interested party and the city, state, and country of the place of business of each interested party;

(4) The identification number used by the governmental entity or state agency to track or identify the contract for which the form is being filed and a short description of the goods or services used by the governmental entity or state agency provided under the contract; and

(5) An indication of whether each interested party has a controlling interest in the business entity, is an intermediary in the contract for which the disclosure is being filed, or both.

(b) The certification of filing and the completed disclosure of interested parties form generated by the commission's electronic filing application must be printed, signed by an authorized agent of the contracting business entity, and submitted to the governmental entity or state agency that is the party to the contract for which the form is being filed

(c) A governmental entity or state agency that receives a completed disclosure of interested parties form and certification of filing shall notify the commission, in an electronic format prescribed by the commission, of the receipt of those documents not later than the 30th day after the date the contract for which the form was filed binds all parties to the contract.

(d) The commission shall make each disclosure of interested parties form filed with the commission under section 2252.908(f) of the Government Code available to the public on the commission's Internet website not later than the seventh business day after the date the commission receives the notice required under subsection (c) of this section.

INSURANCE REQUIREMENTS FOR STANDARD PURCHASES CONTRACTS

The following requirements and specifications shall be in addition to the other requirements contained herein and shall supersede the other requirements where applicable.

INSURANCE: Prior to acceptance of contract by Jones Creek, the successful bidder must furnish a Certificate of Insurance together with a receipt showing the time period for which premium has been paid, from an approved insurance carrier for the coverage indicated below.

A. FOR CONSTRUCTION WORK CONTRACTS, THE FOLLOWING COVERAGES ARE REQUIRED:

1. Statutory workers compensation in accordance with the State of Texas requirements.
2. Comprehensive general liability including owners and contractors protective liability insurance for bodily injury, death, or property damages in the following amounts:

COVERAGE	PER PERSON	PER OCCURRENCE
a. Premises and product liability	\$500,000	\$500,000
b. Aggregate policy limits	\$500,000	

3. Comprehensive automobile and truck liability insurance (covering owned, hired and non-owned vehicles):

COVERAGE	PER PERSON	PER OCCURRENCE
a. Bodily injury (including death)	\$500,000	\$500,000
b. Property damage	\$500,000	\$500,000
c. Aggregate policy limits	\$500,000	

Insurance certificates and policy endorsements shall include agreements to hold City Council Jones Creek and Jones Creek, Texas harmless; i.e., shall include coverage for "Hold Harmless Agreement".

Failure to maintain insurance coverage as required herein shall be grounds for immediate termination of contract.

All policies must provide, by endorsement to the policy, that thirty (30) days prior written notice of cancellation or material change in coverage be given to the Emergency Management Division of Jones Creek. Such insurance when accepted by the City in writing will become acceptable and shall remain unmodified until final acceptance of the work. Coverage provided must be on an occurrence basis.

No policy submitted shall be subject to limitations, conditions, or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by the successful bidder. The decision of Jones Creek thereon is final.

All policies shall be written through a company duly entered and authorized to transact that class of insurance in the State of Texas.

Neither approval by Jones Creek of any insurance supplied by the successful bidder, nor a failure to disapprove that insurance, shall relieve the successful bidder of full responsibility of liability, damages and accidents as set forth herein.

No additional payment shall be made for any insurance that the successful bidder may be required to carry.

Initials _____

JONES CREEK WORKERS' COMPENSATION REQUIREMENTS

BIDDER/OFFERER INSTRUCTIONS:

READ THIS ENTIRE DOCUMENT CAREFULLY. FOLLOW ALL INSTRUCTIONS. YOU ARE RESPONSIBLE FOR FULFILLING ALL REQUIREMENTS AND SPECIFICATIONS. BE SURE YOU UNDERSTAND THEM.

The following requirements and specifications supersede all other Requirements where applicable.

§T285S110.110(c) (7). Workers' Compensation Insurance Coverage

A. Definitions

Certificate of coverage ("certificate") – A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project – includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) – includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity or employees of any entity with furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
 - (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (2) no later than seven (7) days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

- (1) provide coverage, base on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
- (2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
- (3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (4) obtain from each other person with whom it contracts, and provide to the contractor:
 - (a) a certificate of coverage, prior to the other person beginning work on the project; and
 - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (5) retain all required certificated of coverage on file for the duration of the project and for one (1) year thereafter;
- (6) notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the person knew of should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- (7) contractually require each person with whom it contracts, to perform as required by paragraphs (9.1) - (9.7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier of, or in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administration penalties, criminal penalties, civil penalties, or other civil actions.

K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the governmental entity.

If awarded a contract for RFP#21-02, by my signature below, I certify that I will provide workers' compensation insurance coverage for each employee employed on this public project. I also certify that each of my subcontractors will also provide workers compensation for each employee employed on this project.

SIGNATURE

DATE

Typewritten or Printed Name

Title

**JONES CREEK
BID BOND INFORMATION
AND REQUIREMENTS**

The following requirements supersede other requirements where applicable.

BID BOND: When applicable, as designated below, all offerers must submit, with bid/proposal, a cashier's check or certified check for at least five percent (5%) of the total bid/proposal price, if the bid/proposal exceeds \$100,000 in contract price or if the contract includes construction of public work. Such cashier's check shall be payable to the order of Jones Creek, or a Bid/Proposal Bond in the same amount issued by a surety, acceptable to Jones Creek, authorized to do business in the State of Texas, as a guaranty that the offerer will enter into a contract with Jones Creek (as outlined in the Statement of Work and attachments) and that offer will furnish the requisite performance and payment bonds as may be required.

_____ BID BOND REQUIRED IF BID/PROPOSAL EXCEEDS \$100,000 AND REQUIRED BY COURT ORDER

_____ BID BOND REQUIRED WHEN BID/PROPOSAL INCLUDES CONSTRUCTION OF PUBLIC WORK

A guaranty shall be submitted with each bid that the bidder will enter into a contract with Jones Creek for the goods and/or services as outlined in the Specifications, Scope of Work and contract attachments and that offerer will furnish the requisite performance and payment bonds as may be required within ten (10) days after award of the contract and receipt of contract and performance bond forms. Guaranty may be submitted in either of these forms:

- A. Individual bid bonds payable to Jones Creek for 5% of the total amount of the bid.
- B. Bank cashier's check, payable to Jones Creek for 5% of the total amount of each separate bid.

If the successful bidder submits a bank cashier's check, as guaranty, Jones Creek may elect to hold the check until all provisions of the contract have been completed or require the contractor to furnish performance payment bonds. Performance bond and payment bond shall be in a sum equal to the amount of money to be paid by the City under the contract, unless otherwise stated, and shall be executed by a surety company authorized to do business in the State of Texas.

If the performance bond forms and related documents are not returned to the Jones Creek Emergency Management Division, 17207 Stephen F Austin, Jones Creek, Texas 77541 within ten (10) days of award, Jones Creek has the right to render the award ineffective.

Written verification of the validity of the bond shall be received by Jones Creek from the Contractor's Surety before any payments will be made.

Initials _____

**JONES CREEK
BID CHECK RETURN AUTHORIZATION FORM**

Offerer must complete this form and attach to bid check. All bid checks must be for the required amount and be payable to Jones Creek, not payable to any individual.

If an ITB, the Emergency Management Division may retain the bid checks of the three lowest bidders until after the award and approval of the contract, receipt of a performance bond, and, if required, receipt of a payment bond. Jones Creek shall return the bid checks of all other bidders at any time within seventy-two (72) hours following the opening of bids. If an RFP/RFO, all bid checks will be retained by the Office of the Purchasing Director until after the award and approval of the contract, receipt of a performance bond, and, if required, receipt of a payment bond.

Authorization is hereby granted for Jones Creek to return the bid check via regular mail without liability of any kind or nature to the address listed below if:

1. we are an unsuccessful bidder, or
2. a performance bond, and payment bond, if required, has replaced the bid check, or
3. upon completion of contract.

Bid for: _____

Cashier's Check Number _____ . Drawn on _____

Bank of _____ , Dated _____ in the
amount of \$ _____ .

Name: _____

Business Address: _____

Signature: _____

Mailing Address: _____

City & State: _____ Zip Code: _____

Telephone: _____

For Use of Purchasing Director Only:

Date Check Mailed: _____ By: _____

Ledger Number: _____ Dept: _____

**JONES CREEK
PAYMENT BOND INFORMATION
AND REQUIREMENTS**

The following requirements supersede other requirements where applicable.

PAYMENT BOND: (Public Works Contract) In the event the total accepted bid/proposal price exceeds \$25,000 the successful offerer must provide to the office of the City Purchasing Director, a payment bond in the amount of one hundred percent (100%) of the total contract sum within ten (10) calendar days after receipt of notification of bid/proposal award. Such bond shall be executed by a corporate surety or corporate sureties in accordance with Article 7.19-1, Vernon's Texas Insurance Code. Such corporate surety/sureties shall be duly authorized and admitted to do business in the State of Texas and licensed in the State of Texas to issue fidelity and surety bonds with a Best Rating of "A" or better and have a bonding capacity adequate for the prescribed amount. Jones Creek reserves the right to accept or reject any surety company proposed by the offerer. In the event Jones Creek rejects the proposed surety company, the offerer will be afforded five (5) additional days to submit the required bonds issued by a surety company acceptable to Jones Creek.

 ^x PAYMENT BOND REQUIRED WHEN BID/PROPOSAL EXCEEDS \$25,000 AND IS
FOR PUBLIC WORKS.

If the payment bond and related documents are not returned to the Jones Creek Emergency Management Division, 7207 Stephen F Austin, Jones Creek, Texas 77541 within ten (10) days of award, Jones Creek has the right to render the award ineffective.

Written verification of the validity of the bond shall be received by the Emergency Mangement Division from the Contractor's Surety before any payments will be made.

Initials _____

**JONES CREEK
PERFORMANCE BOND INFORMATION
AND REQUIREMENTS**

The following requirements supersede other requirements where applicable.

PERFORMANCE BOND: (Public Works Contract or as Required by City Council) As designated below, the successful offerer must provide a performance bond, in the amount of one hundred percent (100%) of the total contract sum within ten (10) calendar days after receipt of notification of bid/proposal award. Such bond shall be executed by a corporate surety or corporate sureties in accordance with Article 7.19-1, Vernon's Texas Insurance Code. Such corporate surety/sureties shall be duly authorized and admitted to do business in the State of Texas and licensed in the State of Texas to issue fidelity and surety bonds with a Best Rating of "A" or better and have a bonding capacity adequate for the prescribed amount. Jones Creek reserves the right to accept or reject any surety company proposed by the offerer. In the event Jones Creek rejects the proposed surety company, the offerer will be afforded five (5) additional days to submit the required bonds issued by a surety company acceptable to Jones Creek.

- PERFORMANCE BOND REQUIRED WHEN BID/PROPOSAL EXCEEDS \$100,000 AND IS FOR PUBLIC WORK.

- PERFORMANCE BOND REQUIRED WHEN BID/PROPOSAL EXCEEDS \$50,000.00 AND IS REQUIRED BY COURT ORDER.

If the performance bond and related documents are not returned to the Jones Creek Emergency Management Division, 7207 Stephen F Austin, Jones Creek, Texas 77515 within ten (10) days of award, Jones Creek has the right to render the award ineffective.

Written verification of the validity of the bond shall be received by the Emergency Management Division from the Contractor's Surety before any payments will be made.

Initials _____

**JONES CREEK
RETURN LABEL**

*******LATE BIDS CANNOT BE ACCEPTED*******

<u>SEALED INVITATION TO BID</u>	
RFP#:	21-02
OPENING DATE:	FRIDAY, APRIL 16, 2021
OPENING TIME:	12:00 P.M. LOCAL TIME
ITB DESCRIPTION:	DEBRIS HAULING SERVICES
RETURN OFFER TO:	PHYSICAL ADDRESS: JONES CREEK WILLIAM TIDWELL EMERGENCY MANAGEMENT 7207 STEPHEN F AUSTIN JONES CREEK, TEXAS 77541

DATED MATERIAL – DELIVER IMMEDIATELY

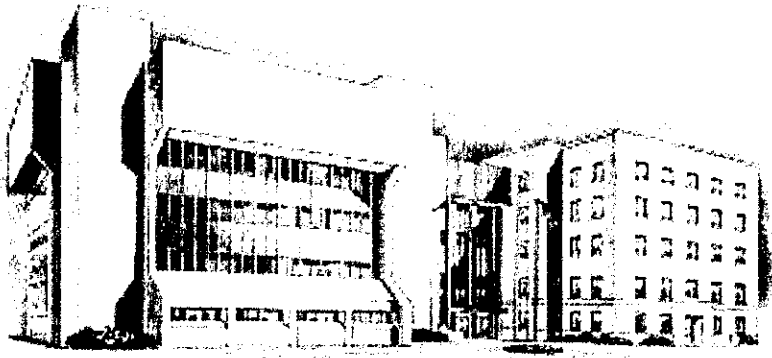
PLEASE CUT OUT AND AFFIX THE ITB LABEL ABOVE TO THE
OUTER MOST ENVELOPE OF YOUR RESPONSE TO HELP
ENSURE PROPER DELIVERY!

****VENDOR MUST RETURN ONE (1) UNBOUND ORIGINAL ,
ONE (1) DIGITAL (PDF FORMAT) AND SIX (6) COMPLETE
COPIES OF THE BID DOCUMENTS****

*******LATE BIDS CANNOT BE ACCEPTED*******

NANCY FRIUDENBERG
DIRECTOR

JENNIFER CRAINER
ASSISTANT DIRECTOR



MARI REYES
PROJECT COORDINATOR

TAMMY HUGHES
FINANCIAL COORDINATOR

BRAZORIA COUNTY COMMUNITY DEVELOPMENT DEPARTMENT

April 5, 2021

Dear Mayor:

This year Brazoria County will be re-qualifying for Community Development Block Grant (CDBG), HOME, and Emergency Solutions Grant (ESG) Program funds from the U. S. Department of Housing and Urban Development for FYS 2022-2024. The County has to re-qualify for these funds every three years. Currently, twenty Cities in the County participate in the Brazoria County CDBG, HOME, and ESG Programs. A list of these Cities is attached hereto.

If your City no longer wishes to participate in the Brazoria County CDBG, HOME, and ESG Program, you will need to notify this office that your City elects to be excluded as a participating jurisdiction in the Brazoria County CDBG, HOME, and ESG Program. We must receive this notification in our office no later than 5:00 p.m. on May 6, 2021. However, I must also point out to you that by continuing to be included in the County's program; your City will not be eligible to apply for grants under the Texas Community Development Program (TX-CDBG) or the Texas HOME Investment Partnership Program through the Texas Department of Agriculture (TDA) during this same period. This will not however affect any other grant program you wish to apply for (e.g., Texas Parks and Wildlife Department, Federal Aviation Administration/Texas Aeronautical Commission, Texas State Library, Criminal Justice Council, etc.)

If we do not receive notification from your City indicating that your City no longer wishes to participate in the County program, then according to the previously executed agreement your City will be automatically included in our County program through September 30, 2021. We do hope that your City will continue to be a partner with the County and we look forward to continuing housing and community development efforts within your City.

Please send the signed attached notice, or any notices, to Nancy Friudenberg, Brazoria County Community Development, 1524 E. Mulberry, Suite 162, Angleton, Texas, 77515.

If you have any questions about the program, please feel free to call me at (979) 864-1860.

Sincerely,

Nancy Friudenberg
Director

1524 EAST MULBERRY SUITE 162, ANGLETON, TEXAS 77515

Angleton Area
(979) 864-1710

Brazosport Area
(979) 388-1710

Houston Area
(281) 756-1710

Fax Number
(979) 864-1089

CDBG, HOME & ESG Programs

Alvin

Angleton

Bailey's Prairie

Bonney

Brazoria

Brookside Village

Clute

Danbury

Freeport

Holiday Lakes

Iowa Colony

Jones Creek Village

Lake Jackson

Manvel

Oyster Creek Village

Richwood

Sandy Point

Surfside Beach

Sweeny

West Columbia

Non-Participating Cities

Hillcrest Village

Liverpool

Pearland

Quintana

**NOTICE TO WITHDRAW OR REMAIN AS A
PARTICIPATING JURISDICTION**

Nancy Friudenberg
Brazoria County Community Development
1524 E. Mulberry, Suite 162
Angleton, TX 77515

The City of Jones Creek elects to:

- Remain as a participating jurisdiction in the Brazoria County CDBG and HOME Program for Federal FY 2022-2024. I understand that requesting to remain as a Participating Jurisdiction, I agree to renew and extend the Cooperation Agreement between the County and the City of Jones Creek.

- Withdraw as a participating jurisdiction in the Brazoria County CDBG and HOME Program for Federal FY 2022-2024. I understand that by withdrawing as a participating jurisdiction, our city will no longer be entitled to receive CDBG and HOME funding from Brazoria County. I also understand that I must notify Brazoria County Community Development and the local HUD Field Office that the City of Jones Creek intends to withdraw as a participating jurisdiction. This request must be in writing, sent to both entities, and be received by May 6, 2021.

Signed by:

Signature

Title

**Please mail original form to Nancy Friudenberg
by May 6, 2021.**

AMENDMENT/ADDENDUM TO COOPERATION AGREEMENT

This Agreement Amendment/Addendum covers the CDBG Entitlement program and, where applicable, the HOME Investment Partnership (HOME) and Emergency Solutions Grants (ESG) Programs.

Per requirement of the CPD Notice 20-03: Instructions for Urban County Qualification for Participation in the Community Development Block Grant (CDBG) Program to read:

Paragraph II has been amended to read as follows:

The City and County acknowledge that this Cooperation Agreement covers the Community Development Block Grant (CDBG) Entitlement Program, the HOME Investment Partnership Program (HOME) and the Emergency Solutions Grants (ESG) Program. Furthermore, the City understands that it may not apply for grants from appropriations under the small cities or State CDBG Programs, nor participate in HOME, HOME consortium, or ESG Programs with other local governments except through the County during the period in which it is participating in the County's Entitlement Program.

Paragraph IX has been amended to read as follows:

In the performance of this Agreement, the County and all cooperating units of general local government executing this Agreement agree to take all actions necessary to assure compliance with County's certification required by Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, including Title VI of the Civil Rights Act of 1964, the Fair Housing Act and will affirmatively further fair housing. The County and City also agree to comply with Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, the Age Discrimination Act of 1975, and Section 3 of the Housing and Urban Development Act of 1968, as well as other applicable laws.

Paragraph XIII has been added to read as follows:

A unit of general local government may not sell, trade, or otherwise transfer all or any portion of such funds to a metropolitan city, urban county, unit of general local government, Indian tribe, or insular area that directly or indirectly receives CDBG funds in exchange for any other funds, credits or non-Federal considerations, but must use such funds for activities eligible under Title I of the Housing and Community Development Act of 1974, as amended.

Paragraph XIV now reads as follows:

This Agreement shall be of no force and effect unless and until it is executed by both parties hereto and as set forth below.

IN WITNESS WHEREOF this instrument in duplicate originals has been executed by the parties hereto as follows:

- a. It has been executed on behalf of Brazoria County on the _____ day of _____, 2021, by the County Judge of Brazoria County and attested by the County Clerk of Brazoria County pursuant to an order authorizing such execution.

- b. It has been executed on behalf of the City on the 20th day of April, 2021, by its Mayor and attested by its City Secretary, pursuant to action of the City Council of the City authorizing such execution.

BRAZORIA COUNTY

Matt Sebesta, County Judge

ATTEST

By: _____
County Clerk

CITY OF JONES CREEK

Terry Jeffers, Mayor

ATTEST

By: _____
Kimberly Morris, City Secretary/Administrator

CERTIFICATE OF CITY ATTORNEY

CITY OF JONES CREEK, TEXAS

I have examined the foregoing Agreement, and as City Attorney for the City named therein, I hereby certify that the terms and provisions of this Agreement are fully authorized under State and local law applicable to the City (including but not limited to the City's Charter and ordinances).

Date

City Attorney

ORDER

THE STATE OF TEXAS §

COUNTY OF BRAZORIA §

On this the _____ day of _____, 2021, the Commissioners' Court, sitting as the governing body of Brazoria County, Texas, at a regular meeting, upon motion of - Commissioner _____ seconded by Commissioner _____, duly put and carried,

IT IS ORDERED that the County Judge be, and he is hereby authorized to execute, and the County Clerk is hereby authorized to attest for and on behalf of Brazoria County, an agreement between Brazoria County and the City of Jones Creek for the purpose of cooperating in the County's Community Development Block Grant (CDBG), HOME, and Emergency Shelter Grant (ESG) Programs for Federal FY 2021-2023, which agreement is hereby referred to and made a part hereof for all purposes as though fully set out herein.

Signed by:

L. M. "Matt" Sebesta, Jr., County Judge _____

Commissioner "Dude" Payne, Pct. 1 _____

Commissioner Ryan Cade, Pct. 2 _____

Commissioner Stacy Adams, Pct. 3 _____

Commissioner David Linder, Pct. 4 _____

THE STATE OF TEXAS §
 §
COUNTY OF BRAZORIA §

COOPERATION AGREEMENT

This agreement, made and entered into by Brazoria County, a body corporate and politic under the laws of the State of Texas, hereinafter sometimes referred to as "County", and the City of Jones Creek, a municipal corporation under the laws of the State of Texas, hereinafter sometimes referred to as "City".

WITNESSETH:

WHEREAS, on April 30, 2009 the City elected to have its population included as a portion of that population to the County in the County's "urban county" application(s) to the U.S. Department of Housing and Urban Development for funding for the Community Development Block Grant Program; and

WHEREAS, the City's area and population are within the boundaries of Brazoria County; and

WHEREAS, the County is willing to cooperate with the City in assisting in undertaking community renewal and housing activities; and

WHEREAS, the Texas Legislature has enacted the "Texas Community Development Act of 1975," codified as V.T.C.A., Local Government Code, Chapter 373, which provides, in part, for the authorization of cities to implement a community development program; and

WHEREAS, the governing bodies of the County and City duly authorizes this Agreement and authorizes their Chief Executive Officers to execute this Agreement on behalf of their entity and that any and all previous agreements in conflict herewith are hereby made void; and

WHEREAS, the Texas legislature has further enacted "The Interlocal Cooperation Act," and codified as V.T.C.A., Government Code, Chapter 791, which provides, in part, that the County may contract with the City to perform governmental functions and services for the City.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS: That the County and the City, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

I.

The City and the County agree to allow the U.S. Department of Housing and Urban Development to use the City's population and other necessary demographic characteristics in the determination of whether the County will qualify as an "urban county" as defined in the Housing and Community Development Act of 1974, as amended, and the rules and regulations promulgated pursuant thereto and in determining the County's annual funding allocations.

II.

The City and the County acknowledge that this Cooperation Agreement covers both the Community Development Block Grant (CDBG) Entitlement Program and the HOME Investment Partnership Program. Furthermore, the City understands that it may not apply for grants under the small cities or State Community Development Block Grant Programs from appropriations during the period in which it is participating in the County's CDBG Program. The City further understands that it may not participate in a HOME Program or HOME consortium with other local governments except through the County.

III.

The City and the County acknowledge that no determination has been made at the time of execution of this Agreement as to where and for what purposes funding, if any, for the applicable Community Development Block Grant Programs will be sought or expended. In this regard, it is agreed that County shall not be obligated to seek or commit funds for expenditure in the City or for assistance to residents of the City. The City is aware that the execution of this Agreement does not constitute any guarantee on the part of the County that funds received pursuant to the CDBG and HOME Program, if any, will be expended for projects within the city limits of the City or for assistance to the residents of the City, and the City has received no assurance, written or oral, from the County to the contrary.

IV.

This Agreement shall remain in full force and effect for the period October 1, 2009 through September 30, 2012. The Agreement will be automatically renewed at the end of this period for consecutive three-year periods unless the Agreement is specifically terminated in writing by either party before the end of the County's three-year qualification period. The County agrees to notify the City by the date specified in HUD's Urban County Qualification Notice for each successive qualification period of the City's right to not participate and to send a copy of such notice to the HUD Field Office. The City and the County acknowledge that they are aware that Federal Regulations do not permit the County to allow the City to withdraw from this Agreement or otherwise terminate this Agreement at any time during the period covered by the Agreement.

The City and the County also acknowledge that it will adopt any amendment to this Agreement to incorporate any changes necessary to meet the requirements for cooperation agreements set forth in any Urban County Qualification Notice which may be applicable for any subsequent three-year period and to submit such amendment to HUD as provided in the Urban County Qualification Notice, and that failure by either party to adopt such amendments will void the automatic renewal of such qualification period.

Furthermore, the City and the County acknowledge that this Agreement remains in effect until the CDBG and HOME funds and program income received with respect to the initial *three*-year qualification period and any successive qualification periods are expended and the funded activities completed and that the County and City shall not terminate or withdraw from the Agreement while the Agreement remains in effect.

V.

The City agrees to inform Brazoria County of any income generated by the expenditure of CDBG and HOME funds received by the City and that any such income shall be paid to Brazoria County. Brazoria County may, in its sole discretion, allow the City to retain program income provided that any and all such income may only be used for eligible activities in accordance with all CDBG and HOME Program requirements as may then apply. The City understands that Brazoria County has the responsibility for monitoring income and reporting to HUD on the use of any such program income, and the City, therefore, agrees to meet such record keeping and reporting requirements as may be required by the County for this purpose. In the event of close-out or change in status of the City, any program income that is on hand or received subsequent to the close-out or change in status will be paid to Brazoria County.

VI.

The City agrees and understands that the following terms and conditions will apply with regard to real property acquired to improve in whole or in part using CDBG funds that is within the control of the City during the term of the Agreement.

- a) The City shall timely notify Brazoria County of any modification or change in the use of property from that planned at the time of acquisition or improvement, including disposition.
- b) The City shall reimburse Brazoria County in an amount equal to the current fair market value (less any portion thereof attributable to expenditures of non-CDBG funds) of property acquired or improved with CDBG funds that is sold or transferred for a use which does not qualify under CDBG regulations.

VII.

The City agrees that program income generated from the disposition or transfer of real property prior to or subsequent to the grant close-out, change of status, or termination of this Agreement shall be treated according to 24 CFR 570.504.

VIII.

The County and the City agree to cooperate to undertake, or assist in undertaking, community renewal and lower income housing assistance activities, specifically urban renewal and publicly assisted housing.

The County and the City acknowledge that the County shall not fund activities in or in support of any cooperating units of general local government, including the City, which does not affirmatively further fair housing within its jurisdiction or that impedes the County's actions to comply with *its* fair housing certification.

IX.

In the performance of this Agreement, the County and all cooperating units of general local government executing this Agreement agree to take all actions necessary to assure compliance with County's certification required by Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, including Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Section 109 of Title I of the Housing and Community Development Act of 1974, and other applicable laws.

X.

The County and the City acknowledge that the City has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies against any individuals within its jurisdiction engaged in non-violent civil rights demonstrations. Furthermore, the City has adopted a policy and is enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within the jurisdiction.

XI.

The City agrees and understands that pursuant to 24 CFR 570.501(b), it is subject to the same requirements applicable to subrecipients, including the requirement of a written agreement as set forth in 24 CFR 570.503.

XII.

Should the U.S. Department of Housing and Urban Development reject or refuse to accept the Agreement for any reason, the County may terminate this Agreement by giving written notice of the same to the City.

XIII.

This Agreement shall be of no force and effect unless and until it is executed by both parties hereto and as set forth below.

IN WITNESS WHEREOF this instrument in duplicate originals has been executed by the parties hereto as follows:

- a. It has been executed on behalf of Brazoria County on the 28th day of MAY, 2009, by the County Judge of Brazoria County and attested by the County Clerk of Brazoria County pursuant to an order authorizing such execution.
- b. It has been executed on behalf of the City on the 30th day of April 30, 2009, by its Mayor and attested by its City Secretary, pursuant to action of the City Council of the City authorizing such execution.

BRAZORIA COUNTY



EJ King, County Judge

ATTEST

By: 

County Clerk

CITY OF



Mayor

ATTEST

By: 

City Secretary

CERTIFICATE OF CITY ATTORNEY

CITY OF JONES CREEK, TEXAS

I have examined the foregoing Agreement, and as City Attorney for the City named therein, I hereby certify that the terms and provisions of this Agreement are fully authorized under State and local law applicable to the City (including but not limited to the City's Charter and ordinances).

5/15/09
Date

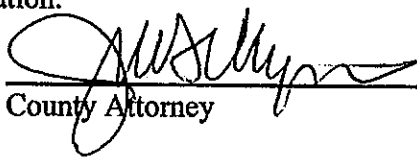
Willow Shaw
City Attorney

CERTIFICATE OF COUNTY ATTORNEY

BRAZORIA COUNTY, TEXAS

I have examined the foregoing Agreement, and as statutory civil counsel to the County named therein, I hereby certify that the terms and provisions of the Agreement are fully authorized under State and local law, and that this agreement provides full legal authority for the County to undertake or to assist the City in undertaking essential community development and housing assistance activities, specifically urban renewal and publicly assisted housing. To the extent that this certificate relates the State and local law applicable to the City (including but not limited to the City's Charter and ordinances), this certificate is given in total reliance upon the Certificate of City Attorney and the undersigned disclaims any responsibility or liability for the City's Attorney and the errors or omissions, if any, in making such certification.

05/27/09
Date


County Attorney

MEMORANDUM

To: Mayor Jeffers, Kimberly Morris, Village of Jones Creek

From: Katie Rutherford, Olson & Olson, LLP

Date: March 24, 2021

RE: Options for dealing with speeding on roads

The Alderman and City Administrator asked what options might be available to reduce potential speeding on City roads.

Under the Texas Transportation Code, a city, with respect to a highway under its jurisdiction and in the reasonable exercise of the police power, is not prohibited from:

- (1) regulating traffic by police officers or traffic-control devices;
- (2) regulating the stopping, standing, or parking of a vehicle;
- (3) regulating or prohibiting a procession or assemblage on a highway;
- (4) regulating the operation and requiring registration and licensing of a bicycle or electric bicycle, including payment of a registration fee, except as provided by Section 551.106;
- (5) regulating the time, place, and manner in which a roller skater may use a highway;
- (6) regulating the speed of a vehicle in a public park;
- (7) regulating or prohibiting the turning of a vehicle or specified type of vehicle at an intersection;
- (8) designating an intersection as a stop intersection or a yield intersection and requiring each vehicle to stop or yield at one or more entrances to the intersection;
- (9) designating a highway as a through highway;
- (10) designating a highway as a one-way highway and requiring each vehicle on the highway to move in one specific direction;
- (11) designating school crossing guards and school crossing zones;
- (12) altering a speed limit as authorized by this subtitle; or
- (13) adopting other traffic rules specifically authorized by this subtitle.

Tex. Transp. Code Ann. § 542.202 (West)

1. A city council may lower the state-mandated speed limit on a city street by performing an engineering and traffic investigation and determining that the prima facie speed limit is unreasonable or unsafe for that street. TEX. TRANSP. CODE § 545.353.

The City can lower the speed limit on a two lane, undivided highway to 25 miles per hour based on the results of an engineering and traffic investigation and subject to continued safety reporting requirements.

Chapter 545, Texas Transportation Code sets out the rules regarding speed limits in Texas. Unless a special hazard exists the prima facie speed limit is 30 miles per hour in an urban district on a street other than an alley and 15 miles per hour in an alley and 70 miles per hour on a highway numbered by this state or the United States outside an urban district, including a farm-to-market or ranch-to-market road. Tex. Transp. Code Ann. § 545.352 (West). "Urban district" means the territory adjacent to and including a highway, if the territory is improved with structures that are used for business, industry, or dwelling houses and are located at intervals of less than 100 feet for a distance of at least one-quarter mile on either side of the highway. Tex. Transp. Code Ann. § 545.352(d)(3) (West).

A City may only alter the prima facie speed limits by ordinance based upon the results of an engineering and traffic investigation and continued safety reporting requirements. Tex. Transp. Code Ann. § 545.356 (a) (West). An entity that establishes or alters a speed limit under this subchapter shall establish the same speed limit for daytime and nighttime. Tex. Transp. Code Ann. § 545.352(e) (West).

The City, for a highway or a part of a highway in the municipality that is not an officially designated or marked highway or road of the state highway system, may declare a lower speed limit of not less than 25 miles per hour, if the city determines that the prima facie speed limit on the highway is unreasonable or unsafe. This Subsection applies only to a two-lane, undivided highway or part of a highway.

The governing body of a municipality that declares a lower speed limit on a highway or part of a highway, not later than February 1 of each year, shall publish on its Internet website and submit to the department a report that compares for each of the two previous calendar years:

(1) the number of traffic citations issued by peace officers of the municipality and the alleged speed of the vehicles, for speed limit violations on the highway or part of the highway;

(2) the number of warning citations issued by peace officers of the municipality on the highway or part of the highway; and

(3) the number of vehicular accidents that resulted in injury or death and were attributable to speed limit violations on the highway or part of the highway.

Tex. Transp. Code Ann. § 545.356 (West).

A municipality may not enact an ordinance governing the erection or operation of a traffic signal or sign in the municipality on a state highway funded in whole or in part by the state without prior approval by the Texas Department of Transportation. Tex. Transp. Code Ann. § 553.002 (West).

2. A city has authority to install traffic calming devices under Sections 311.002 and 544.002 of the Texas Transportation Code. However, the Transportation Code requires that a city obtain the Texas Department of Transportation's permission to place or maintain a traffic-control device on a highway under the department's jurisdiction. TEX. TRANSP. CODE § 544.002. In addition, a traffic study is required prior to the installation of speed bumps. Tex. Att'y Gen. Op No. JC-0175.

Generally, road bumps and fises in the pavement have not been considered special defects. *Brazoria Cty. v. Van Gelder*, 304 S.W.3d 447, 452 (Tex. App. 2009) (“The bump does not obstruct the county road in the manner required to constitute a special defect”), quoting *City of Dallas v. Reed*, 258 S.W.3d 620, 622 (Tex.2008); *Hindman v. State Dep't of Highways & Pub. Transp.*, 906 S.W.2d 43, 45–46 (Tex.App.-Tyler 1994, writ denied) (“We do not agree that the Legislature, in creating an exceptional class of road defects for which the State carries a higher degree of liability, meant to include in such class every pothole or bump encountered on a public highway in Texas[.]”); *Dippel v. Refugio County Mem'l Hosp. Dist.*, No. 13–01–211–CV, 2002 WL 121931, at *4 (Tex.App.-Corpus Christi Jan. 31, 2002, no pet.) (mem. op., not designated for publication).

Despite the case cited above regarding a County's authority, some still argue that speed bumps is are “obstructions” in the road. Cities have a duty to keep public streets free from obstructions, and erecting or placing any object on a public street that interferes with the full and free use thereof might be considered an obstruction. This duty was originally found in Texas Revised Civil Statute Article 1016, and is now based on Transportation Code § 311.002 and *Dozier v. Austin*, 253 S.W.2d 554 (Tex. Civ. App.--Austin, 1923, writ dism'd w.o.j.). Several cases have been decided in which a city was held liable for damages for failure to remove an obstruction from a city street, from piles of gravel to ropes to wet paint stripes. *See e.g., City of Austin v. Daniels*, 335 S.W.2d 753 (Tex. 1960); *Crow v. City of San Antonio*, 301 S.W.2d 628 (Tex. 1957); *City of Texarkana v. Williams*, 146 S.W. 333 (Tex. Civ. App. 1912, writ ref'd). The risk involved with the use of speed bumps is that a city might be held liable for any injury or damage that can be attributed to their use and that a court would find that other traffic control devices, such as signs, flashing lights or reduced speed limits are a more reasonable method to control speeding.

A municipality may not enact an ordinance governing the erection or operation of a traffic signal or sign in the municipality on a state highway funded in whole or in part by the state without prior approval by the Texas Department of Transportation. Tex. Transp. Code Ann. § 553.002 (West).

Speed humps generally provide more gradual vertical deflection than speed bumps. Speed bumps limit the speed of traffic more severely than speed humps. Texas Manual on Uniform Traffic Control Devices (2011). The City should place warning signs in the area of the speed bumps.

3. The City may install rumble strips subject to the same risks and conditions as speed bumps or speed humps.

The same rules for speed bumps and speed humps also apply to rumble strips. Rumble strips can be extremely loud. If the City is to place rumble strips on streets that have homes nearby, the City should seek consent from the homeowners first.



April 6, 2021

Mayor and City Council Members
Village of Jones Creek, Texas
7207 Stephen F. Austin
Jones Creek, Texas 77541

Re: Proposal for Professional Engineering Services
for a Speed Zone Study
Village of Jones Creek, Texas

HDR Engineering, Inc. (HDR) is pleased to submit this proposal to conduct a speed zone study for six roadways within the City limits of the Village of Jones Creek. General overview, project understanding, scope of services, and fee schedule are included herein.

GENERAL OVERVIEW

It is our understanding that the Village of Jones Creek, Texas has requested the evaluation of the existing speed limits and observed 85th percentile speed on six (6) roadways within the City Limits. This proposal provides a description of the engineering services required to conduct a speed zone study for Peach Point Road, Live Oak Drive, Smith Street, Stephen F. Austin Road, Primrose Road, and Bluebonnet Drive.

SCOPE OF SERVICES

The following Scope of Services is outlined as part of the speed study:

I. PROJECT MANAGEMENT

- Perform general Project Management during the project to include coordination with the City, management of subconsultants, and invoices.
- Perform QA/QC of deliverables prior to submittal to the City. Implement a documented QA/QC program in accordance with the Engineer's established procedures.
- Attend project progress and coordination meetings with the City as required during project development. One (1) meeting is assumed.

II. DATA COLLECTION

- Collect data for two (2) hour period during off-peak hours on a typical weekday at nine (9) speed check stations along the corridor (both directions) in order to calculate 85th percentile speeds for each of the segments summarized below.

- Peach Point Road (1 locations)
- Live Oak Drive (2 locations)
- Smith Street (1 locations)
- Stephen F. Austin Road (3 locations)
- Primrose Road (1 location)
- Bluebonnet (1 location)
- Perform field visit to identify existing speed limits within the project limits.
- Perform trial runs along the corridor to validate proposed speed zones.
- Collect crash data, including crash severity and crash location, for a 36-month period (January 2018 through December 2020) from TxDOT's CRIS Query system.
- Compile, process, and interpret data, including calculation of 85th Percentile speeds.

III. LETTER REPORT PREPARATION

The Engineer will prepare a letter report for presentation to the City in order to present analysis results and recommendations for speed zone limits. Tasks listed below will be performed in preparation of the letter report:

- Review and validate calculation of 85th Percentile Speeds
- Develop recommendations for proposed speed zones and zone limits, based on 85th percentile speed results
- Present existing and recommended speed zoning, speed check locations, and existing speed limit signs on an aerial map.
- Draft letter report to present all the data and recommendations listed herein
- Coordinate with the City to obtain and address all review comments
- Prepare final letter report, signed and sealed, addressing all comments received by the City

IV. REIMBURSABLE EXPENSES

- A budgetary amount will be allocated for typical reimbursable expenses such as reproduction, courier services, mileage, etc. Costs for printing will be charged at Cost Plus 10%. Mileage will be charged at prevailing IRS rates.

V. ADDITIONAL SERVICES

The following services are considered additional and will not be performed without separated authorization by the City:

- Development of schematic designs, plans, specifications, or estimates for any improvements recommended as part of the study, or otherwise requested.
- Other traffic engineering studies, including but not limited to:
 - Traffic signal warrant studies
 - All-way stop warrant studies
 - Roadway and intersection sign distance studies
 - Traffic safety studies
 - Traffic impact analysis
 - School zone speed limits
 - Curve advisory speed limits
- Stakeholder coordination
- Development or delivery of presentation to City Council

FEE SCHEDULE

HDR will submit monthly invoices with status reports for all engineering work completed to invoice date. Please be aware that these fees are based on performing all improvement design as a single project. The fees presented in this section reflect a combined effort to perform all proposed work at one time as a single project. If the project is reduced the proposed fees will need to be adjusted accordingly to reflect the cost of performing engineering services on a smaller project. The invoices will be based on the following schedule:

<u>2020 Paving Improvements Project</u>	<u>Total Fees</u>
Speed Study (Lump Sum)	\$ 12,365.00
Data Collection (Cost + 10%)	\$ 1,485.00
<u>*Reimbursables (Reproduction (Cost Plus 10%) or Mileage at IRS Rate)</u>	<u>\$ 200.00</u>

2020 Paving Improvements Project **\$ 14,050.00**

*At this time the magnitude of these tasks are not known. Therefore budgetary amounts are provided. These figures may increase or decrease depending upon actual work required. If an increase becomes necessary it can be accomplished by utilizing available funds from other lines items that have under run or by contract amendment.

Public meetings addressing the results of the speed study is not included in this scope. In the event the City should desire a public meeting, (such as a Town Hall type meeting) HDR's services associated with such a meeting or meetings will be negotiated under a separate authorization.

SCHEDULE

It is estimated that the schedule to accomplish the data collection, analysis, and the draft letter report will be completed approximately one month after authorization from the City. The final letter report will be completed approximately one week after receiving comments from the City on the draft letter report.

INVOICES

All hourly charges shall be based on a raw labor rate times a multiplier of 3.18. Reimbursable expenses will be charged at cost plus 10%. Time and materials charges and additional services beyond those described in the Scope of Services will be invoiced on the basis of direct labor costs times a factor of 3.18 for office personnel and for field personnel and direct cost plus 10%. No additional services will be performed or invoiced without prior authorization from the City.

The above described professional services will be performed in accordance with the attached Terms & Conditions for Professional Services (see Attachment A).

HDR appreciates the opportunity to submit this proposal and we look forward to working with the Village of Jones Creek.

Sincerely

HDR ENGINEERING, INC.



David Weston
Vice President/Area Manager

Acceptance: Village of Jones Creek, Texas

By: _____

Title: _____

Date: _____

Attachment A
HDR Engineering, Inc. Terms and Conditions
for Professional Services

1. STANDARD OF PERFORMANCE

The standard of care for all professional engineering, consulting and related services performed or furnished by ENGINEER and its employees under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under the same or similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

2. INSURANCE/INDEMNITY

ENGINEER agrees to procure and maintain, at its expense, Workers' Compensation insurance as required by statute; Employer's Liability of \$250,000; Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and Professional Liability insurance of \$1,000,000 per claim for protection against claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which ENGINEER is legally liable. If flying an Unmanned Aerial System (UAS or drone), ENGINEER will procure and maintain aircraft unmanned aerial systems insurance of \$1,000,000 per occurrence. OWNER shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the OWNER. ENGINEER agrees to indemnify OWNER for third party personal injury and property damage claims to the extent caused by ENGINEER's negligent acts, errors or omissions. However, neither Party to this Agreement shall be liable to the other Party for any special, incidental, indirect, or consequential damages (including but not limited to loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; cost of capital; and/or fines or penalties), loss of profits or revenue arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, errors or omissions, strict liability or breach of contract.

3. OPINIONS OF PROBABLE COST (COST ESTIMATES)

Any opinions of probable project cost or probable construction cost provided by ENGINEER are made on the basis of information available to ENGINEER and on the basis of ENGINEER's experience and qualifications, and represents its judgment as an experienced and qualified professional engineer. However, since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s)' methods of determining prices, or over competitive bidding or market conditions, ENGINEER does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost ENGINEER prepares.

4. CONSTRUCTION PROCEDURES

ENGINEER's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. ENGINEER shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. ENGINEER shall not be responsible for the

acts or omissions of the contractor or other parties on the project. ENGINEER shall be entitled to review all construction contract documents and to require that no provisions extend the duties or liabilities of ENGINEER beyond those set forth in this Agreement. OWNER agrees to include ENGINEER as an indemnified party in OWNER's construction contracts for the work, which shall protect ENGINEER to the same degree as OWNER. Further, OWNER agrees that ENGINEER shall be listed as an additional insured under the construction contractor's liability insurance policies.

5. CONTROLLING LAW

This Agreement is to be governed by the law of the state where ENGINEER's services are performed.

6. SERVICES AND INFORMATION

OWNER will provide all criteria and information pertaining to OWNER's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. OWNER will also provide copies of any OWNER-furnished Standard Details, Standard Specifications, or Standard Bidding Documents which are to be incorporated into the project.

OWNER will furnish the services of soils/geotechnical engineers or other consultants that include reports and appropriate professional recommendations when such services are deemed necessary by ENGINEER. The OWNER agrees to bear full responsibility for the technical accuracy and content of OWNER-furnished documents and services.

In performing professional engineering and related services hereunder, it is understood by OWNER that ENGINEER is not engaged in rendering any type of legal, insurance or accounting services, opinions or advice. Further, it is the OWNER's sole responsibility to obtain the advice of an attorney, insurance counselor or accountant to protect the OWNER's legal and financial interests. To that end, the OWNER agrees that OWNER or the OWNER's representative will examine all studies, reports, sketches, drawings, specifications, proposals and other documents, opinions or advice prepared or provided by ENGINEER, and will obtain the advice of an attorney, insurance counselor or other consultant as the OWNER deems necessary to protect the OWNER's interests before OWNER takes action or forebears to take action based upon or relying upon the services provided by ENGINEER.

7. SUCCESSORS, ASSIGNS AND BENEFICIARIES

OWNER and ENGINEER, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither OWNER nor ENGINEER will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other. No third party beneficiaries are intended under this Agreement.

8. RE-USE OF DOCUMENTS

All documents, including all reports, drawings, specifications, computer software or other items prepared or furnished by ENGINEER pursuant to this Agreement, are instruments of service with respect to the project. ENGINEER retains ownership of all such documents. OWNER may retain copies of the documents for its information and reference in connection with the project; however, none of the documents are intended or represented to be suitable for reuse by OWNER or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's

sole risk and without liability or legal exposure to ENGINEER, and OWNER will defend, indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses, including attorney's fees, arising or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

9. TERMINATION OF AGREEMENT

OWNER or ENGINEER may terminate the Agreement, in whole or in part, by giving seven (7) days written notice to the other party. Where the method of payment is "lump sum," or cost reimbursement, the final invoice will include all services and expenses associated with the project up to the effective date of termination. An equitable adjustment shall also be made to provide for termination settlement costs ENGINEER incurs as a result of commitments that had become firm before termination, and for a reasonable profit for services performed.

10. SEVERABILITY

If any provision of this agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

11. INVOICES

ENGINEER will submit monthly invoices for services rendered and OWNER will make payments to ENGINEER within thirty (30) days of OWNER's receipt of ENGINEER's invoice.

ENGINEER will retain receipts for reimbursable expenses in general accordance with Internal Revenue Service rules pertaining to the support of expenditures for income tax purposes. Receipts will be available for inspection by OWNER's auditors upon request.

If OWNER disputes any items in ENGINEER's invoice for any reason, including the lack of supporting documentation, OWNER may temporarily delete the disputed item and pay the remaining amount of the invoice. OWNER will promptly notify ENGINEER of the dispute and request clarification and/or correction. After any dispute has been settled, ENGINEER will include the disputed item on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item only.

OWNER recognizes that late payment of invoices results in extra expenses for ENGINEER. ENGINEER retains the right to assess OWNER interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within thirty (30) days from the date OWNER receives ENGINEER's invoice. In the event undisputed portions of ENGINEER's invoices are not paid when due, ENGINEER also reserves the right, after seven (7) days prior written notice, to suspend the performance of its services under this Agreement until all past due amounts have been paid in full.

12. CHANGES

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of this Agreement. Any proposed fees by ENGINEER are estimates to perform the services required to complete the project as ENGINEER understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. ENGINEER will inform OWNER of such situations so that changes in scope and adjustments to the time of

performance and compensation can be made as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, an equitable adjustment shall be made, and the Agreement modified accordingly.

13. CONTROLLING AGREEMENT

These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document.

14. EQUAL EMPLOYMENT AND NONDISCRIMINATION

In connection with the services under this Agreement, ENGINEER agrees to comply with the applicable provisions of federal and state Equal Employment Opportunity for individuals based on color, religion, sex, or national origin, or disabled veteran, recently separated veteran, other protected veteran and armed forces service medal veteran status, disabilities under provisions of executive order 11246, and other employment, statutes and regulations, as stated in Title 41 Part 60 of the Code of Federal Regulations § 60-1.4 (a-f), § 60-300.5 (a-e), § 60-741 (a-e).

15. HAZARDOUS MATERIALS

OWNER represents to ENGINEER that, to the best of its knowledge, no hazardous materials are present at the project site. However, in the event hazardous materials are known to be present, OWNER represents that to the best of its knowledge it has disclosed to ENGINEER the existence of all such hazardous materials, including but not limited to asbestos, PCB's, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. It is acknowledged by both parties that ENGINEER's scope of services do not include services related in any way to hazardous materials. In the event ENGINEER or any other party encounters undisclosed hazardous materials, ENGINEER shall have the obligation to notify OWNER and, to the extent required by law or regulation, the appropriate governmental officials, and ENGINEER may, at its option and without liability for delay, consequential or any other damages to OWNER, suspend performance of services on that portion of the project affected by hazardous materials until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the hazardous materials; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with ENGINEER's services under this Agreement. If ENGINEER's services hereunder cannot be performed because of the existence of hazardous materials, ENGINEER shall be entitled to terminate this Agreement for cause on 30 days written notice. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, its officers, directors, partners, employees, and subconsultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from hazardous materials, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate OWNER to indemnify any individual or entity from and

against the consequences of that individual's or entity's sole negligence or willful misconduct.

16. EXECUTION

This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between ENGINEER and OWNER, supersedes and controls over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

17. ALLOCATION OF RISK

OWNER AND ENGINEER HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING ENGINEER'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE RISKS, SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF ENGINEER (AND ITS RELATED CORPORATIONS, SUBCONSULTANTS AND EMPLOYEES) TO OWNER AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE LESSER OF \$1,000,000 OR ITS FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF ENGINEER'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY.

18. LITIGATION SUPPORT

In the event ENGINEER is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a legal or dispute resolution proceeding to which ENGINEER is not a party, OWNER shall reimburse ENGINEER for reasonable costs in responding and compensate ENGINEER at its then standard rates for reasonable time incurred in gathering information and documents and attending depositions, hearings, and trial.

19. NO THIRD PARTY BENEFICIARIES

No third party beneficiaries are intended under this Agreement. In the event a reliance letter or certification is required under the scope of services, the parties agree to use a form that is mutually acceptable to both parties.

20. UTILITY LOCATION

If underground sampling/testing is to be performed, a local utility locating service shall be contacted to make arrangements for all utilities to determine the location of underground utilities. In addition, OWNER shall notify ENGINEER of the presence and location of any underground utilities located on the OWNER's property which are not the responsibility of private/public utilities. ENGINEER shall take reasonable precautions to avoid damaging underground utilities that are properly marked. The OWNER agrees to waive any claim against ENGINEER and will indemnify and hold ENGINEER harmless from any claim of liability, injury or loss caused by or allegedly caused by ENGINEER's damaging of underground utilities that are not properly marked or are not called to ENGINEER's attention prior to beginning the underground sampling/testing.

21. UNMANNED AERIAL SYSTEMS

If operating UAS, ENGINEER will obtain all permits or exemptions required by law to operate any UAS included in the services. ENGINEER's operators have completed the training, certifications and licensure as required by the applicable jurisdiction in which the UAS will be operated. OWNER will obtain any necessary permissions for ENGINEER to operate over private property, and assist, as necessary, with all other necessary permissions for operations.

22. OPERATIONAL TECHNOLOGY SYSTEMS

OWNER agrees that the effectiveness of operational technology systems ("OT Systems") and features designed, recommended or assessed by ENGINEER are dependent upon OWNER's continued operation and maintenance of the OT Systems in accordance with all standards, best practices, laws, and regulations that govern the operation and maintenance of the OT Systems. OWNER shall be solely responsible for operating and maintaining the OT System in accordance with applicable industry standards (i.e. ISA, NIST, etc.) and best practices, which generally include but are not limited to, cyber security policies and procedures, documentation and training requirements, continuous monitoring of assets for tampering and intrusion, periodic evaluation for asset vulnerabilities, implementation and update of appropriate technical, physical, and operational standards, and offline testing of all software/firmware patches/updates prior to placing updates into production. Additionally, OWNER recognizes and agrees that OT Systems are subject to internal and external breach, compromise, and similar incidents. Security features designed, recommended or assessed by ENGINEER are intended to reduce the likelihood that OT Systems will be compromised by such incidents. However, ENGINEER does not guarantee that OWNER's OT Systems are impenetrable and OWNER agrees to waive any claims against ENGINEER resulting from any such incidents that relate to or affect OWNER's OT Systems.

23. FORCE MAJEURE

ENGINEER shall not be responsible for delays caused by factors beyond ENGINEER's reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, government ordered industry shutdowns, power or server outages, acts of nature, widespread infectious disease outbreaks (including, but not limited to epidemics and pandemics), failure of any governmental or other regulatory authority to act in a timely manner, failure of the OWNER to furnish timely information or approve or disapprove of ENGINEER's services or work product, or delays caused by faulty performance by the OWNER's or by contractors of any level or any other events or circumstances not within the reasonable control of the party affected, whether similar or dissimilar to any of the foregoing. When such delays beyond ENGINEER's reasonable control occur, the OWNER agrees that ENGINEER shall not be responsible for damages, nor shall ENGINEER be deemed in default of this Agreement, and the parties will negotiate an equitable adjustment to ENGINEER's schedule and/or compensation if impacted by the force majeure event or condition.