

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: February 10, 2015		DATE SUBMITTED: January 9, 2015	
DEPARTMENT OF ORIGIN: Public Works		SUBMITTED BY: Eric Zaragoza	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input checked="" type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input checked="" type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input checked="" type="checkbox"/> STATUTORY		<input type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input checked="" type="checkbox"/> INFRASTRUCTURE
			<input type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: Consideration of a contract to remove spoil material from the Municipal Service Center (1111 Waco St.) to Brazos Site Works for an amount not to exceed \$150,000.			
SUMMARY STATEMENT: In the daily operation of maintaining streets, drainage ways, the water system, the wastewater system, and sweeping of streets, the City of Bryan accumulates material and stores it at the Municipal Service Center (MSC) on Waco Street. This material is inert and consists of broken asphalt, concrete, pieces of pipe, and a mixture of soil types all of which is commonly referred to as spoils. This material is not topsoil or material that will compact or decompose easily.			
<p>Historically, the City of Bryan used an annual contract to remove this stockpile. In September of 2006, the City bid an annual contract for stockpile removal. The low bidder for that contract was Brazos Site Works. The unit price was set at \$3.49 per cubic yard. The City used this contract for fiscal years 2007-2009 with the following expenditures: \$85,330.50 (FY07), \$99,517.35 (FY08), and \$89,047.35 (FY09). The average volume of material removed over the three years was approximately 26,000 cubic yards per year.</p> <p>Beginning in 2010-2012, staff stopped having the material removed as a cost-saving measure. This resulted in a large amount of material being accumulated at the MSC over those years. The amount of material limited the ability to operate at the MSC and the stockpile became unsightly and unsafe to operate around.</p> <p>The stockpile was rebid in January of 2013 for removal. Staff set the budget on the amount of material to be removed at \$150,000. This was equally split between the Transportation budget (general fund), Water budget (enterprise fund), and Wastewater budget (enterprise fund). In 2013, four bids were received with Brazos Site Works being the low bidder at \$3.19 per cubic yard to remove 47,021 cubic yards of the material. See attachment #3 for bid results.</p> <p>On December 30, 2014, staff opened bids on a contract to continue removing the stockpile from the Municipal Service Center. See attachment #2 for bid results. This bid was set up the same as the 2013 with a not to exceed amount of \$150,000. Once again, the amount will be split equally amongst the Transportation budget (general fund), Water budget (enterprise fund), and Wastewater budget (enterprise fund). Four bids were received with Brazos Site Works being the low bidder at \$5.92 per cubic yard to remove 25,337 cubic yards of material. This volume is loose volume of material to be removed and will be measured by the volume of the excavating equipment bucket loading the truck.</p> <p>In the past, staff has tried several ways to remove the material. Staff has given the material to landowners willing to accept it and even advertised it free in the newspaper. In addition, recently, the material was tested to determine if it</p>			

could be used as general fill at Coulter Airfield, but unfortunately it did not meet requirements. Although these methods have removed a very limited amount of material, it has not kept up with the volume being brought in by the daily operations. The current contract is expected to remove one-half to two-thirds of the material.

STAFF ANALYSIS AND RECOMMENDATION: Staff recommends the Bryan City Council approve the contract with Brazos Site Works for the removal of the excess material in an amount not to exceed of \$150,000. Staff will monitor the removal of the stockpile and will continue to look for alternative ways to have the material removed in the most cost effective manner.

OPTIONS (In Suggested Order of Staff Preference):

1. Approve the contract.
2. Do not approve the contract.

ATTACHMENTS:

1. Contract
2. 2014 bid tab
3. 2013 bid tab

FUNDING SOURCE: Transportation, Water and Wastewater Operating Budgets (as budgeted)

APPROVALS: Jayson E. Barfknecht 1/06/2015; Hugh R. Walker, 01/26/2015

APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 01/26/2015

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 02-02-2015

**CONTRACT
FOR
RFB #15-021
MSC Storage Yard – Spoil Stockpile Removal Project**

This Contract, dated _____, 2015, is between the **City of Bryan**, a Texas home-rule municipal corporation, (the City) and **Brazos Site Works, LP** (the Service Provider), whereby the Service Provider agrees to provide the City with certain services as described herein and the City agrees to pay the Service Provider for those services.

1. Scope of Services

In consideration of the compensation stated in **paragraph 2**, the Service Provider agrees to provide the City with the services as described in **Exhibit A, RFB #15-021**, which is incorporated herein by reference for all purposes, and which services may be more generally described as follows:

MSC Storage Yard – Spoil Stockpile Removal Project

2. Payment

In consideration of the Service Providers provision of the services in compliance with all terms and conditions of this Contract, the City shall pay the Service Provider according to the terms set forth in **Exhibit A, RFB #15-021**. Except in the event of a duly authorized change order, approved by the City in writing, the total cost of all services provided under this Contract may not exceed **\$149,995.04**.

3. Time of Performance

A. All work and services provided under this Contract must be completed according to the Scope of Services described in **Exhibit A, RFB #15-021**.

B. **Time is of the essence of this Contract.** The Service Provider shall be prepared to provide the services in the most expedient and efficient manner possible in order to complete the work by the times specified and described in **Exhibit A, RFB #15-021**.

4. Warranty, Indemnification & Release

A. As an experienced and qualified Service Provider, the Service Provider agrees that the services provided by the Service Provider reflect the professional and industry standards, procedures, and performances. The Service Provider agrees the selection and supervision of personnel, and the performance of services under this Contract, will be pursuant to the standard of performance in the profession. The Service Provider agrees that the Service Provider will exercise diligence and due care and perform in a good and workmanlike manner all of the services pursuant to this Contract. Approval of the City shall not constitute, or be deemed, a release of the responsibility and liability of the Service Provider, its employees, agents, or associates for the exercise of skill and diligence to promote the accuracy, competency and quality of the services provided, nor shall the City's approval be deemed to be the assumption of responsibility by the City for any defect or error in the aforesaid services provided by the Service Provider, its employees, associates, agents, or subcontractors.

B. The Service Provider shall promptly correct any defective work furnished by the Service Provider at no cost to the City. The City's approval, acceptance, use of, or payment for, all or any part of

the services hereunder itself shall in no way alter the Service Providers obligations or the City's rights hereunder.

C. In all activities or services performed hereunder, the Service Provider is an independent contractor and not an agent or employee of the City. The Service Provider and its employees are not the agents, servants, or employees of the City. As an independent contractor, the Service Provider shall be responsible for the services and the final work product contemplated under this Contract. Except for materials furnished by the City, the Service Provider shall supply all materials, equipment, and labor required for the services to be provided under this Contract. The Service Provider shall have ultimate control over the execution of the services. The Service Provider shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees or subcontractors, and the City shall have no control of or supervision over the employees of the Service Provider or any of the Service Providers subcontractors.

D. The Service Provider must at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, subcontractors, licensees, and other persons, as well as their personal property, while in the vicinity of the Project or any of the work being done on or for the Project. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the Service Provider, its officers, employees, agents, subcontractors, invitees, licensees, and other persons.

E. Responsibility for damage claims (indemnification): Service Provider shall defend, indemnify and save harmless the City and all its officers, agents, and employees from all suits, actions, or claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person or persons or property resulting from the Service Provider's negligent performance of the work, or by or on account of any claims or amounts recovered under the Workmen's Compensation Law or any other law, ordinance, order or decree, and his sureties shall be held until such suit or suits, action or actions, claim or claims for injury or damages as aforesaid shall have been settled and satisfactory evidence to the effect furnished the City. Service Provider shall defend, indemnify and save harmless the City, its officers, agents and employees in accordance with this indemnification clause only for that portion of the damage caused by Service Provider's negligence.

F. **Release.** The Service Provider releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to, sickness or death of the Service Provider or its employees and any loss of or damage to any property of the Service Provider or its employees that is caused by or alleged to be caused by, arises out of, or is in connection with the Service Provider's negligent performance of the work. Both the City and the Service Provider expressly intend that this release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance.

5. Termination

A. The City may terminate this Contract at any time upon **thirty (30)-calendar** days written notice. Upon the Service Provider's receipt of such notice, the Service Provider shall cease work immediately. The Service Provider shall be compensated for the services satisfactorily performed prior to the termination date.

B. If, through any cause, the Service Provider fails to fulfill its obligations under this Contract, or if the Service Provider violates any of the agreements of this Contract, the City has the right to terminate this Contract by giving the Service Provider **five (5)** calendar days written notice. The Service Provider will be compensated for the services satisfactorily performed before the termination date.

C. No term or provision of this Contract shall be construed to relieve the Service Provider of liability to the City for damages sustained by the City because of any breach of contract by the Service Provider. The City may withhold payments to the Service Provider for the purpose of setoff until the exact amount of damages due the City from the Service Provider is determined and paid.

6. Insurance Requirements

The contractor agrees to maintain the coverage's, endorsements, and limits in accordance with and set forth by the Insurance Coverage & Limit Table below for the duration of this contract. The Contractor agrees to:

- Deliver to the City Certificate(s) of Insurance evidencing that such policies are in full force and effect not later than 5 business days after notification of the City's intent to award a contract, but in any event prior to commencement of work. If policy endorsements are necessary, satisfactory evidence of request to insurance carrier must accompany the Certificate(s) of Insurance. Failure to meet these requirements may cause the bid to be rejected.
- Submit any policy endorsements within 30 days of the City's intent to award contract. No payment will be made and/or the City may stop work or terminate the contract if contractor fails to supply satisfactory evidence of policy endorsements.
- Allow the City the right to obtain complete, certified copies of all required insurance policies at any time.
- Clearly indicate contract name and contract number to which Certificate(s), endorsements, and policies apply.

The requirements as to types and limits, as well as the City's review or acceptance of insurance coverage to be maintained by Contractor, is not intended to nor shall in any manner limit or qualify the liabilities and obligations assumed by the Contractor.

INSURANCE COVERAGE & LIMIT TABLE

WORKERS' COMPENSATION INSURANCE & EMPLOYERS' LIABILITY INSURANCE – Statutory & \$500,000/\$500,000/\$500,000 Contractor agrees to maintain Worker's Compensation Insurance & Employers Liability. In the event any work is sublet, the Contractor shall require the subcontractor similarly to provide the same coverage and shall himself acquire evidence of such coverage on behalf of the subcontractor. Waiver of subrogation in favor of the City required. This requirement may be waived with satisfactory evidence that the contractor is sole proprietor(s)/has no employees.

COMMERCIAL GENERAL LIABILITY INSURANCE – Limit of liability not less than \$1,000,000 per occurrence Contractor agrees to maintain a standard ISO version Commercial General Liability occurrence form, or its equivalent providing coverage for, but not limited to, Bodily Injury and Property Damage, Premises/Operations, Products/Completed Operations, Independent Contractors. Additional insured endorsement required.

BUSINESS AUTOMOBILE LIABILITY INSURANCE – Limit of liability not less than \$1,000,000 per occurrence Contractor agrees to maintain a standard ISO version Business Automobile Liability, or its

equivalent, providing coverage for all owned, non-owned, and hired automobiles. Should the Contractor not own any automobiles and furnish satisfactory evidence of this, the business auto liability requirement shall be amended to allow the Contractor to agree to maintain only Hired & Non-Owned Auto Liability. This amended coverage requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto policy.

UMBRELLA or EXCESS LIABILITY Contractor may satisfy the minimum liability limits required for Commercial General Liability and Business Auto Liability under an Umbrella or Excess Liability policy. The annual aggregate limit shall not be less than the highest "each occurrence" limit. Contractor agrees to endorse City as an additional insured, unless the Certificate states the Umbrella or Excess Liability provides coverage on a pure "True Follow Form" basis.

CONTRACTOR'S INSURANCE TO BE PRIMARY Contractor's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City for liability arising out of operations under the contract.

DEDUCTIBLES, COINSURANCE PENALTIES, & SELF-INSURED RETENTION Contractor shall agree to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, or self-insured retention.

RIGHT TO REVIEW AND ADJUST The City reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent. Furthermore, the City reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition.

SUBCONTRACTOR'S INSURANCE Contractor shall agree to cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified, provided the Contractor's insurance does not afford coverage on behalf of the subcontractor.

CERTIFICATE OF INSURANCE Contractor shall furnish the City with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements. The certificate must be from a company with an A.M. Best rating of "A-VI" or better and/or otherwise acceptable to the City. Certificates must be submitted using the ACORD form and all endorsements must be included with the submittal. Contractor must provide minimum 30 days prior written notice to the City of Bryan of policy cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage.

Contractor must provide minimum 30 days prior written notice to the City of Bryan of policy cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage. If City is notified a required insurance coverage will cancel or non-renew during the contract period, the Contractor shall agree to furnish prior to the expiration of insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. The City reserves the right to withhold payment to Contractor until coverage is reinstated. If the Contractor fails to maintain the required insurance, the City shall have the right, but not the obligation, to purchase the required insurance at Contractor's expense.

Certificates and notices should be provided to the City at the following address:

City of Bryan
Attn: Risk Management
P O Box 1000
Bryan, TX 77805

7. Miscellaneous Terms

A. This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.

B. Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

The City of Bryan
Public Works - Transportation
P.O. Box 1000
Bryan, Texas 77805

The Service Provider:
Brazos Site Works, LP
9349 Dilly Shaw Tap Road
Bryan, Texas 77808

C. No waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

D. This Contract represents the entire and integrated agreement between the City and the Service provider and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

E. This Contract and all rights and obligations contained herein may not be assigned by the Service Provider without the prior written approval of the City.

F. The Service Provider, its agents, employees, and subcontractors must comply with all applicable federal and state laws, the charter and ordinances of the City of Bryan, and with all applicable rules and regulations promulgated by local, state, and national boards, bureaus, and agencies. The Service Provider must obtain all necessary permits and licenses required in completing the work and providing the services required by this Contract.

G. The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract.

CITY OF BRYAN:

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

Date: _____

Jason P. Bienski, Mayor

Date: _____

ATTEST:

Mary Lynne Stratta, City Secretary

Date: _____

SERVICE PROVIDER:

By: _____

(Service Provider - Corporate Seal)

Printed Name: _____

Title: _____

Date: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

ACKNOWLEDGEMENT

This instrument was acknowledged before me on the _____ day of _____,
2015, by _____ on behalf of
_____.

Notary Public in and for
The State of Texas

**City of Bryan - Purchasing Department
 Bid Tabulation for #15-021
 Spoils Stockpile Removal Project
 Open Date: 12/30/14**

All bids submitted are reflected on this bid tab sheet. However, the listing of a bid should not be construed as any indication that the City accepts such bid as responsive. The City will notify the successful bidder upon award of contract.

	Brazos Site Works	TexCon General Contractors	TDI Trucking	CLM Energy Svcs
Executed 5% Bidder's Bond (Y/N)	Y	Y	Y	Y
References (Y/N)	Y	Y	Y	Y
Felony Conviction Notification (Y/N)	Y	Y	Y	Y
Prompt Payment Discount:	Y	Y	Y	Y
Certification from bid package (Y/N)	Y	Y	Y	Y

ITEM	DESCRIPTION	Cu. Yd. Quantity	Unit Cost Per Cu. Yd.						
1	All labor, material, equipment, and incidentals for the removal and disposal of spoils stockpiled per all terms, conditions and specifications contained in RFB #15-021	25,337	\$5.92	19,354.84	\$7.75	23,809	\$6.30	19,685	\$7.62
GRAND TOTAL		\$149,995.04		\$150,000.01		\$149,996.70		\$149,999.70	
Work will commence within _____ consecutive calendar days after receipt of PO.		10 Days		10 Days		10 Days		15 Days	
Work shall be completed within _____ consecutive calendar days and/or consecutive calendar weeks, after receipt of PO.		55 Days		60 Days		45 Days		38 Days	



**City of Bryan - Purchasing Department
 Bid Tabulation for #13-018
 Spoils Stockpile Removal Project
 Open Date: 01/17/13**

All bids submitted are reflected on this bid tab sheet. However, the listing of a bid should not be construed as any indication that the City accepts such bid as responsive. The City will notify the successful bidder upon award of contract.

	Kelly Burt	Civil Constructors	TDT Trucking	Brazos Site Works
Executed 5% Bidder's Bond (Y/N)	Y	Y	Y	Y
References (Y/N)	Y	Y	Y	Y
Acknowledged Addendum #1 (Y/N)	Y	Y	Y	Y
Felony Conviction Notification (Y/N)	Y	Y	Y	Y
Prompt Payment Discount:	N	N	N	N
Certification from bid package (Y/N)	Y	Y	Y	Y

ITEM	DESCRIPTION	Cu. Yd. Quantity	Unit Cost Per Cu. Yd.	Cu. Yd. Quantity	Unit Cost Per Cu. Yd.	Cu. Yd. Quantity	Unit Cost Per Cu. Yd.	Cu. Yd. Quantity	Unit Cost Per Cu. Yd.
1	All labor, material, equipment, and incidentals for the removal and disposal of spoils stockpiled per all terms, conditions and specifications contained in RFB #13-018	23,076	\$6.50	30,060	\$4.99	18,182	\$8.25	47,021	\$3.19
GRAND TOTAL		\$149,994.00		\$149,999.40		\$150,001.50		\$149,996.99	
Work will commence within _____ consecutive calendar days after receipt of PO.		5 Days		10 Days		10 Days		10 Days	
Work shall be completed within _____ consecutive calendar days and/or consecutive calendar weeks, after receipt of PO.		75 Days		120 Days		60 Days		90 Days	