

**CONTRACT
FOR
RFB #16-009
MSC Storage Yard – Spoil Stockpile Removal Project**

This Contract, dated _____, 2016 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 #16-009**, 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 **\$149,999.98**.

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 #16-009**.

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 #16-009**.

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 minimum insurance coverage and comply with each condition set forth below during the duration of this contract with the City of Bryan. All parties to this contract hereby agree that the Contractor's coverage will be primary in the event of a loss, regardless of the application of any other insurance or self-insurance.

Contractor must deliver to City of Bryan a certificate(s) of insurance evidencing such policies are in full force and effect within 10 business days of notification of the City of Bryan's intent to award a Contract. No contract shall be effective until the required certificate(s) have been received and approved by the City of Bryan. Failure to meet the insurance requirements and provide the required certificate(s) and any necessary endorsements within 10 business days **may cause the contract to be rejected.**

The City of Bryan reserves the right to review these requirements and to modify insurance coverage and their limits when deemed necessary and prudent.

A. Workers' Compensation Insurance & Employers Liability Insurance - Contractor shall maintain Workers' Compensation insurance for statutory limits and Employers Liability insurance with limits not less than \$500,000 each accident for bodily injury by accident or

\$500,000 each employee for bodily injury by disease. Contractor shall provide Waiver of Subrogation in favor of the City of Bryan and its agents, officers, officials, and employees.

- B. Commercial General Liability Insurance** - Contractor shall maintain Commercial General Liability (CGL) with a limit of not less than \$1,000,000 per occurrence and an annual aggregate of at least \$2,000,000. CGL shall be written on a standard ISO “occurrence” form (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract. No coverage shall be deleted from the standard policy without notification of individual exclusions and acceptance by the City of Bryan. The City of Bryan and its agents, officers, officials, and employee shall be listed as an additional insured.
- C. Business Automobile Liability Insurance** - Contractor shall maintain Business Automobile Liability insurance with a limit of not less than \$1,000,000 each accident. Business Auto Liability shall be written on a standard ISO version Business Automobile Liability, or its equivalent, providing coverage for all owned, non-owned and hired automobiles. Contractor shall provide Waiver of Subrogation in favor of the City of Bryan and its agents, officers, officials, and employees.
- D. Policy Limits** - Required limits may be satisfied by a combination of primary and umbrella or excess liability policies. Contractor agrees to endorse City of Bryan and its agents, officers, officials, and employees as an additional insured, unless the Certificate states the Umbrella or Excess Liability provides coverage on a pure “True Follow Form” basis.
- E. Deductibles, Coinsurance Penalties & Self-Insured Retention** - Contractor may maintain reasonable and customary deductibles, subject to approval by the City of Bryan. 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.
- F. Subcontractors** - If the Contractor’s insurance does not afford coverage on behalf of any Subcontractor(s) hired by the Contractor, the Subcontractor(s) shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City of Bryan accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.
- G. Acceptability of Insurers** - Insurance coverage shall be provided by companies admitted to do business in Texas and rated A-:VI or better by AM Best Insurance Rating.
- H. Evidence of Insurance** – A valid certificate of insurance verifying each of the coverages required shall be issued directly to the City of Bryan within 10 business days by the successful Contractor’s insurance agent or insurance company after contract award. Endorsements must be

submitted with the certificate. No contract shall be effective until the required certificates have been received and approved by the City of Bryan.

Renewal certificates shall be sent a minimum of 10 days prior to coverage expiration.

Upon request, Contractor shall furnish the City of Bryan with certified copies of all insurance policies.

The certificate of insurance and all notices shall be sent to:

City of Bryan

Risk Management

PO Box 1000

Bryan, TX 77805

Emailed to: mquiroya@bryantx.gov

Failure of the City of Bryan to demand evidence of full compliance with these insurance requirements or failure of the City of Bryan to identify a deficiency shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

- I. **Notice of Cancellation, Non-renewal, Material Change, Exhaustion of limits** – 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 of Bryan 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 such insurance, a new or revised certificate(s) as proof that equal and like coverage is in effect. The City of Bryan reserves the right to withhold payment to Contractor until coverage is reinstated.
- J. **Contractor's Failure to Maintain Insurance** – If the Contractor fails to maintain the required insurance, the City of Bryan shall have the right, but not the obligation, to withhold payment to Contractor until coverage is reinstated or to terminate the Contract.
- K. **No Representation of Coverage Adequacy** - The requirements as to types and limits, as well as the City of Bryan'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 under the Contract.

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 Hampton, City Attorney

Date: _____

Jason P. Bienski, Mayor

Date: _____

ATTEST:

Mary L. Stratta, City Secretary

Date: _____

SERVICE PROVIDER:

By: _____

Printed Name: _____

Title: _____

Date: _____

(Service Provider - Corporate Seal)

STATE OF TEXAS §
 § ACKNOWLEDGEMENT
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____,
2016, by _____ on behalf of
_____.

Notary Public in and for
The State of Texas

**City of Bryan - Purchasing Department
 Bid Tabulation for #16-009
 Spoils Stockpile Removal Project
 Open Date: 02/09/16**

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.

	Jeffery Bailey Trucking	Brazos Site Works	Ruffneck Construction	KSH Services	TDT	Crockett Construction
Executed 5% Bidder's Bond (Y/N)	Y	Y	Y	Y	Y	Y
References (Y/N)	Y	Y	Y	Y	Y	Y
Addendum No 1 (Y/N)	Y	Y	N	Y	Y	Y
Felony Conviction Notification (Y/N)	N	Y	Y	Y	Y	Y
Prompt Payment Discount:	N	N	Y 1%/10	Y 5%/10 & 1%EFT	N	Y 1%/10
Certification from bid package (Y/N)	Y	Y	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.	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 #16-009	25,684	\$5.84	28,625.95	\$5.24	15,300	\$9.80	15,000	\$10.00	25,424	\$5.90	15,075	\$9.95
GRAND TOTAL		\$149,994.56		\$149,999.98		\$149,940.00		\$150,000.00		\$150,001.60		\$149,996.25	
	Work will commence within _____ consecutive calendar days after receipt of PO.	15		10		3/1/2016		3		10		10	
	Work shall be completed within _____ consecutive calendar days and/or consecutive calendar weeks, after receipt of PO.	90		45		4/8/2016		45		75		27	

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

Attachment #3

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	TDT 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	