

**INVITATION TO BIDDERS ON REPAIR OF
CITY OF OYSTER CREEK COMMUNITY CENTER**

The City of Oyster Creek invites sealed bids for repairing storm damage to the Oyster Creek Community Center, including like-for-like repair or replacement of floors, ceilings, lighting, exterior gables, and interior and exterior paint.

Bids must be received at the Oyster Creek City Hall, 3210 F. M. 523, Oyster Creek, Texas, by **10:00 a.m., June 15, 2026**, and the bids will be publicly opened and read then and there. If city offices are closed, you may file your bid with the Oyster Creek Police Department at the same address.

Bids must be in a sealed envelope marked “**SEALED BID FOR COMMUNITY CENTER REPAIRS.**”

For a free packet of necessary bid information and for questions, contact:

Andi Ford, City Secretary, or
Erik Chitwood, Superintendent of Public Works,
3210 F. M. 523
Oyster Creek, Texas 77541
Telephone: 979-233-0243
Fax: 979-233-1568
andi@cityfoystercreek.com (for Andi Ford or Erik Chitwood)
or see: www.cityfoystercreek.org

The City Council will consider awarding the contract(s) at a City Council meeting at **6:00 p.m., June 18, 2026**, in the City Council Chambers, Oyster Creek City Hall, 3210 F. M. 523, Oyster Creek, Texas, or at another meeting after the bid opening.

**AGREEMENT BETWEEN OWNER AND CONTRACTOR
ON OYSTER CREEK COMMUNITY CENTER
(Equipment, Materials, and Services)**

THIS AGREEMENT is made by the **CITY OF OYSTER CREEK**, a Texas municipality, located at 3210 FM 523, Oyster Creek, Texas 77541 (herein called OWNER or CITY) **and** _____ (herein called CONTRACTOR OR BIDDER).

OWNER and CONTRACTOR, in consideration of the mutual covenants herein set forth, agree as follows:

Article 1. **GOODS AND SERVICES**

1.1 The term “Goods” herein includes both goods and materials.

1.2 The term “the Work” herein shall mean the Goods and Services described in the Contract Documents. CONTRACTOR shall furnish and deliver the Work as provided in the Contract Documents. The Work shall conform strictly to the descriptions, plans, specifications, and samples, if any, indicated in the Contract Documents, and no deviation or substitution will be allowed without the express written agreement of the OWNER.

1.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the CONTRACTOR. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

Article 2. **POINT OF DELIVERY.**

The place where the Work is to be delivered is the job site at OWNER’s facility in Brazoria County, Texas, as may be more fully specified in the Contract Documents. All Work will be delivered f.o.b. point of delivery. CONTRACTOR shall select the means of transportation. All transportation charges will be paid by the CONTRACTOR.

Article 3. **CONTRACT TIME.**

3.1 CONTRACTOR shall not commence the Work until CONTRACTOR receives a written Notice to Proceed from OWNER. Upon execution of the Contract, and upon receipt by OWNER of the required Contract Documents, OWNER shall issue a Notice to Proceed to CONTRACTOR, and CONTRACTOR shall commence the Work within ten days after the Notice to Proceed.

3.2 The Work is to be finally completed and ready for the OWNER’S acceptance **within** _____ **calendar days** after the Notice to Proceed.

- 3.3 However, CONTRACTOR shall be entitled to a change order extending the contract time by the number of days that adverse weather makes work on the contract not reasonably possible.
- 3.4 The CONTRACTOR is required to place a representative on site while work is being done on site pursuant to this contract. The CONTRACTOR's representative will verify that the Work is being performed in compliance with this Contract.
- 3.5 In the event of delay, or anticipated delay, for any cause, including force majeure, CONTRACTOR shall immediately notify OWNER in writing of the delay or anticipated delay, and will undertake to shorten or make up the delay by all reasonable means.
- 3.6 Time is of the essence in the completion of this contract.
- 3.7 Liquidated Damages

OWNER and CONTRACTOR recognize the importance of time in this Contract. They recognize and stipulate that OWNER will suffer financial loss if CONTRACTOR does not complete the Work within the time provided by this Contract. They also recognize and stipulate that it would be very difficult for OWNER to prove the actual damages resulting from a failure by CONTRACTOR to complete the Work within the time required by this Contract. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as penalty) CONTRACTOR shall pay OWNER \$1,000.00 for each day the final completion of the Work is late, and that such amount is fair compensation to OWNER for such delay.

Article 4. CONTRACT PRICE

The Contract Price for the Work is the **fixed, lump sum** of \$ _____.

Article 5. PAYMENT PROCEDURES AND RETAINAGE

5.01 General

Payment shall be made in monthly progress payments, final payment, and release of resolved retainage.

5.02 Applications for Payments

5.02.1. Three days before CONTRACTOR submits to OWNER each Application for Payment, CONTRACTOR and OWNER'S Representative will meet to review the month's Work. When that Work has been reviewed and preliminarily approved, CONTRACTOR will submit the Request for Payment to OWNER for processing. However, such preliminary approval by the On-Site Construction Inspector or Engineer is merely a preliminary screening and shall not bind OWNER.

5.02.2. CONTRACTOR shall submit Applications for Payment satisfactory to OWNER, itemizing the Work in that Application, the amount of payment requested for that Work, the percentage of the whole contract represented by that portion of the Work, the percentage of the Work in all prior Applications, the amount requested and paid in all prior Applications, the amount of retainage to be deducted from the current Application and all prior Applications, and any other pertinent information requested by OWNER.

5.02.3. CONTRACTOR must include with each Request for Payment, whether partial or final, an Affidavit and Release of Lien, swearing that all items used for the Work have been paid for in full, and releasing all liens and bond claims concerning this project. CONTRACTOR must also provide such documents from each subcontractor working on this project. The Affidavits and Releases of Liens must be in all ways satisfactory to the OWNER.

5.03 Progress Payments

5.03.1 Owner shall make monthly progress payments on account of the Contract Price during performance of the Work as provided herein, provided that Applications for such Payment have been submitted in a timely manner and are approved by OWNER and meet the requirements of the Contract.

5.03.2 Progress payments will be reduced by retainage, by the aggregate of payments previously made, and by any amounts Owner may lawfully withhold, including but not limited to liquidated damages, in accordance with the Contract.

5.03.2 Time for Progress Payments

Progress payments shall be due within 30 days after a complete and satisfactory Application for Payment is received by OWNER.

5.04 Retainage

5.04.1 OWNER shall have the right to hold retainage in the amount of ten percent of the contract price, plus any additional amounts required or allowed by law. OWNER may hold said retainage until the time has expired for filing any claims against OWNER, the bonds, or the amounts due to CONTRACTOR. In addition, OWNER shall have the right to withhold payment in an amount estimated by OWNER, in OWNER's sole discretion, necessary to remedy any defects in the Work or to pay any unpaid claimants concerning this job. Retainage and other withholding under this section shall be OWNER's right but not OWNER's obligation. This is not a third party contract and shall not be enforceable by any person other than the parties hereto.

5.04.2 However, if OWNER at any time after 50 percent of the work has been completed finds that satisfactory progress is being made, OWNER may choose whether to authorize any of the remaining progress payments to be made in full. OWNER shall not be obligated to pay any interest on the 10 percent retainage held on the first 50 percent of work completed. If OWNER holds any retainage on the remaining 50 percent of the work completed, OWNER shall pay interest on such retainage from the date the retainage is withheld to the date of payment to CONTRACTOR. The interest rate to be paid on such retainage shall be the rate of interest paid by OWNER'S depository bank on interest bearing accounts of similar amounts during the period of time interest accrues as provided herein.

5.04.3 "Substantial Completion" means that the Work is ready to be used for its intended purpose, and that no Goods or Services remain to be delivered, except for common, minor, punch list type items.

5.04.4 Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to CONTRACTOR to the Contract Price, less retainage, and less any amounts set off by Owner, and less 200 percent of OWNER's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

5.05 Final Payment

Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price, except that retainage may be withheld as provided by law or this contract.

5.06 Consent of Sureties

Owner will not make payments, or return or release retainage at Substantial Completion or any other time, unless CONTRACTOR submits written consent of the sureties on the Performance and Payment

Bonds to such payment, return, or release. Owner may also require such written consent for progress payments

Article 6. CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 6.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents and has given OWNER written notice of all conflicts, errors or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by OWNER is acceptable to CONTRACTOR.
- 6.2 CONTRACTOR has visited the site and has familiarized itself with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect the production and delivery of the Work.
- 6.3 CONTRACTOR has carefully correlated the results of all such examinations, investigations, and resolutions with the terms and conditions of the Contract Documents. CONTRACTOR has informed OWNER of any discrepancies or errors found therein.

Article 7. CONTRACT DOCUMENTS

- 7.1 The Contract Documents, which comprise the entire agreement between the OWNER and CONTRACTOR, are attached to, or accompany, or are subsequently attached to this Agreement, and are made a part hereof and consist of the following:
 - 7.1.1 This Agreement between OWNER and CONTRACTOR
 - 7.1.2 Terms and Conditions and Instructions to Bidders
 - 7.1.3 Scope of Work Document
 - 7.1.4 CONTRACTOR's Bid (Proposal)
 - 7.1.5 Timeline for completion
 - 7.1.6 Certificate of Liability Insurance
 - 7.1.7 Payment Bond

- 7.1.8 Performance Bond
 - 7.1.9 Bid Bond or Cashier's Check for 5% of Bid
 - 7.1.10 List of References
 - 7.1.11 Conflict of Interest Questionnaire
 - 7.1.12 Addenda, if any, to this Agreement
 - 7.1.13 Change Orders, if any, to this Agreement
- 7.2 In the event of any conflict in terms between the Contract Documents, the documents shall have priority over each other in the order listed above in this Article, subject to changes in Addenda and Change Orders, if any.
- 7.3 Any reference in any of the Contract Documents to the Contract, the Agreement, or similar terms shall mean all of the Contract Documents listed or described in this Article.
- 7.4 Any reference in any of the Contract Documents to a "purchase order" shall mean the Contract, unless a more specific purchase order is clearly designated.

Article 8. CHANGES

- 8.1 Changes may be made by OWNER, without invalidating the Agreement, in the character or quantity of Work to be furnished hereunder, by Change Order in writing, Such change order shall be signed by OWNER's Superintendent or by such other person as OWNER's governing body may designate, and no other person(s) has (have) authority to amend the requirements of the Work.
- 8.2 An equitable adjustment will be made to the Contract time and the Contract Price if any Change Order causes an increase or decrease in the cost to the CONTRACTOR or the extension or reduction in the time required for delivery. The price shall be equitably adjusted based on the cost to the CONTRACTOR with reasonable allocation of overhead and profit. CONTRACTOR shall submit to OWNER satisfactory evidence from which adjustments based on cost can be determined.

Article 9. WARRANTIES

9.1 Warranty of Title: No materials, supplies, or equipment shall be purchased subject to any chattel mortgage, or under a condition of sale or other agreement by which any interest therein or in any part thereof is retained by any seller, supplier, or any other person. CONTRACTOR warrants good title to all material, supplies, and equipment installed or incorporated in the Work. CONTRACTOR shall give notice of this section to all persons furnishing the Work when no formal subcontract is entered into with those persons; and in cases of formal subcontracts, CONTRACTOR will obtain a warranty of title from the subcontractor on the same terms as given herein, and CONTRACTOR hereby assigns all such warranties to OWNER. In either case, the CONTRACTOR will not be relieved from direct responsibility for title to all materials, supplies, and equipment. CONTRACTOR shall deliver the Work to the OWNER free from any claims, liens, or charges.

9.2 Warranty of Work:

9.2.1. Notwithstanding inspection and acceptance by the OWNER of the Work; CONTRACTOR warrants that the Work is free from defects in design, materials, and workmanship for a period of one (1) year after the final completion, and that the work complies with all specifications and requirements of this contract, and that all warranties in Article 2 of the Uniform Commercial Code apply.

9.2.2. CONTRACTOR warrants that the Work will be performed in a good and workmanlike manner and in compliance with all applicable laws.

9.3 In addition to the foregoing, CONTRACTOR hereby assigns to OWNER any warranties from any manufacturer, distributor, or supplier of any of the labor, materials, or other components of the Work in this contract.

Article 10 OWNER'S RIGHTS AND REMEDIES

10.1 The rights and remedies of the OWNER provided in any part of the Contract are in addition to, and do not limit any right or remedies afforded to the OWNER by State or Federal law, or by any other portion of this contract or any other source.

10.2 Pursuing or receiving any right or remedy concerning the subject of this Agreement shall not impair OWNER's right to pursue any other right or remedy, and the doctrine of election of remedies shall not apply.

10.3 Owner's Right to Carry Out the Work

If CONTRACTOR defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, the Architect may withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the cost of correction, provided the actions of the Owner and amounts charged to CONTRACTOR were approved by the Architect.

10.4 Owner's Right to Perform Construction and to Award Separate Contracts

10.4.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project.

10.4.2 CONTRACTOR shall coordinate and cooperate with the Owner's own forces and separate contractors employed by the Owner.

Article 11. OTHER PROVISIONS

11.1 Sales Tax Exemption

Attention is directed to paragraph No. 3 of Ruling no. 9, Repairmen and Contractors, (as amended) issued by the Comptroller of Public Accounts. Reference Article 20.01 (T), Limited Sales, Excise, and Use Tax and to subsequent applicable legislation. The OWNER will issue an Exemption Certificate certifying that all improvements will be owned by the **CITY OF OYSTER CREEK**, so that no sales tax in Texas need be paid on any of the Work. All Bidders and their respective suppliers must comply with paragraph No. 3 of Ruling No. 9, by obtaining the necessary permit or permits from the Texas Comptroller allowing the purchase of materials for incorporation into this project without having to pay the Limited Sales, Excise, and Use Tax at the time of purchase. Total materials cost should not include materials which are used up or consumed in performing the Work, which do not become a part of the Work.

11.2 Transportation Tax Exemption

The State, or a political subdivision of a State, including an agency or instrumentality thereof, in the case of a contractor, need not pay the tax on transportation of property imposed by Section 3475 of the Internal Revenue Code. CONTRACTOR must consign such materials to the State or political subdivision. Accordingly, OWNER authorizes CONTRACTOR to have

construction materials, necessary for actual incorporation in the project covered by this contract, consigned to the OWNER in care of the CONTRACTOR. OWNER will act as the purchaser of record and CONTRACTOR need not pay federal transportation tax. The CONTRACTOR must pay for all materials consigned hereunder, or any or all cost with the furnishing of those materials to the project, including all transportation costs and incurred demurrage. However, nothing herein shall be construed to transfer risk of loss or responsibility for any part of the Work to OWNER before delivery and acceptance thereof at the f.o.b. point of delivery at the job site.

11.3 Permits, Fees and Notices

11.3.1 CONTRACTOR shall obtain and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work.

11.3.2 CONTRACTOR shall comply with and give notices required by agencies having jurisdiction over the Work. If CONTRACTOR performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, CONTRACTOR shall assume full responsibility for such Work and shall bear the attributable costs. CONTRACTOR shall promptly notify the Architect in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules, and regulations.

11.4 Use of Site

CONTRACTOR shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents, and the Owner.

11.5 Cleaning Up

CONTRACTOR shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, CONTRACTOR shall remove its tools, construction equipment, machinery, and surplus material; and shall properly dispose of waste materials.

11.6 References to Architect or Engineer

Any reference to the Architect or Engineer in the Contract Documents shall mean the SUPERINTENDENT OF PUBLIC WORKS and/or the MAYOR of the OWNER.

11.7 Correction of Work

11.7.1 The CONTRACTOR shall promptly correct Work rejected by the Architect as failing to conform to the requirements of the Contract Documents. The CONTRACTOR shall bear the cost of correcting such

rejected Work, including the costs of uncovering, replacement, and additional testing.

11.7.2 In addition to the CONTRACTOR's other obligations including warranties under the Contract, the CONTRACTOR shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.

11.7.3 If the CONTRACTOR fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.3.

11.8 Tests and Inspections

11.8.1 At the appropriate times, the CONTRACTOR shall arrange and bear cost of tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

11.8.2 If the Architect requires additional testing, the CONTRACTOR shall perform those tests.

11.8.3 The Owner shall bear cost of tests, inspections, or approvals that do not become requirements until after the Contract is executed. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

Article 12. INSURANCE

12.1 CONTRACTOR shall assume all risk of loss or damage to the Work, including any OWNER furnished equipment consigned to CONTRACTOR, prior to acceptance by OWNER of delivery and installation at the place of delivery; and CONTRACTOR shall provide insurance on the Work to insure against the perils of fire and extended coverage including "all risk" insurance for physical loss and damage including theft, vandalism, and malicious mischief, collapse, water damage and such other risk as CONTRACTOR deems appropriate until acceptance by OWNER.

12.2 During the term of this agreement and until final acceptance by OWNER of all work to be performed hereunder, CONTRACTOR shall carry the following minimum insurance:

- a. Full coverage and compliance under the Worker's Compensation laws of the State of Texas;

- b. Comprehensive General Liability Insurance in the minimum amount of \$1,000,000.00 for any one person in any one incident and in the minimum amount of \$1,000,000.00 for any one incident;
- c. Excess liability umbrella insurance in the amount of \$10,000,000;
- d. Upon each and every unit of automotive equipment operated or used by CONTRACTOR in the performance of this contract, as follows:
 - i. Automotive Public Liability Insurance in the amount of \$1,000,000.00 for any one person in any one incident, and \$1,000,000.00 for any one incident;
 - ii. Automotive Property Damage Insurance in the amount \$1,000,000.00.

12.3 The insurance policies required by this Agreement must name OWNER as an additional insured party. All Certificates of Insurance shall be furnished to and approved by OWNER.

12.4 All such insurance shall be carried in or by companies licensed to provide insurance in the State of Texas by the State Board of Insurance and approved by OWNER. CONTRACTOR shall furnish OWNER a certificate or certificates properly executed by the insurance carrier, showing all such insurance to be in force, with no reductions to coverage due to any pending claim or claims paid, and said certificate or certificates shall include the following statement: "The General Liability Insurance certified hereunder includes Contractor's Assumed Liability Coverage for liability assumed by the Insured under all written contracts between City of Oyster Creek and the Insured." The certificate or certificates shall permit the cancellation or amendment of such policies only after thirty (30) days' written notice to OWNER, which such certificate or certificates shall be furnished OWNER prior to the commencement of any operations under this Agreement. The insurance required by this contract shall provide that it is the primary coverage and shall cover claims accruing during the policy period, even if those claims are not asserted during the policy period.

Article 13. BONDS

13.1 Bonding

CONTRACTOR shall provide a Payment Bond if the Contract Price is over \$25,000 and a Performance Bond if the Contract Price is over \$100,000.00. Said bonds must comply with Texas Government Code chapter 2253 and must be satisfactory in all respects to OWNER.

13.2 Construction of Contract Documents

The Contract Documents shall not be construed against one party on the grounds that such party drafted them.

Article 14. INDEMNITY.

14.1 CONTRACTOR shall indemnify and hold harmless the OWNER, its agents, representatives, assigns, officers, servants, and employees (“the Indemnified Persons”) from and against any and all losses, expenses, demands, claims, judgments, executions, and causes of action of whatever nature, whether in contract, tort, or otherwise made against any of the Indemnified Persons by any person, firm, corporation, association, entity, or any person whomsoever, because of damage, injury, alleged injury (including death), or loss of any nature whatsoever arising from the negligence or other breach of any duty by CONTRACTOR or those for whom CONTRACTOR is responsible in connection, directly or indirectly, with the manufacture, assembly, or delivery of the Goods or Services provided or required under this Agreement, and CONTRACTOR shall defend any suit or action brought against any of the Indemnified Persons, based on any such claim, damage, injury, alleged injury, or loss and shall pay any judgment as well as any and all costs and expenses of litigation, not just court costs, and including but not limited to attorney’s fees, incurred in connection therewith or resulting directly or indirectly therefrom.

Article 15. NO ASSUMPTION OF LIABILITY BY OWNER

15.1 Regardless of any other provision, nothing in any of the Contract Documents shall be construed as an assumption of liability by OWNER for any claims, fees, or damages of any nature whatsoever and of any person whatsoever, beyond any liability the OWNER may have by law in the absence of such assumption. This paragraph applies to any such claims, fees, liability, or damages in any way arising from any accident, act, omission, or otherwise, in any way concerning this project. However, this paragraph shall not impair OWNER’s obligation to pay the contract price according to the Contract Documents.

Article 16. ASSIGNMENT

16.1 CONTRACTOR hereby agrees that CONTRACTOR shall not assign this contract without the prior written approval of OWNER, and unless specifically stated to the contrary in such written consent to an assignment,

no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

- 16.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the express written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 16.3 OWNER and CONTRACTOR each binds itself and its partners, successors, assigns and legal representative to the other party hereto and such other party's partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

Article 17. TERMINATION

- 17.1 Termination by the Owner for Cause
- 17.1.1 The Owner may terminate the Contract if the CONTRACTOR:
- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
 - .2 fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the CONTRACTOR and the subcontractors;
 - .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
 - .4 is otherwise guilty of substantial breach of a provision of the Contract Documents.
- 17.1.2 When any of the above reasons exist, the Owner, after consultation with the Architect, may without prejudice to any other rights or remedies of the Owner and after giving the CONTRACTOR and the CONTRACTOR's surety, if any, seven days' written notice, terminate employment of the CONTRACTOR and may
- .1 take possession of the site and of all materials thereon owned by the CONTRACTOR, and
 - .2 finish the Work by whatever reasonable method the Owner may deem expedient.
- 17.1.3 When the Owner terminates the Contract for one of the reasons stated in Section 16.2.1, the CONTRACTOR shall not be entitled to receive further payment until the Work is finished.

17.1.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the CONTRACTOR. If such costs exceed the unpaid balance, the CONTRACTOR shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

17.1.5 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The CONTRACTOR shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

17.2 Under no circumstances shall CONTRACTOR receive anticipated profit for goods or services not furnished or delivered, except as provided in the section on termination by OWNER for convenience.

17.3 With respect to Work identified to the Contract, and in inventory or completed or in process of manufacture or fabrication, OWNER shall, upon termination of the Contract, have the right, at its option, to remove all or a portion of said goods from the premises of the CONTRACTOR, upon OWNER's payment or promise to pay the amount herein provided.

Article 18. PLACE OF PERFORMANCE. JURISDICTION AND VENUE.

18.1 It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Texas, both as to interpretation and performance, except for any choice of law provision that would result in the application of other than Texas Law.

18.2 Any and all suits for any and every breach of this Contract shall be instituted and maintained only in any court of competent jurisdiction in the County of Brazoria, State of Texas, or if there is federal jurisdiction, in a United States District Court for the Southern District of Texas, Galveston or Houston Division.

Article 19. INDEPENDENT CONTRACTOR.

19.1 CONTRACTOR shall be an independent contractor under the terms of this agreement and shall assume all of the rights, obligations, and liabilities applicable to it as an independent contractor hereunder and any provisions in this contract which may appear to give OWNER the right to direct

CONTRACTOR as to the details of doing the Work herein covered shall be deemed to mean that the CONTRACTOR shall follow the desires of the OWNER in the results of the Work only.

Article 20. SAFETY

20.1 CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;
2. all the Work and equipment used therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

20.2 CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury or loss; and shall provide, install, and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any person or property caused directly, indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of OWNER, or anyone employed by OWNER, or anyone for whose acts OWNER may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

Article 21. WORK STOPPAGE

21.1 If the CONTRACTOR fails to correct Work which is not in accordance with the Contract Documents, the Owner may direct the CONTRACTOR in writing to stop the Work until the correction is made.

- 21.2 At the sole discretion of the OWNER, if any emergency condition arises requiring that all or part of the work be stopped, all work of or through CONTRACTOR will be stopped upon notice given to CONTRACTOR by the Superintendent of OWNER.
- 21.3 Upon work stoppage for any reason, any and all equipment, tools, and the like will be removed as soon as reasonably possible, on request of OWNER.
- 21.4 After the period of emergency passes, CONTRACTOR shall resume and complete the work, with time allowance made for the delay caused by the stoppage.
- 21.5 Any reasonable and necessary expense, charges, and downtime costs caused by the emergency stoppage of work will be submitted, in writing, to the OWNER for payment. The OWNER shall make the final determination of what are reasonable and necessary expense, charge, and downtime costs caused by the stoppage.

Article 22. NOTICES

- 22.1 Any notice required or permitted to be given under the provisions of this Agreement shall be in writing and shall be deemed received upon the earlier of the following: (1) actual receipt, at the address stated in this section, regardless of the delivery method; or (2) being deposited in the United States mail by certified or registered mail, postage prepaid, addressed as stated in this section. Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

To the City:

City of Oyster Creek
 Attention: Superintendent
 3210 FM 523
 Oyster Creek, TX 77541

To the Contractor:

- 22.2 Either party may designate a different address by giving the other party ten days written notice, as herein provided.

Article 24. NOT A THIRD PARTY CONTRACT

- 24.1 This is not a third party contract. This Agreement shall not create any rights of – and shall not be enforceable by – any person other than the parties hereto, except as otherwise provided in the indemnity section for the benefit of the Indemnified Persons.

Article 25. NONWAIVER BY NONENFORCEMENT

The failure to enforce any obligation or to invoke any right concerning the subject of this Agreement on one or more occasions shall not be construed as a waiver of that obligation or right, and a party may commence or resume strict enforcement of that obligation or right without advance notice to any person, except such notice as may be specifically required by this Agreement.

Article 23. ENTIRE AGREEMENT BETWEEN PARTIES. AMENDMENTS.

- 23.1 This Agreement between OWNER and CONTRACTOR, together with all other Contract Documents described in Article 7 of this Agreement, embodies the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto concerning the subject matter hereof.
- 23.2 This contract shall not be amended except by either (1) a change order as herein provided; or (2) another written agreement signed by both parties and expressly and clearly stating that it amends this contract.

Article 24. AUTHORITY TO SIGN

- 24.1 Each person signing this Agreement purportedly on behalf of CONTRACTOR or on behalf of a governing person of CONTRACTOR each guaranties that each of those signers has the authority to do so and to bind the entity on behalf of which the signer purports to sign to the terms of this Agreement. CONTRACTOR shall furnish OWNER a resolution passed by the Board of Directors of the CONTRACTOR and certified to be current by the organizational Secretary of CONTRACTOR, confirming that those persons have that authority.

IN WITNESS WHEREOF, OWNER AND CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to the OWNER and the CONTRACTOR.

This Agreement will be effective on this date (“the Effective Date”):

OWNER:

CITY OF OYSTER CREEK

By: _____
Justin Mark Mills, Mayor

Attested:

By: _____
Andi Ford, City Secretary

CONTRACTOR:

Company Name

By: _____

Signature

Printed Name: _____

Title: _____

Attested by Second Authorized Governing Person

By: _____

Signature

Printed Name: _____

Title: _____

EXHIBIT 7.1.2
TERMS AND CONDITIONS,
AND INSTRUCTIONS TO BIDDERS

1.00 General

Deviations from these minimum specifications are only acceptable when they tend to exceed specifications stated, or make the products and services bid stronger and more reliable, and in any event, no change shall be effective unless approved in writing by the City.

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

1.01 Bid Instructions

If a Bidder cannot meet a specification, then the Builder must state the exceptions proposed for consideration on a signed addendum attached by the Bidder to the Bid Proposal, including a statement of the reason for non-compliance, a specification of the alternatives offered, and a statement of why those alternatives were selected for proposal by the Bidder.

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

- A. Bids shall be submitted to the following address:

City of Oyster Creek
3210 FM 523
Oyster Creek, Texas 77541

If city offices are closed, bids may be filed at the **Oyster Creek Police Department** at the same address.

- B. The Bidder must complete and return to the City, as part of the bid package the Certification of Authorized Representative on Bid Compliance and Other Matters included in the Bid Proposal in these Contract Documents. **NO BID WILL BE ACCEPTED WITHOUT THAT SIGNED CERTIFICATION.**
- C. **One (1)** signed original and **One (1)** copy of the bid must be submitted. Although Bidder must sign the Bid Proposal and any supplement thereto, the Bidder need not sign the Contract until the Contract is awarded to that Bidder.
- D. Proof of Insurance must be attached as a part of the bid.
- E. **Three** commercial references (preferably municipalities or other accounts of such size) must be provided.

- F. A list of the types, sizes and quantities of heavy equipment, if any, to be used by the CONTRACTOR and the number of personnel to be used by the CONTRACTOR.
- G. To obtain results, copies of the bid sheets, specifications, bidding documents or if you have other questions, please contact **Erik Chitwood, Superintendent of Public Works or Andi Ford, Office Manager and City Secretary at (979) 233-0243.**
- H. The bid must be accompanied by a **bid bond** in the amount of five percent of the contract price. Since this is a unit price contract, and the amount of debris cannot be known in advance, the actual contract price cannot be known at this time. However, for purposes of the bid bond amount only, CONTRACTOR may use \$100,000 as the contract price, resulting in a **bid bond amount of \$5,000.00**. The bid bond must be issued by a surety licensed to do business in Texas and acceptable to the CITY. The bond must be conditioned that if the bidder is awarded the contract by the CITY, then the bidder will execute and deliver all of the contract documents within ten days after being notified of that award. The bidder may elect to submit with the bid a cashier's check in the amount of **\$5,000**, payable to the CITY, in lieu of a bid bond. If the bidder is not awarded the contract, or if the bidder is awarded the contract and executes and delivers all of the contract documents within ten days after being notified of the award, then the bid bond shall be cancelled or the cashier's check shall be returned to the bidder. . However, this section does not require CONTRACTOR to provide performance and payment bonds before the City notifies CONTRACTOR to provide those bonds in connection with a purchase order or notice to proceed.

1.02 Funding

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 City fiscal year shall be subject to budget approval by the City Council.

1.03 Late Bids

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

1.04 Altering Bids

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

1.05 Withdrawal of Bids

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

1.06 Sales Tax

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

1.07 Pricing

This is a fixed price contract. The bid price shall be firm for the duration of this contract and shall be stated on the bid sheets. **The bid price shall be all inclusive.** No price changes, additions or subsequent qualifications will be honored during the course of the contract, except by a change order approved by the City in writing at the discretion of the City. Additional changes not shown on the bid will not be honored. All prices must be in ink.

1.08 Bid Award

If a contract is awarded, it will be awarded to the lowest responsible bidders, whom the City believes in its sole discretion possess the ability to perform successfully under the terms and conditions of the contract, and who meets or exceeds the terms, conditions, and specifications of the bid. The City has the right to award a contract upon the conditions, terms, and specifications contained in a bid submitted to the City for a period of up to one hundred twenty (120) days following the date specified for the opening of bids. In awarding a contract, the City may waive minor technicalities and informalities in the bid process and bids received if they are not material to or alter any of the conditions, terms, or specifications contained in the bid. In determining the lowest responsible bidder, the City may consider:

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

1.09 Contract

The bid, when properly supplemented by any bonds and/or certificate of insurance as may be required herein, and when accepted by City, shall constitute a contract equally binding between the successful bidder and the City. No invoices will be paid prior to acceptance of contract by City. No different or additional terms will become a part of this contract.

1.10 Rejection of Bids. Waiver of Formalities or Defects.

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

1.11 References

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

1.12 Conflict of Interest

No public official shall have interest in this contract except in accordance with Vernon's Texas Codes Annotated, Local Government Code Title 5, Subtitle C, Chapter 171. Separately, any conflict of interest that might jeopardize FEMA reimbursement for this contract shall be a disqualification of the bidder.

1.13 Ethics

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

1.14 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 CONTRACTOR's manner or method of executing the work, or at any time due to defective work or materials, and said responsibility will not be released until the project shall have been completed and accepted.

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

CONTRACTOR shall be responsible for all work, materials, defects, and damages caused by any subcontractor, to the same extent as if caused by CONTRACTOR itself. Without limiting the generality of the foregoing, any reference in this contract to damages caused by CONTRACTOR shall also include damages caused by any subcontractor.

1.15 Descriptions

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

1.16 Addenda

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

1.17 Bids Must Comply

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

1.18 Documentation

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

1.19 Termination of Contract

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

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

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

1.20 Notice

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

1.21 Invoices

Invoices shall be submitted weekly and shall be addressed to the City and shall reference the City approved purchase order number. Periodic payments will be made within 30 days of invoice date or satisfactory delivery of the product or service, whichever is later, provided that all other requirements as detailed in the contract have been fulfilled.

1.22 Law Governing and Venue

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

1.23 Assignment

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

1.24 Silence of Specification

The apparent silence of these specifications as to any detail or the apparent omission from them of a detailed description concerning any point shall be regarded as meaning that only the best commercial practice shall be used and that only material and workmanship of the first quality are acceptable. All interpretations of these specifications shall be made upon the basis of this statement.

1.25 Warranty

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

1.26 Drug and Alcohol Testing

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

1.27 Employee Background Checks

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

1.28 Contractor Past Performance

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

1.29 No Geographical Preference

There shall be no statutorily or administratively imposed in-state or local geographical preference in the evaluation of bids, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference.

1.30 Contractor Experience

Contractor shall have provided services similar in scope to the services required in this specification on a continuing basis over a recent minimum five (5) year period. The bidder shall submit with this bid, detailed relevant company experience.

1.31 Bidder and Contractor

The terms “Bidder” and “Contractor” herein shall be interchangeable after the Contract is signed.

**EXHIBIT 7.1.3
SCOPE OF WORK**

The Work shall include all materials, labor, and other things necessary for repairing and replacing storm damaged portions of the Oyster Creek Community Center, 124 Linda Lane, Oyster Creek, Texas with like for like items. This includes, but is not limited to:

Floors;

Ceilings;

Lighting;

Exterior gables; and

Interior and exterior paint.

Each bidder must inspect the Community Center to prepare a bid that itemizes the repairs and replacements to be made, as stated in the Bid Proposal included with these Contract Documents.

**EXHIBIT 7.1.4
CONTRACTOR'S BID (PROPOSAL)**

I, the undersigned, have completely read all parts of the proposed contract for **REPAIR OF THE OYSTER CREEK COMMUNITY CENTER.**

State an itemized description of all items to be repaired and all items to be replaced, including a detailed description of the materials, equipment, and methods to be used, including the quantities. Also include a drawing showing the locations areas to be replaced, and the same information for those to be repaired. Add and initial additional pages if necessary.

**The lump sum bid price for that Work is _____
DOLLARS (\$_____).**

This bid price includes all equipment, labor, supervision, material, and all other costs of any nature to the City, I have read and agree to comply with all of these requirements.

The Work shall be fully completed no later than _____ calendar days after the notice to proceed.

Date: _____

BIDDER: _____
ADDRESS: _____
PHONE: _____

INITIALS: _____

CERTIFICATION OF AUTHORIZED REPRESENTATIVE ON BID COMPLIANCE AND OTHER MATTERS:

I hereby certify that I possess the authority to submit this bid on behalf of the Bidder I represent, and by my signature hereon I certify that the services/unit(s) the Bidder proposes to furnish will meet or exceed every specification contained herein, except as specifically stated on a signed addendum attached to this Bid Proposal, in compliance with section 1.01 of the Terms and Conditions and Instructions to Bidders. I have read each and every page of the Contract Documents. Further, the Bidder agrees that if this bid is accepted, the Bidder shall perform as required in these contract documents. I am aware that, once accepted by City, this bid becomes a binding contract in accordance with the provisions herein of the aforementioned Contract Documents, and that the Bidder will not be permitted to attempt enforcement of any other contract or contract provisions.

AUTHORIZED REPRESENTATIVE ON BEHALF OF BIDDER

NAME OF BIDDER:

SIGNATURE

PRINTED NAME

TITLE

DATE SIGNED

**EXHIBIT 7.1.5
TIMELINE FOR COMPLETION**

Provide a detailed schedule of progress through completion of the Work.

**AUTHORIZED REPRESENTATIVE ON
BEHALF OF BIDDER**
NAME OF BIDDER:

SIGNATURE

PRINTED NAME

TITLE

DATE SIGNED

EXHIBIT 7.1.6
CERTIFICATE OF LIABILITY INSURANCE

**EXHIBIT 7.1.7
PAYMENT BOND**

EXHIBIT 7.1.8
PERFORMANCE BOND

EXHIBIT 7.1.9
BID BOND OR CASHIER'S CHECK FOR 5% OF BID

**EXHIBIT 7.2.10
CONTRACTOR'S REFERENCES**

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

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

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

EXHIBIT 7.1.11

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

officer named in this section AND the taxable income is not from the **City of Oyster Creek**?

Yes _____

No _____

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

Yes _____

No _____

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

4.

Signature of person doing business with the government entity

Date