

Chang's Aggregates

ADVERTISEMENT AND INVITATION FOR BIDS

The City of Llano will receive sealed bids for the City of Llano Maintenance of City Lake Dredging Project, until 10:00 a.m., local time on Monday, December 29, 2014 at City Hall located at 301 W. Main Street, Llano, TX 78643, at which time the bids will be publicly opened and read aloud.

Bid/Contract Documents may be obtained by contacting:

Toni Milam
City Secretary
City of Llano
301 W Main
Llano, Texas 78643
Telephone Number [325 247 4158 Ext 207](tel:3252474158)
Email: tmilam@cityofllano.com

The **City of Llano** reserves the right to reject any or all bids or to waive any informalities in the bidding.

Bids may be held by **City of Llano** for a period not to exceed **30** days from the date of the bid opening for the purpose of reviewing the bids and investigating the contractor's qualifications prior to the contract award.

City of Llano Maintenance of City Lake

The City of Llano is taking sealed bids for the partial dredging of City Lake in various quantities. The City wishes to enter into a multi-year contract

Prior to Bidding and Performance of work:

(a) Examination of Contract and Site. Contractor specifically represents that it has carefully examined the site of the proposed Work and is thoroughly familiar with the nature and location of the Work, the time needed to complete the Work, Contractor's ability to meet all deadlines and schedules required by this Agreement, the general and local conditions, and all other matters that in any way affect the Work under this Agreement, having had the opportunity to conduct any and all additional inquiry, tests and investigation that Contractor deems necessary and proper.

(b) Continuing Obligation. Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents to check and verify pertinent information and requirements of this Agreement. Contractor shall promptly report in writing to City's representative any conflict, error, ambiguity or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from City's representative before proceeding with any Work affected thereby. Contractor shall be liable to City for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents of which Contractor knew or reasonably should have known.

(c) City will not be responsible for additional expenses incurred by Contractor to perform extra work necessitated by conditions which were discoverable by Contractor prior to beginning work and which Contractor failed to include in its proposal or this Agreement.

(d) Term of Agreement. The term of this Agreement shall be for a period

of five (5) years, commencing on 12-1-14 and concluding on 12-1-19. At the expiration of the term of this Agreement, the Agreement will be extended for successive periods of five (5) years; provided, that neither party provides the other party with written notice of intent to terminate this Agreement at least ninety (90) days prior to the expiration date of this Agreement or ninety (90) days prior to any of the then applicable individual five-year extension periods. If either party provides such notice, this Agreement will cease to be renewed and will terminate at the end of either this five (5) year agreement, or at the end of the subsequent five (5) year extension period, as applicable.

(e) Rate Adjustment. CPI-U Adjustment. On March 1, 2015 and on each subsequent March 1 of this Agreement, the Service Provider shall have the right, in its sole discretion and upon giving prior notice to the City, to increase or decrease the rates set forth in Exhibit A (the "Initial Rates") in accordance with the CPI-U. As used herein, "CPI-U" shall mean the revised Consumer Price Index rate for all urban consumers (all items included) for the Houston-Galveston-Brazoria, TX area, based on the latest available figures from the Department of Labor's Bureau of Labor Statistics (the "Bureau"). The CPI-U used will be the CPI-U published by the Bureau during the month of November each year for the subsequent adjustment date of March 1. The amount of the increase or decrease under this Section 10.A. shall be equal to the percentage that the CPI-U has increased or decreased over the previous twelve (12) month period.

(f) Operating Cost Adjustment. In addition to the rate adjustments provided for in Section 10.A., on an annual basis, the Service Provider may petition the City for additional rate and price adjustments on the basis of material or unusual changes in its cost of operations, including but not limited to increases in disposal costs, transportation costs and an increase in fuel costs above the Base Price, as defined herein. At the time of any such petition, the Service Provider shall provide the City with documents and records in reasonable form and sufficient detail to reasonably establish the necessity of any requested rate adjustment. The City shall not unreasonably withhold, condition or delay its consent to any requested rate increase. In the event the City fails or refuses to consent to any such requested rate increase and the Service Provider can demonstrate that such rate increase is necessary to offset the Service Provider's increased costs in connection with performing the services under this Agreement not otherwise offset by any previous rate adjustments hereunder, the Service Provider may, in its sole discretion, terminate this Agreement upon ninety (90) days written notice to the City.

In the event the City agrees to a rate adjustment on the basis of an increase or decrease in the price of diesel fuel (a "Fuel Cost Adjustment"), then any such Fuel Cost Adjustment shall be determined when the average price of diesel fuel for the preceding year exceeds two dollars and ninety-five cents (\$2.95) per gallon (the "Base Price"). The average price of diesel fuel will be established using the United States Department of Energy diesel fuel pricing for the Gulf Coast Region. The following website, or similar, will be the source for such information:

http://tonto.eia.doe.gov/oog/info/wohdp/diesel_detail_report_combined.asp. The average price of diesel fuel for any proposed Fuel Cost Adjustment shall be the average of the weekly fuel prices published for the fifty-two weeks immediately preceding such proposed Fuel Cost Adjustment (the "Average Price"). The Service Provider and City agree that any Fuel Cost Adjustment shall be done in accordance with the following formula: Any proposed Fuel Cost Adjustment shall be equal to the product of (i) 6.60% and (ii) a fraction the numerator of which is equal to the difference between the Base Price and the Average Price and the denominator of which is the Base Price. In the event the Average Price is greater than the Base Price, the Fuel Cost Adjustment shall be an upward adjustment to all the rates herein. In the event the Average Price is less than the Base Price, the Fuel Cost Adjustment shall be a downward adjustment to all the rates herein, provided, however, the rates shall not go below the rates contained in Exhibit "A" hereof. Notwithstanding anything to the contrary contained herein, the Franchise Fee shall not apply to the Fuel Cost Adjustment.

Dredging Responsibilities

(a) Commencement and Completion Dates. Contractor hereby agrees to commence

Work on or after the date established for the start of Work as set forth in the notice to proceed and complete all Work within the time stated in this Agreement. The notice to proceed shall be given in writing by the City. The Work required to be performed by the Contractor in accordance with this Agreement shall be completed no later than ninety (90) days after receipt of the notice to proceed; provided, however, that an extension shall be automatically granted for each day that inclement weather prohibits safe conduct of the Work.

- (b) *Specifications.* Contractor shall complete the Work required by the description of the Work set out in the Contract Documents in a competent and efficient manner in accordance with the procedures, specifications and standards contained in the Contract Documents and all regulations, ordinances or specifications applicable to such Work (with the exception of those permits and licenses described in Section 2(i) of this Agreement which shall be the responsibility of the City), such specifications, standards, regulations and ordinances being expressly incorporated herein by reference and being made a part of this Agreement as though written herein.
- (c) *Unforeseen Conditions.* Contractor must notify City in writing as soon as reasonably possible, but no later than three (3) calendar days, if unforeseen conditions are encountered at the site which are unknown physical conditions of an unusual nature, that differ materially from those normally encountered in the type of work being performed under this Agreement. If it is determined by City that such conditions differ materially and cause an increase or decrease in the cost of or time required for performance of any part of the Work, City's representative, in his reasonable discretion, will determine whether or not an equitable adjustment in the price or time for performance will be made, taking into consideration Section 1 and other applicable provisions of this Agreement. If it is determined that such conditions are not materially different from those indicated in the Contract Documents, the price and time period will not be adjusted.
- (d) *Protection of Lines.* Notwithstanding any other provision of this Agreement, Contractor is solely responsible for the location and protection of any and all public utility lines and utility customer service lines in the Work area. **Contractor shall indemnify or reimburse such expenses or costs (including fines that may be levied against City) that may result from unauthorized or accidental damage to all public lines and utility customer service lines in the Work area.** City reserves the right to repair any damage Contractor causes to such utilities at Contractor's expense. If a public line and/or customer service line is damaged by Contractor, Contractor shall give verbal notice within one (1) hour and written notice within twenty-four (24) hours to City's representative.
- (e) *Good and Workmanlike Manner.* All Work performed under this Agreement shall be performed in a good and workmanlike manner and to the reasonable satisfaction of the City and its representative.
- (f) *Facilitate Inspection.* Contractor shall furnish City and City's representative with every reasonable facility for ascertaining whether or not the Work performed was in accordance with the specifications applicable thereto, and further, access to Contractor's Eagle's Nest mine facility and associated records to verify the weight of the dredged material removed.
- (g) *Means and Methods of Dredging.* Contractor shall be solely responsible for the

means, methods, techniques, sequences and procedures of the Work. Contractor shall be responsible to see that the completed work complies accurately with the Contract Documents. City may reject any of the Work for which, in the judgment of the City, the Work was not performed in accordance with the Contract Documents. Prior to commencement of work to be performed the City shall determine if the lake will be drained or if dredging will be performed without the drainage of the lake. During dredging, the Contractor shall ensure that there is no interruption of water flowing into the water intake located at the water treatment plant. Contractor shall have all accumulated materials from the dredging removed from the dewatering area within the stated time frame for the length of the contract.

It is the contractors responsibility to determine the most suitable area for the dewatering and temporary storage. Contractor shall provide a map indicating the locations, and also proposed routes of trucks. Prospective bidders shall meet with the City to determine locations that will be used for the aforementioned.

Contractor shall be responsible to maintain a natural turbidity level at the raw water intake and for any costs associated with failure to maintain a natural turbidity.

- (h) *Work Stoppage.* The City shall have the right to order the Work of the Contractor wholly or partially stopped:
 - a. if any of the Work being done is not in strict accordance with this Agreement; or
 - b. if any portion of the Work is being performed so as to create a hazardous condition.
- (i) Such stoppage or suspension shall neither invalidate any of Contractor's performance obligations under this Agreement, including the time of performance and deadlines therefore, nor will extra charges be allowed the Contractor by reason of such stoppage or suspension.
- (j) *Permits and Licenses.* The City shall secure and pay for all necessary permits and licenses, governmental fees, and inspections necessary for the proper execution and completion of the Work. During this Agreement term and/or period during which the Contractor is working, with the exception of those permits and licenses described in this Section 2(i) which shall be the responsibility of the City, Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the Work. Contractor shall have no liability for the City's failure to obtain permits and inspections or pay fees in accordance with this Section 2(i).
- (k) *Safety Precautions.* Safety precautions at the site are a part of the construction techniques and processes for which the Contractor shall be solely responsible. The Contractor is solely responsible for handling and use of hazardous materials or waste, and informing employees of any such hazardous materials or waste. The Contractor shall provide copies of all hazardous materials and waste data sheets to the Fire Department.
- (l) *Warn of Hazards.* The Contractor has the sole obligation to protect or warn any individual of potential hazards created by the performance of the Work set forth herein. The Contractor shall, at its own expense, take such precautionary measures for the protection of persons, property, and the work as may be necessary.

(m) *Failure of Safety Devices.* The Contractor shall be held responsible for all damages to property, personal injuries and/or death due to failure of safety devices of any type or nature that may be required to protect or warn any individual of potential hazards created by the performance of the Work set forth herein; and when any property damage is incurred, the damaged portion shall immediately be replaced or compensated for by the Contractor at its own cost and expense.

(n) *Indemnity for Safety Failure.* **The Contractor shall indemnify City and its officers, agents and employees from any liability caused by the Contractor's failure to comply with applicable federal, state, or local regulations, that relate to or concern the maintenance of a safe and protected working environment and the safe use and operation of machinery and equipment in that working environment no matter where fault or responsibility lies.**

Insurance and Indemnification

(a) *Insurance.* Contractor shall provide for insurance coverage in accordance with the requirements applicable to Contractor as provided for in Exhibit "B", the provisions of which are expressly incorporated herein by reference.

(b) *Indemnification.* Contractor shall INDEMNIFY, DEFEND, AND HOLD HARMLESS, City, its officers, agents and employees from and against any and all suits, actions, claims, damages, losses, and expenses of any character, name and description, including, but not limited to, attorney's fees, arising out of or resulting from the operations of Contractor, its agents, employees or subcontractors; or on account of any negligent act or fault of Contractor, its agents, employees or subcontractors in performing the Work pursuant to this Agreement, including, but not limited to, any such claim, damage, loss or expense attributable to bodily or personal injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and shall pay any judgment, with costs, which may be obtained against the City growing out of such injury or damage. Nothing herein shall waive any governmental immunity available to the City under Texas law and any defenses of the parties under Texas law.

4. Acceptance and Payment

City shall pay Contractor the amount specified in this Agreement (\$48,000.00) within ten (10) days of Contractor completing the Work in accordance with the terms of this Agreement.

(a) *Assurance of Payment.* Prior to City's payment for the Work, Contractor shall furnish a written affidavit, in a form provided by City, stating all bids, charges, accounts or claims for labor performed and material furnished in connection with the work performed pursuant to this Agreement have been paid in full and that there are no unreleased recorded liens related to or filed against the Work.

5. Remedies and Damages

Delay Damages. If the Contractor should neglect, fail, or refuse to finally complete the Work within the time herein specified, or any proper extension thereof granted by the City, then the Contractor

does hereby agree as part of the consideration for the awarding of this Agreement, that City may withhold permanently from the Contractor's total compensation the sum of Two Hundred and Fifty and No/100 Dollars (\$250.00) for each and every calendar day that the Contractor shall be in default after the time for finally completing the Work, not as a penalty, but as liquidated damages for the breach of this Agreement.

6. Termination

(a) Termination for Cause. Without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law the City, upon giving the Contractor five (5) days prior written notice, shall be entitled to terminate this Agreement in its entirety at any time for the following:

- (1) If the Contractor becomes insolvent, commits any act of bankruptcy, makes a general assignment for the benefit of creditors, or becomes the subject of any proceeding commenced under any statute or law for the relief of debtors; or
- (2) If a receiver trustee or liquidator of any of the property or income of the Contractor shall be appointed; or
- (3) If the Contractor shall fail to prosecute the Work or any part thereof with diligence necessary to insure its progress and completion as prescribed by the time schedules; or
- (4) If the Contractor shall fail to remedy any default within ten (10) days after written notice thereof from City; or
- (5) If the Contractor commits a default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

(b) Termination for Convenience. The performance of the work may be terminated at any time in whole or, from time to time, in part, by the City for its convenience. Any such termination shall be effected by delivery to the Contractor of a written notice (notice of termination) specifying the extent to which performance of the work is terminated, and the date upon which termination becomes effective.

(c) Payment on Termination For Convenience. In the event of termination for convenience, the Contractor shall only be paid for material removed prior such termination at the rate of \$2.25 per ton of material removed and shall not be entitled to receive any further fixed fee payments hereunder and shall be further subject to any claim the City may have against the Contractor under other provisions of this Agreement or as a matter of law, including the refund of any overpayment of reimbursable costs and/or fixed fee. Further, in the event of termination for convenience, City shall also pay the Contractor a mobilization fee of \$ 4,000.

(d) Right To Complete. If this Agreement is terminated, the City shall have the right but shall not be obligated to complete the Work itself or by others; and to this end, if this Agreement is terminated for cause, the City shall be entitled to exercise all rights, options, and privileges of the Contractor under its subcontracts, purchase orders, or otherwise; and the Contractor shall promptly assign such rights, options, and privileges to City, if requested to do so by the City. If the City elects to complete the work itself or by others, pursuant to the foregoing, then the Contractor will reimburse City for all costs incurred by the City (including, without limitation, applicable, general, and administrative

expenses, and field overhead, and the cost of necessary equipment, materials, and field labor) in completing the Work by the Contractor which fails to meet any Agreement requirements.

(e) Close Out. After receipt of a notice of termination, whether for cause or convenience, unless otherwise directed by City, the Contractor shall, in good faith and to the best of its ability, do all things necessary in the light of such notice to assure the efficient and proper closeout of the terminated work (including the protection of City's property). Among other things, the Contractor shall, except as otherwise directed or approved by City, do the following:

(1) Stop the Work on the date and to the extent specified in the notice of termination;

(2) With the approval of City, settle all outstanding liabilities and all claims arising out of such termination, orders, and subcontracts;

(f) Breach of Agreement. The City shall have the right to declare the Contractor in breach of this Agreement for cause when the City determines, in its good faith judgment, that this Agreement is not being performed according to its understanding of the intent and meaning of this Agreement. Such breach shall not in any way invalidate, abrogate or terminate the Contractor's obligations under this Agreement.

(g) Completion of Work. Wherein the Contractor has abandoned the project or the City has terminated the contract for cause, then the City at its option may provide for completion of the work, including but not limited to the employment of such force of workers and use of instruments, machinery, equipment, tools, materials, and supplies as the City may deem necessary to complete the Work and charge the expense of such labor, machinery, equipment, tools, materials, and supplies to said the Contractor, and the expense so charged shall be deducted and paid by the City out of such monies as may be due or that may thereafter at any time become due to the Contractor.

(h) Damages. Without prejudice to any other legal or equitable right or remedy that the City would otherwise possess hereunder or as a matter of law, the City upon giving the Contractor five (5) days prior written notice shall be entitled to damages for breach of contract, upon but not limited to the following occurrences:

(1) If the Contractor shall fail to remedy any default after written notice thereof from City, as City shall direct; or

(2) If the Contractor commits a default under any of the terms, provisions, conditions, or covenants contained in this Agreement.

The following is the various bids the City will be accepting for the Dredging Project without the draining of a portion of City Lake, all bids shall include dredging, removal of material from the de-watering area, and mobilization

Site Bid Amount Location of Dewatering
 Bid A: Removal of 20,000 tons of Oregon Street
 material per
 year: \$2.50
 Bid B: Removal of 25,000 tons of
 material per year: \$2.30

Bid C: Removal of Over 25,000 tons of
 Material based on a per ton
 basis per
 year: \$2.15
 Estimated Date to Begin Work each year: 12/1/15 12/1/16 12/1/17 12/1/18 12/1/19

The following is the various bids the City will be accepting for the Dredging Project with the draining of a portion of City Lake, all bids shall include dredging, removal of material from the de-watering area, and mobilization

Bid Amount Location of Dewatering Site
 Bid A: Removal of 20,000 tons of Bqdu park (undeveloped)
 material per
 year: \$2.25
 Bid B: Removal of 25,000 tons of
 material per year: \$2.05
 Bid C: Removal of Over 25,000 tons of
 Material based on a per ton
 \$1.30 ~~min~~ with minimum 38,000 tons moved *
 basis per
 year:
 Estimated Date to Begin Work each year: 12/1/15 12/1/16 12/1/17 12/1/18 12/1/19

Bidder/Company Name: Chang's Aggregates
 Bidder/Company Address: 7850 East State Hwy 29; Llano, TX 78643
 Bidder/Company Representative Name: Keith Jackson
Keith Jackson 12-19-14
 Signature Date

